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FEDERAL REGISTER

Vol. 87 Wednesday
No. 133 July 13, 2022

Pages 41581–42058

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0806; Project Identifier MCAI–2022–00377–R; Amendment 39–22108; AD 2022–14–03]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB412 and AB412 EP helicopters. This AD was prompted by reports of cracked tailboom attachment bolts and barrel nuts. This AD requires replacing the upper left hand (LH) tailboom attachment bolt, visually inspecting the other three tailboom attachment bolts and all barrel nuts, repetitive torque checks of the tailboom attachment bolts, and corrective action if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective July 28, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 28, 2022.

The FAA must receive comments on this AD by August 29, 2022.

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 incorporated by reference (IBR) in this final rule, 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*. For Leonardo Helicopters service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *https://customerportal.leonardocompany.com/en-US/*. 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. Service Information that is IBRed is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0806.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0806; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4130; email *9-AVS-AIR-730-AMOC@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0046, dated March 17, 2022 (EASA AD 2022–0046), to correct an unsafe condition for all serial-numbered Leonardo S.p.a. Model AB212, AB412, and AB412EP helicopters.

This AD was prompted by reports of cracked tailboom attachment bolts and barrel nuts. The FAA is issuing this AD to address the fatigue cracking of tailboom attachment bolts. See EASA AD 2022–0046 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0046 requires a one-time replacement of the upper left-hand tailboom attachment bolt and an inspection of the other three tailboom attachment bolts and all four barrel nuts for corrosion and damage. If there is any corrosion or damage, EASA AD 2022–0046 requires replacing the attachment bolt or barrel nut as applicable. EASA AD 2022–0046 also requires a torque check following each replacement of a tailboom attachment bolt or after tailboom installation and depending on the results of the torque check, corrective action.

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 also reviewed Leonardo Helicopters Service Bulletin Alert No. 412–170, dated March 1, 2022. This service information specifies procedures for inspecting and the replacing the tailboom attachment hardware.

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, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of the same type designs.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0046, described previously, as IBRed, except for any differences identified as exceptions in the regulatory text of this AD and as discussed under ''Differences Between this AD and 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, EASA AD 2022–0046 is IBRed in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2022–0046 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0046 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 2022–0046. Service information referenced in EASA AD 2022–0046 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0806 after this final rule is published.

Differences Between This AD and EASA AD

EASA AD 2022–0046 includes Model AB212 helicopters in the applicability; this AD does not because that helicopter model is not FAA type-certificated. Service information referenced in EASA AD 2022–0046 specifies sending compliance forms to the manufacturer; this AD does not require that action. EASA AD 2022–0046 requires contacting the manufacturer for disposition instructions for damaged parts; this AD does not and instead requires that the parts be removed from service.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

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

There are no helicopters with these type certificates on the U.S. Registry. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0806; Project Identifier MCAI–2022–00377–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4130; email *9-AVS-AIR-730-AMOC@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.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

There are no costs of compliance with this AD because there are no helicopters with these type certificates on the U.S. Registry.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national

Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–14–03 Leonardo S.p.a.: Amendment 39–22108; Docket No. FAA–2022–0806; Project Identifier MCAI–2022–00377–R.

(a) Effective Date

This airworthiness directive (AD) is effective July 28, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model AB412 and AB412 EP helicopters.

(d) Subject

Joint Aircraft System Component (JASC) Code: 5302, Rotorcraft Tail Boom.

(e) Unsafe Condition

This AD was prompted by reports of cracked tailboom attachment bolts and barrel nuts. The FAA is issuing this AD to address fatigue cracking of tailboom attachment bolts and barrel nuts. The unsafe condition, if not addressed, could result in separation of the tailboom from the helicopter and subsequent 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 paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0046, dated March 17, 2022 (EASA AD 2022–0046).

(h) Exceptions to EASA AD 2022–0046

(1) Where EASA AD 2022–0046 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0046 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD refers to March 14, 2022, the effective date of EASA AD 2022–0035 dated March 7, 2022, this AD requires using the effective date of this AD.

(4) Where the service information referenced in EASA AD 2022–0046 specifies contacting Leonardo S.p.a. for disposition instructions if a part is found damaged, this AD instead requires removing the part from service.

(5) Where the service information referenced in EASA AD 2022–0046 specifies discarding a certain part, this AD instead requires removing that part from service.

(6) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2022–0046.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0046 specifies submitting 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) 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

For more information about this AD, contact Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4130; email *9-AVS-AIR-730-AMOC@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0046, dated March 17, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0046, 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*.

(4) You may view this service information 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–2022–0806.

(5) You may view this material that is incorporated by reference 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued on June 23, 2022.

Ross Landes,

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

[FR Doc. 2022–14817 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0169; Airspace Docket No. 21–ASO–3]

RIN 2120–AA66

Amendment Class D and Class E Airspace; South Florida; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is correcting a final rule that appeared in the **Federal Register** on March 4, 2022, amending airspace for several airports in the south Florida area. This action corrects the legal description of Miami Executive Airport (formerly Kendall-Tamiami Executive Airport), by including the erroneously omitted surface E airspace description.

DATES: Effective 0901 UTC, September 8, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** for Docket No. FAA 2021–0169 (86 FR 50245, September 8, 2021), amending Class D and Class E airspace for eight airports in the south Florida area. Subsequent to publication, the FAA found that the surface E airspace for Miami Executive Airport (formerly Kendall-Tamiami Executive Airport), required updating to mirror the airport's Class D airspace, and was inadvertently omitted from the action. This action corrects this error by amending the surface E airspace for this airport by updating the airport's name and geographic coordinates, as well as removing unnecessary verbiage referencing the Miami Class B airspace.

Good Cause for No Notice and Comment

Section 553(b)(3)(B) of Title 5, United States Code, (the Administrative Procedure Act) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The FAA finds that prior notice and public comment to this final rule is unnecessary due to the fact that there is no substantive change to the rule.

Availability and Summary of Documents for Incorporation by Reference

This document amends 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 routes, and reporting points.

Correction to Final Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by adding the amended descriptor for the surface E airspace for Miami Executive Airport to the final rule of Amendment Class D and Class E Airspace; South Florida.

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. Therefore, this regulation: (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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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.

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO FL E2 Miami Executive Airport, FL [Amended]

Miami Executive Airport, FL
(Lat. 25°38′51″ N, long. 80°26′00″ W)

That airspace extending upward from the surface within a 3.5-mile radius of the Miami Executive Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in College Park, Georgia, on July 7, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–14829 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–13–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY

28 CFR Part 814

RIN 3225–AA18

Collection by Offset From Indebted Government Employees

AGENCY: Court Services and Offender Supervision Agency (CSOSA).

ACTION: Direct final rule.

SUMMARY: This direct final rule codifies internal procedural requirements for the offset to employees' salaries by the Court Services and Offender Supervision Agency for the District of Columbia as required by the Office of Personnel Management regulations. The OMB regulations require review and approval of this rulemaking by the Office of Personnel Management prior to its publication, CSOSA is publishing this rule as a direct final rule.

DATES: This direct final rule is effective October 11, 2022 without further action, unless an adverse comment is received by August 12, 2022. If an adverse comment is received, CSOSA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Paul Girardo, Associate Director, Office of Financial Management, Court Services and Offender Supervision Agency, 633 Indiana Ave. NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Paul Girardo, Associate Director, Office of Financial Management, Court Services and Offender Supervision Agency, 633 Indiana Ave. NW, Washington, DC 20004; telephone: 202–220–5718; email: *Paul.Girardo@csosa.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management, in its regulations at 5 CFR 550.1104, requires agencies to issue regulations governing the collection of a debt by salary offset. The Court Services and Offender Supervision Agency (CSOSA) has developed a new regulation in compliance with 5 CFR 550.1104.

CSOSA was established within the Executive Branch of the Federal Government by the *National Capital Revitalization and Self-Government Improvement Act of 1997,* Public Law. 105–33, 111 Stat. 251, 712 (DC Code 24–1232, 24–1233). On August 4, 2000, CSOSA, including the Pretrial Services Agency for the District of Columbia (PSA), an independent entity within CSOSA, was certified by the Attorney General as an independent Federal agency.

CSOSA provides supervisory and intervention services to individuals on probation, parole, and supervised release for District of Columbia Code violations. CSOSA also provides supervisory and intervention services to offenders from other jurisdictions in accordance with the Interstate Parole and Probation Compact. PSA supervises, monitors, and provides treatment services to defendants awaiting trial in the Superior Court for the District of Columbia (DC Superior Court) and the United States District Court for the District of Columbia (U.S. District Court).

This part applies to employees of CSOSA and PSA, both hereinafter referred to as CSOSA employees. The CSOSA Director assumes overall responsibility for Agency compliance with this regulation. The CSOSA Director delegates the processing and administration of employee salary offset procedures for PSA employees to the PSA Director.

I. Background

This direct final rule (hereinafter part) responds to and complies with the requirements of the Office of Personnel Management's regulations at 5 CFR part 550 subpart K, Collection by Offset from Indebted Government Employees.

This part covers internal Agency and government-wide collections of debt through the use of salary offset. Employees will be provided with notice, as set forth in the regulation. The part also notes any exceptions that apply to CSOSA's collection of debts from employees through the use of salary offset. This part also: (1) details the process by which an employee may petition for a hearing; (2) delineates the hearing procedure; (3) specifies how the deductions will be made and the limitations on the amount and duration; (4) specifies the process for liquidating debt from a final paycheck and recovery from other payments due a separating employee; (5) provides information on how interest, penalties, and administrative costs will be assessed.

II. Procedural Issues and Regulatory Review

Administrative Procedure Act (APA): Because this rule pertains to changes required and approved by the Office of Personnel Management, CSOSA is issuing the rule as a direct final rule without general notice of proposed rulemaking. Any interested person, however, who wishes to submit comments on the rule may do so by writing or emailing the agency at the addresses given above in the **ADDRESSES** caption. Should CSOSA receive any adverse comments, it will publish a document in the **Federal Register** withdrawing this rule.

Executive Order 12866 and 13563 (Regulatory Planning and Review): CSOSA does not anticipate that this direct final rule will have significant economic impact, raise novel issues, and/or have any other significant impacts because it simply implements 5 CFR part 550, subpart K, which require federal agencies to update regulations governing the collection of debt by salary offset. Thus, this direct final rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of the order.

Regulatory Flexibility Act (RFA): The Regulatory Flexibility Act does not apply. This direct final rule will not directly regulate small entities. CSOSA, therefore, does not need to perform a regulatory flexibility analysis of small entity impacts.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA): CSOSA has determined that this direct final rule does not impose a significant impact on a substantial number of small entities under the RFA; therefore, CSOSA is not required to produce any Compliance Guides for Small Entities as mandated by the SBREFA.

Congressional Review Act: CSOSA has determined that this direct final rule is not a major rule under the Congressional Review Act, as it is unlikely to result in an annual effect on the economy of $100 million or more; is unlikely to result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions; and is unlikely to have a significant adverse effect on competition, employment, investment, productivity, or innovation, or on the ability of U.S.-based enterprises to compete in domestic and export markets.

Unfunded Mandates Reform Act (UMRA): This revision does not impose any Federal mandates on state, local, or tribal governments, or on the private sector within the meaning of the UMRA.

National Environmental Policy Act (NEPA): This direct final rule will have no physical impact upon the environment and, therefore, will not require any further review under NEPA.

Paperwork Reduction Act (PRA): The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Executive Order 13132 (Federalism): This final revision does not have new federalism implications under Executive Order 13132.

Executive Order 12988 (Civil Justice Reform): This direct final rule meets applicable standards of 3(a) and 3(b)(2) of Executive Order 12988 and CSOSA has determined that the direct final rule will not unduly burden the Federal court system.

Plain Language: E.O. 12866 and E.O. 13563 require regulations to be written in a manner that is easy to understand. CSOSA has concluded that it has drafted this direct final rule in plain language.

Assessment of Federal Regulations and Policies on Families: Section 654 of the *Treasury and General Government Appropriations Act,* enacted as part of the *Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999* (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this rule on family well-being. CSOSA has assessed this direct final rule and determined that the regulation is required by OPM and the subject activities are required of agencies with debt collection responsibilities.

Executive Order 13175 (Indian Tribal Governments): CSOSA reviewed this direct final rule under the terms of E.O. 13175 and has determined that the rule will not have tribal implications.

Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights): CSOSA has determined that this direct final rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 13211 (Energy Supply): This CSOSA direct final rule was drafted and reviewed in accordance with E.O. 13211, Energy Supply. CSOSA has determined that this direct

final rule will not have a significant adverse effect on the supply, distribution, or use of energy and is not subject to E.O. 13211.

List of Subjects in 28 CFR Part 814

Debt collection; Employee indebtedness; Salary offset.

Authority and Issuance

■ In consideration of the foregoing, CSOSA adds 28 CFR 814 to read as follows:

PART 814—SALARY OFFSET PROCEDURES

Sec.

814.1 Purpose and Scope.
814.2 Definitions.
814.3 Entitlement to notice, hearing, written responses and decisions.
814.4 Exception to entitlement to notice, hearing, written responses, and final decisions.
814.5 Notification before deductions begin.
814.6 Petitions for hearing.
814.7 Petitions for hearing made after time expires.
814.8 Representation at the hearing.
814.9 Procedures for hearing and final decisions.
814.10 Method and source of deductions.
814.11 Interest, penalties, and administrative costs.
814.12 Non-waiver of rights by payments.
814.13 Refunds.

Authority: 5 U.S.C. 5514; 5 CFR part 550, subpart K; sec. 8(1) of E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 814.1 Purpose and Scope.

(a) *Purpose.* This part prescribes the Court Services and Offender Supervision Agency's (CSOSA) standards and procedures for the collection of debts owed by CSOSA employees to the United States through voluntary or involuntary Agency salary offset.

(b) *Scope.* (1) This part applies to internal and Government-wide collections of debts, owed by CSOSA employees, through administrative offset from the current pay account of the debtor without his or her consent.

(2) The procedures contained in this part do not apply to—

(i) Any case where an employee consents to collection through deduction(s) from the employee's Agency pay account;

(ii) Debts arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*);

(iii) Debts arising under the tariff laws of the United States;

(iv) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.,* travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108); or

(v) Any other debt excluded by the Federal Claims Collection Standards (FCCS), 31 CFR parts 900 through 904.

(3) This part does not preclude a CSOSA employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the Director. Similarly, this part does not preclude a CSOSA employee from requesting a waiver of the collection of a debt under any other applicable statutory authority.

(4) Nothing in this part precludes the compromise of the debt, or the suspension or termination of collection actions, in accordance with 31 U.S.C. 3711 or other applicable statutory authority.

§ 814.2 Definitions.

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government Corporation.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in 5 CFR 550.1110).

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

Debt means an amount determined by an appropriate official to be owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Debt collection Center means the Department of the Treasury, Department of Agriculture's National Finance Center or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debtor means a Federal employee who owes a debt to the United States.

Delinquent debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post delinquency repayment agreement.

Director means the CSOSA Director who is responsible for overall Agency (CSOSA/Pretrial Services Agency for the District of Columbia (PSA)) compliance with employee salary offset regulations. The CSOSA Director delegates the processing and administration of employee salary offset procedures for PSA employees to the PSA Director.

Disposable Pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). For purposes of calculating disposable pay, legally required deductions that must be applied first include: tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, Federal Insurance Contributions Act (FICA), Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

Employee means any individual currently employed by CSOSA or PSA, as defined in this section, including seasonal and temporary employees and current members of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Evidence of Service means information retained by the Agency indicating the nature of the document to which it pertains, the date of mailing the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

FCCS means Federal Claims Collection Standards (FCCS), published in 31 CFR parts 900 through 904.

Hearing means a review of the documentary evidence to confirm the

existence or amount of a debt or the terms of a repayment schedule. If the Director determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Director may provide an oral hearing.

Hearing official is an administrative law judge or a hearing officer not under the control of the Director of CSOSA (per 5 CFR 550.1104(d)(7)). A hearing official oversees paper (documentary) and oral hearings and provides a written decision on salary offset issues.

Paying agency means the agency employing the individual and authorizing the payment of his or her current pay.

Salary Offset means an administrative offset to collect a debt under 5 U.S.C. 5514 owed by a Federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to CSOSA or PSA or another agency as required or permitted by 5 U.S.C. 5584, 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 814.3 Entitlement to notice, hearing, written responses and decisions.

(a) Except as provided in § 814.4, each employee from whom CSOSA proposes to collect a debt using salary offset under this part is entitled to receive from CSOSA:

(1) A written notice as described in § 814.5; and

(2) An opportunity to petition for a hearing and, if a hearing is given, to receive a written decision from the official within 60 days of holding the hearing on the following issues:

(i) The determination concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and CSOSA.

(b) [Reserved]

§ 814.4 Exception to entitlement to notice, hearing, written responses, and final decisions.

For internal collections, the provisions of § 814.3 do not apply to:

(a) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(b) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(c) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 814.5 Notification before deductions begin.

(a) CSOSA and/or a Debt Collection Center will provide employees notification before deductions begin. Except as provided in § 814.4, agency pay deductions under the authority of 5 U.S.C. 5514 must not be made unless the Director (or authorized designee) provides the employee a written notice at least 30 days before any deduction begins. (For debts outstanding more than 10 years on or before June 11, 2009, see also 31 CFR 285.7(d) for additional notification requirements.) The written notice must state at a minimum:

(1) CSOSA's determination that a debt is owed, including the origin, nature, and amount of that debt;

(2) CSOSA's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay except as provided in § 814.10) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(4) An explanation of CSOSA's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS as defined in § 814.2;

(5) The employee's right to inspect and copy Government records relating to the debt or, if employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to CSOSA) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and CSOSA; and documented in CSOSA's files;

(7) The employee's right to a hearing conducted by an official arranged by CSOSA (an administrative law judge, or alternatively, a hearing official not under the control of the Director of CSOSA) if a petition is filed as prescribed in § 814.6;

(8) The method and time period for petitioning for a hearing;

(9) The name and address of the office to which the petition should be set.

(10) That the timely and complete filing of a petition for hearing will stay the commencement of collection proceedings;

(11) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(12) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(14) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(15) Proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) The Director, as defined in § 814.2, will retain evidence of service indicating the date of mailing of the notice.

§ 814.6 Petitions for hearing.

(a) To request a hearing concerning the existence or amount of the debt or the offset schedule established by the Agency, the employee must send a written petition to the office designated in the notice of intent to offset, see § 814.5(a)(9), within 15 days of receipt of the deduction notice, stating why the employee believes the determination of the Agency concerning the existence or

amount of the debt is in error or requesting changes to the proposed deduction frequency and amount.

(b) The petition must:

(1) Be signed by the employee;

(2) Fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support the employee's position; and

(3) Specify whether an oral or paper (documentary) hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

§ 814.7 Petitions for hearing made after time expires.

(a) If the petition for hearing is filed after the 15-day period provided for in § 814.6, the Director may grant the request if the employee can establish that the delay was the result of circumstances beyond the employee's control, or that the employee failed to receive actual notice of the filing deadline.

(b) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the offset schedule established by the Agency, if the employee:

(1) Fails to file a timely request for a hearing, unless such failure is excused; or

(2) Fails to appear at an oral hearing, of which the employee was notified, unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(c) The following procedure is instituted upon a failure to appear at a hearing.

(1) In the absence of good cause shown (*e.g.,* illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice of intent.

(2) If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make a determination based upon oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date, and both parties shall be given reasonable notice of the time and place of the new hearing.

§ 814.8 Representation at the hearing.

(a) The creditor agency may be represented by legal counsel.

(b) The employee may be self-represented or may be represented by an individual of the employee's choosing, at the employee's expense.

§ 814.9 Procedures for hearing and final decisions.

(a) *Form of hearings*—(1) *General.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing. If the hearing will be a review of the written record, the employee shall be notified that he or she should submit evidence and arguments in writing to the hearing official by a specified date, after which the record shall be closed. The date specified shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing, if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.,* when an issue of credibility or veracity is involved). Where an oral hearing is appropriate, the hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing, *e.g.,* the rules of evidence do not apply. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and arguments;

(ii) Informal meetings in which the hearing official interviews the employee; or

(iii) Formal written submissions with an opportunity for oral presentations.

(3) *Paper (documentary) hearing.* If the hearing official determines that an oral hearing is not necessary, the hearing official will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this part. Witnesses who testify in oral hearings will do so under oath or affirmation.

(b) *Written decision*—(1) *Date of decision.* The hearing officer shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than sixty (60) days after the date on which the hearing petition was received by the creditor agency, unless the employee requested a delay in the proceedings, in which case the 60-day decision period shall be extended by the number of days by which the hearing was postponed.

(2) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions, including a determination whether the employee's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity; and

(iii) The terms of any repayment schedule, if applicable.

§ 814.10 Method and source of deductions.

(a) *Types of deductions.* Unless the debtor employee and the Director have agreed to an alternative repayment arrangement under § 814.9, a debt shall be collected in lump sum or by installment deductions at officially established pay intervals from an employee's current pay account.

(b) *Limitation on amount of deduction.* Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount, as outlined in § 814.10(c) and/or a higher deduction has been ordered by a court under section 124 of Public Law 97–276 (96 Stat. 1195).

(c) *Duration of deductions*—(1) *Lump sum.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay for an officially established pay interval, the debt generally will be collected in one lump-sum deduction.

(2) *Inability to pay lump sum.* If the employee is deemed financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, the debt shall be collected in installments. Except as provided in paragraphs (e) and (f) of this section, installment deductions must be made over a period not greater than the anticipated period of active duty or employment.

(d) *When deductions may begin.* (1) Deductions will begin on the date stated in the notice of intent, unless an alternative repayment agreement under § 814.9 has been accepted or the employee has filed a timely request for a hearing.

(2) If the employee files a timely petition for hearing as provided in § 814.6, deductions will begin after the hearing official has provided the

employee with a hearing and a final written decision has been rendered in favor of the Agency.

(e) *Liquidation from final check.* If an employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset under 31 U.S.C. 3716 from subsequent payments of any nature (*e.g.,* final salary payment or lump-sum leave) due the employee from the paying agency as of the date of separation.

(f) *Recovery from other payments due a separated employee.* If the debt cannot be satisfied by offset from any final payment due the employee on the date of separation, the Director will liquidate the debt, where appropriate, by administrative offset under 31 U.S.C. 3716 from later payments of any kind due the former employee (*e.g.,* lump sum leave payment).

§ 814.11 Interest, penalties, and administrative costs.

Debts owed to the Agency shall be assessed interest, penalties and administrative costs in accordance with FCCS, 31 CFR 901.9.

§ 814.12 Non-waiver of rights by payments.

An employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 814.13 Refunds.

(a) CSOSA will promptly refund amounts paid or deducted under this subpart to the appropriate party, when:

(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

Richard S. Tischner,

Director.

[FR Doc. 2022–13241 Filed 7–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 589

Publication of Ukraine-/Russia-Related Web General Licenses 2 and 10

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 two general licenses (GLs) issued in the Ukraine-/Russia-Related Sanctions program: GL 2 and GL 10, each of which was previously issued on OFAC's website and is now expired.

DATES: GL 2 expired on September 26, 2014, and GL 10 expired on October 1, 2016. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.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 *et seq.*), 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), both of which 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 (which have since been reissued and renamed the Ukraine-/Russia-Related Sanctions Regulations), to implement E.O. 13660, E.O. 13661, and E.O. 13662 (79 FR 26365, May 8, 2014).

On September 12, 2014, pursuant to authorities delegated from the Secretary of the Treasury, the Director of OFAC issued Directive 4 under E.O. 13662. Directive 4, as originally issued,[1] prohibited, among other things, the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology by U.S. persons or within the United States in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory, and that involve any person determined to be subject to Directive 4, its property, or its interests in property.

Also on September 12, 2014, OFAC, in consultation with the Department of State, issued GL 2, pursuant to E.O. 13662, to authorize, through 12:01 a.m. eastern daylight time, September 26, 2014, certain activities prohibited by Directive 4 under E.O. 13662 that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving persons determined to be subject to Directive 4 and that were in effect prior to September 12, 2014.

On December 19, 2014, the President, in order to take additional steps to address the Russian occupation of the Crimea region of Ukraine, issued E.O. 13685, ''Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine'' (79 FR 77357, December 24, 2014), pursuant to the national emergency declared in E.O. 13660 and expanded by E.O. 13661 and E.O. 13662.

On August 31, 2016, OFAC, in consultation with the Department of State, issued GL 10, pursuant to E.O. 13685, to authorize, through 12:01 a.m.

[1] Directive 4, as originally issued, was replaced and superseded by an amended version of Directive 4, issued October 31, 2017.

eastern daylight time, October 1, 2016, certain transactions and activities otherwise prohibited pursuant to E.O. 13685, that are ordinarily incident and necessary to divest or transfer holdings in PJSC Mostotrest, a person blocked pursuant to E.O. 13685, to a non-U.S. person.

The text of GLs 2 and 10 is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13662 of March 20, 2014

Blocking Property of Additional Persons Contributing to the Situation in Ukraine

GENERAL LICENSE NO. 2

Authorizing Certain Activities Prohibited by Directive 4 Under Executive Order 13662 Necessary To Wind Down Operations

(a) Except as provided in paragraph (b) of this general license, all activities prohibited by Directive 4 under Executive Order 13662 of March 20, 2014, that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving persons determined to be subject to Directive 4 under Executive Order 13662 and that were in effect prior to September 12, 2014, are authorized through 12:01 a.m. eastern daylight time, September 26, 2014.

(b) This general license does not authorize any new provision, exportation, or reexportation of goods, services (except for financial services), or technology except as needed to cease operations involving projects covered by Directive 4 under Executive Order 13662. This general license does not authorize any transactions or dealings otherwise prohibited by any other Directive under Executive Order 13662 or any part of 31 CFR chapter V.

(c) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the wind-down activities conclude, to file a detailed report, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Licensing Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Annex, Washington, DC 20220.

John E. Smith,
Acting Director, Office of Foreign Assets Control.

Dated: September 12, 2014.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13685 of December 19, 2014

Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine

GENERAL LICENSE NO. 10

Authorizing Certain Transactions Otherwise Prohibited by Executive Order 13685

Necessary To Divest or Transfer Holdings in Certain Blocked Entities

(a) Except as provided in paragraph (c) of this general license, all transactions and activities otherwise prohibited pursuant to Executive Order (E.O.) 13685 of December 19, 2014 (''Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine'') that are ordinarily incident and necessary to divest or transfer to a non-U.S. person holdings in PJSC Mostotrest are authorized through 12:01 a.m. eastern daylight time, October 1, 2016.

(b) The transactions and activities authorized in paragraph (a) include facilitating, clearing, and settling transactions to divest or transfer to a non-U.S. person holdings in PJSC Mostotrest, including on behalf of non-U.S. persons.

(c) This general license does not authorize:

(1) U.S. persons to sell holdings to, purchase or invest in holdings of, or facilitate non-U.S. person transactions with, any entity whose property and interests in property are blocked pursuant to E.O. 13685, including PJSC Mostotrest, or to engage in any transactions or activities otherwise prohibited by any other Executive order, or any part of 31 CFR chapter V; or

(2) The unblocking of any property blocked pursuant to E.O. 13685, any other Executive order, or any part of 31 CFR chapter V, except as authorized by paragraph (a).

(d) U.S. and non-U.S. persons divesting or transferring holdings in PJSC Mostotrest authorized by this general license are required, within 10 business days after the divestment activities conclude, to file a detailed report, 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, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov.*

Andrea Gacki,
Acting Director, Office of Foreign Assets Control.

Dated: August 31, 2016.

Andrea M. Gacki,
Director, Office of Foreign Assets Control.

[FR Doc. 2022–14914 Filed 7–12–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0594]

RIN 1625–AA00

Safety Zone; Military Exercise, Sinclair Inlet, Bremerton, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zones for navigable waters within a 500 yard radius of a position located in Sinclair Inlet, Bremerton, WA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a military exercise involving helocast operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Puget Sound.

DATES: This rule is effective from 10:30 a.m. on August 4, 2022 through 11:30 a.m. on August 5, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0594 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer, William Martinez, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6048, email *SectorPugetSoundWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Puget Sound
DHS Department of Homeland Security

FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was notified of the military exercise on July 5, 2022, and due to the evolving dynamic nature of the military helocast exercise it was determined on July 5, 2022 that immediate action is needed to respond to the potential safety hazards associated with the exercise. The Captain of the Port Puget Sound (COTP) determined this regulation is necessary to ensure the safety of personnel, vessels, and the marine environment. The Coast Guard lacks sufficient time to request public comments and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because this regulation is needed to respond to the potential safety hazards associated with this military exercise.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the military helocast exercise on August 4, 2022 and August 5, 2022, will be a safety concern for anyone within a 500-yard radius of position 47°32′51.5″ N 122°38′37″ W and the exercise participants. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of the Rule

This rule establishes a safety zone from 10:30 until 11:30 a.m. on August 4, 2022 and 10:30 until 11:00 a.m. on August 5, 2022. The safety zone will cover all navigable waters within a 500 yard radius of position 47°32′51.5″ N 122°38′37″ W in Sinclair Inlet. This helocast exercise involves helicopters flying at a low altitude above the water and launching boats and personnel from the aircraft. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the exercise is ongoing. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Puget Sound for 1 hour on two days. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the safety zone enforcement and publish in the Local Notice to Mariners information about details of the safety zone. In addition, the rule allows mariners to seek permission to enter the zone. To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a stationary safety zone lasting only 1 hour per day that will prohibit entry within a 500 yard radius of position 47°32′51.5″ N 122°38′37″ W in Sinclair Inlet. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–0594 to read as follows:

§ 165.T13–0594 Safety Zone; Military Exercise, Sinclair Inlet, Bremerton, WA.

(a) *Location.* The following area is a safety zone: all navigable waters within a 500 yard radius of position 47°32′51.5″ N 122°38′37″ W in Sinclair Inlet. These coordinates are based 1984 World Geodetic System (WGS 84).

(b) *Definitions.* As used in this section, a 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 Puget Sound (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 10:30 until 11:30 a.m. on August 4, 2022 and 10:30 until 11:30 a.m. on August 5, 2022.

Dated: July 7, 2022.

P.M. Hilbert,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2022–14895 Filed 7–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0568]

RIN 1625–AA00

Safety Zone; Gulf Intracoastal Waterway, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone for the navigable waters of the Gulf Intracoastal Water (GIWW) within 500 yards of the barge CBC MIAMI and barge JULIUS as they transport oversized equipment from State Service, Ingleside, TX to the Corpus Christi Ship Channel. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by transport of oversized equipment. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from July 13, 2022 through July 14, 2022. For the purposes of enforcement, actual notice will be used from July 10, 2022, until July 13, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0568 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Anthony.M.Garofalo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

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

personnel, vessels, and the marine environment from potential hazards created by barge CBC MIAMI and JULIUS as they transport oversized equipment and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the barge CBC MIAMI and barge JULIUS as they transport oversized equipment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with barge CBC MIAMI and barge JULIUS as they transport oversized equipment occurring from July 10, 2022 through July 14, 2022 will be a safety concern for anyone within 500 yards of the rig transport in the GIWW from State Service, Ingleside, TX to the Corpus Christi Ship Channel. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone during the transport of the oversized equipment.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone on July 10, 2022 through July 14, 2022. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information about the zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and location of the safety zones. This rule will impact a small designated area of 500-yards around the moving vessels in the GIWW as the vessels transits a 2 mile section of the channel. Moreover, the rule allows vessels to seek permission to enter the zones.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule involves establishment of a temporary moving safety zone for navigable waters of the Corpus Christi Ship Channel within 500 yards of the barge CBC MIAMI and barge JULIUS as they transport oversized equipment to the sea buoy. It is categorically excluded from further review under paragraph L60 (c) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0568 to read as follows:

§ 165.T08–0568 Safety Zone; Gulf Intracoastal Waterway, Corpus Christi, TX

(a) *Location.* The following area is a temporary moving safety zone: Navigable waters of the Gulf Intracoastal Waterway (GIWW) within 500 yards of the barge CBC MIAMI and barge JULIUS as they transports oversized equipment. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative.

(b) *Effective period.* This section is effective from July 10, 2022. through July 14, 2022.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into the temporary safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: July 6, 2022.

H.C. Govertsen,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2022–14965 Filed 7–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0583]

Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Fleet Week Maritime Festival Pier 66 Safety Zone in Elliott Bay, Seattle, WA thirty minutes prior to the beginning, during, and thirty minutes following the conclusion of the parade of ships on August 1, 2022. This action is necessary to provide for the safety of life on navigable waterways during this event. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 165.1330 will be enforced from 12 p.m. until 3:30 p.m. on August 1, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Chief Warrant Officer William Martinez, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Fleet Week Maritime Festival in 33 CFR 165.1330, from 12 p.m. until 3:30 p.m. on August 1, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. During the enforcement period, as reflected in § 165.1330, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign. The Captain of the Port may be assisted by other federal, state, or local agencies as needed.

In accordance with the general regulations in 33 CFR part 165, subpart C, no vessel operator may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port, Puget Sound or her designated representative. All vessel operators desiring entry into this safety zone shall gain prior authorization by contacting either the on-scene patrol craft on VHF Ch. 13 or Ch. 16, or Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002. Vessel operators granted individual permission to enter this safety zone will be escorted by the on-scene patrol until no longer within the safety zone.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 7, 2022.

P.M. Hilbert,

Captain, U.S. Coast Guard, Captain of the Port Sector Puget Sound.

[FR Doc. 2022–14894 Filed 7–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP02

Civilian Health and Medical Program of the Department of Veterans Affairs

AGENCY: Department of Veterans Affairs

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with changes, a proposed rule to amend its medical regulations concerning the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). The final rule clarifies

and updates these regulations to conform to changes in law and policy that control the administration of CHAMPVA and include details concerning the administration of CHAMPVA that were previously not reflected in regulation. The amendments improve our ability to effectively administer CHAMPVA and make technical revisions to make our regulations more understandable. In addition, this rulemaking expands covered services and supplies, to include certain preventive services, and eliminates cost-share amounts and deductibles for certain covered services.

DATES: *Effective date:* This final rule is effective August 12, 2022.

Applicability date: The provisions of this final rule shall apply to all applications for benefits that are received by VA on or after the effective date of this final rule or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Director, Policy and Planning, Office of Integrated Veteran Care (OIVC), 3773 Cherry Creek North Drive, Denver, Colorado 80209, *Joseph.Duran2@va.gov,* (303) 370–1637. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: CHAMPVA is a health benefits program in which the Department of Veterans Affairs (VA) shares the cost of covered medical care services and supplies with spouses, children, survivors, and certain caregivers of veterans who meet eligibility criteria under 38 U.S.C. 1781. One criterion is that CHAMPVA beneficiaries cannot be eligible for TRICARE, a health care program administered by the Department of Defense (DoD) that is authorized to provide health care to certain family members of veterans. Another criterion is that primary family caregivers designated under 38 U.S.C. 1720G(a)(7)(A) cannot be entitled to services under a health-plan contract as defined in 38 U.S.C. 1725(f).

VA must operate the CHAMPVA program and provide for medical care in the same or similar manner and subject to the same or similar limitations as medical care is furnished to certain dependents and survivors of active duty and retired members of the Armed Forces under the CHAMPUS program. *See* 38 U.S.C. 1781(b). CHAMPUS was the original program administered by DoD to provide civilian health benefits for active duty military personnel, military retirees, and their dependents. *See* 32 CFR 199.1. Although the CHAMPUS program is still referenced in DoD regulations, DoD effectively replaced the CHAMPUS program with what is commonly known as the TRICARE Select plan (''TRICARE''). *See* 32 CFR 199.1(r), 199.17(a)(6)(ii)(D) (identifying TRICARE Select as the basic CHAMPUS program). TRICARE's current benefit structure offers varying degrees of medical benefits under multiple plan options beyond its Select plan. However, we administer CHAMPVA in the same or similar manner as TRICARE Select because the basic program is what is referenced by the CHAMPUS authority. Thus, all references in this rulemaking to TRICARE are to the TRICARE Select plan, which we refer to simply as TRICARE throughout most of this rulemaking for ease of reference.

VA interprets the ''same or similar manner'' language in 38 U.S.C. 1781(b) to mean that we must generally administer CHAMPVA in a same or similar manner as the TRICARE Select plan. We do not interpret this statutory language as requiring VA to operate CHAMPVA in an identical manner to TRICARE. Rather, we interpret this language as affording VA needed flexibility to administer the program for CHAMPVA beneficiaries. For this reason, not every aspect of CHAMPVA will find a corollary in the TRICARE Select Plan.

On January 17, 2018, VA proposed to amend its regulations governing CHAMPVA to expand covered services and supplies to include certain preventive services, improve our ability to effectively administer CHAMPVA, and waive cost-shares as well as deductibles for certain covered services. *See* 83 FR 2396. VA provided a 60-day period during which the public could submit comments to our proposal. The public comment period ended on March 19, 2018, and we received six comments on the proposed rule. Public comments were generally supportive, however several comments suggested substantive changes to the proposed rule. We respond to these public comments here.

§ 17.270 General Provisions and Definitions

We proposed amending paragraph (b) by adding definitions for terms used in the CHAMPVA program. We proposed defining an ''authorized non-VA provider'' to mean an individual or institutional non-VA provider of CHAMPVA-covered medical services and supplies who is licensed or certified by a State to provide the covered medical services and supplies, or is otherwise certified by an appropriate national or professional association that sets standards for the specific medical provider. We stated that this requirement for State licensure or other certification would be similar to TRICARE, which requires that its providers be either licensed or certified by a State, or, where States do not offer licensure or certification, be otherwise certified by an appropriate national or professional association that sets standards for the specific medical provider. See TRICARE Policy Manual 6010.60–M, Chapter 11 (''Providers''), section 3.2 (''State Licensure And Certification'').

One commenter generally supported the proposed definition of authorized non-VA provider, and encouraged VA to continue to adopt this language throughout the CHAMPVA regulations to increase consistency and ensure that all healthcare providers, including nurse practitioners, are authorized to provide treatment and services to CHAMPVA members to the full extent of their licensure and certification. To clarify, this rulemaking does not address the scope of practice of health care professionals and does not authorize health care professionals to practice beyond the scope of their state license, certification, or registration. However, we note that CHAMPVA beneficiaries can seek care from qualified nurse practitioners practicing within the scope of their State license and privileges. We thank the commenter for their recommendations and make no changes to the rule based on the comment.

One commenter opposed the inclusion of the language ''otherwise certified by an appropriate national or professional association that sets standards for the specific medical provider.'' The commenter was concerned that this language granted full practice authority to non-physician providers. To clarify, this rulemaking does not grant full practice authority to non-physician providers and does not supersede any State laws. The language was included to address the limited instance where members of a health care occupation or specialty practice area are not governed by a state through its licensure or certification procedures, but instead are governed by the requirements of a national or professional association such as the Joint Commission (previously known as the Joint Commission on Accreditation of Health Care Organizations) and the Commission on Accreditation of Rehabilitation Facilities (CARF).

Changes to paragraph (c). In addition, VA makes technical edits to the rule for clarity. Proposed paragraph (c) addresses VA's discretionary authority

to waive certain regulatory requirements. The second sentence of this proposed paragraph states that ''it is VA's intent that such discretionary authority would be used only under very unusual and limited circumstances and not to deny any individual any right, benefit, or privilege provided to him or her by statute or these regulations.'' We are amending proposed paragraph (c) to remove the phrase ''It is VA's intent that'' at the beginning of the second sentence in the definition as VA does not believe this predicate is necessary. VA is also amending the paragraph by replacing the word ''shall'' with ''will'' in the last sentence of the paragraph for clarity.

§ 17.272 Benefits Limitations/ Exclusions

As part of our reorganization of this section we proposed redesignating multiple subparagraphs in paragraph (a) which addresses exclusions from CHAMPVA coverage, including redesignating paragraph (a)(31) as paragraph (a)(30). This paragraph addresses excluded preventive services from CHAMPVA coverage, except for certain listed services. In addition, we proposed amending two listed exceptions, expanding one exception, and adding three exceptions. The proposed changes are intended to generally align CHAMPVA exceptions with those under TRICARE.

One commenter recommended that VA health plans cover all preventive services with Grade ''A'' or ''B'' recommendations from the U.S. Preventive Services Task Force (USPSTF). The USPSTF is an independent, volunteer panel of national experts in prevention and evidence-based medicine. The Task Force makes evidence-based recommendations about clinical preventive services such as screenings, counseling services, and preventive medications.

Consistent with our mandate to operate the CHAMPVA program in a same or similar manner as TRICARE, we follow TRICARE by adding to our list of covered preventive screenings the following preventive services: colorectal cancer screenings, breast cancer screenings, cervical cancer screenings, prostate cancer screenings, and immunizations. As explained in the proposed rule, TRICARE expanded its program to include certain preventive services, in response to specific statutory requirements. However, for the reasons also explained in the proposed rule, we add annual physical exams to this list, even though not included under TRICARE. 83 FR at 2401. A review of the USPSTF Grade ''A'' or ''B'' recommendations reveals that the task force recommends 52 specific preventive medical screenings or interventions, many of which would be part of a routine annual physical examination or otherwise addressed in CHAMPVA preventive services exceptions. Lastly, this rulemaking is limited to amending CHAMPVA regulations, and to the extent this public comment touches on other aspects of VA health care, the recommended changes exceed the scope of this rulemaking.

We proposed redesignating paragraph (a)(51) as paragraph (a)(49). This paragraph excludes food, food substitutes, vitamins or other nutritional supplements, including those related to prenatal care for a home patient whose condition permits oral feeding, from CHAMPVA coverage.

One commenter asked why CHAMPVA does not cover prescription prenatal vitamins for pregnant beneficiaries when TRICARE provides prenatal vitamins. As stated earlier, CHAMPVA must operate in the same or similar manner to TRICARE. See 38 U.S.C. 1781(b). TRICARE covers medically necessary vitamins used for the management of a covered disease or condition pursuant to a prescription, order, or recommendation of a TRICARE authorized provider acting within the provider's scope of license/certificate of practice. The term ''covered disease or condition'' includes pregnancy in relation to prenatal vitamins, with the limitation that the prenatal vitamins that require a prescription in the United States may be covered for prenatal care only. 32 CFR 199.4(d)(3)(vi)(D)(5). We agree that prenatal vitamins should be provided when deemed medically necessary as part of a treatment plan for a pregnant beneficiary. Accordingly, we are amending redesignated paragraph (a)(49), removing the explicit restriction on prenatal care, and amending the paragraph to include clarifying language. As amended, newly redesignated paragraph (a)(49) excludes food, food substitutes, vitamins or other nutritional supplements, including those related to care for a home patient whose condition permits oral feeding, except for prenatal vitamins which are medically necessary as a component of prenatal care and prescribed by a VA provider or an authorized non-VA provider as defined in § 17.270.

Previously, smoking cessation services and supplies were specifically excluded from CHAMPVA coverage. In paragraph (a)(76) we proposed that over-the-counter pharmaceutical smoking cessation supplies approved by the U.S. Food and Drug Administration, prescribed, and provided through Medications by Mail (MbM), would not be excluded from CHAMPVA coverage. In a related provision, in 38 CFR 17.270(a)(3)(ii), we proposed that smoking cessation pharmaceutical supplies would be available only through MbM. Smoking cessation supplies would be available to CHAMPVA beneficiaries who are not eligible for Medicare and do not have any other prescription health insurance.

One commenter supported the proposed change but recommended that VA increase opportunities for family physicians and other healthcare clinicians to counsel patients about tobacco cessation. We agree with the commenter and believe that the changes we proposed to CHAMPVA exclusions support efforts to promote smoking cessation. By removing the regulatory restrictions and allowing for smoking cessation services and supplies VA believes it is increasing the opportunities for physicians to care for beneficiaries who use tobacco products and improving payment for primary care cessation counseling. Under this final rule, smoking cessation counseling, including coverage of pharmaceuticals, is a covered benefit when CHAMPVA is the primary payer and any prescribed, FDA-approved smoking cessation pharmaceutical products are delivered through MbM. This mirrors TRICARE, which covers smoking cessation pharmaceutical products only when delivered through its mail order pharmacy program. Thus, we are covering these services in a similar manner to TRICARE. Additionally, by providing smoking cessation products through MbM, the beneficiary avoids any CHAMPVA cost-sharing amounts which might otherwise apply if purchased through a retail pharmacy. We make no changes based on this comment.

§ 17.273 Preauthorization

We proposed revising preauthorization requirements by adding language to indicate when a beneficiary has ''other health insurance'' that provides primary coverage for the benefit, preauthorization requirements will not apply. To provide benefits in a similar fashion as TRICARE we proposed waiving any requirement for preauthorization where other health insurance covers the benefit. In addition, we proposed removing the requirement for preauthorization for durable medical equipment (DME) as a covered service or supply.

One commenter encouraged VA to apply prior authorization principles in

CHAMPVA and other health plans under VA's purview such as: activities requiring prior authorization must be justified in terms of financial recovery, cost of administration, workflow burden, and lack of another feasible method of utilization control; prior authorization should be eliminated for physicians with aligned financial incentives (*e.g.,* shared savings) and proven successful stewardship; and eliminate prior authorization for DME, imaging, supplies, and generic drugs. To the extent this comment addresses health care provided by VA other than CHAMPVA, it focuses on issues beyond the scope of this rulemaking. VA follows guidelines in its CHAMPVA regulations specifying the need for prior authorization under specific sets of circumstances. Also, with the removal of prior authorization for DME in this final rule, CHAMPVA no longer requires preauthorization for DME, imaging, supplies, or generic drugs. Whenever prior authorization is required, however, we note that VA always determines need based on the best interest of the beneficiaries we serve.

In addition, the commenter recommended the VA apply transitional steps for changing preauthorization requirements, and offered suggestions primarily related to VA's relationship to VA contractors. Generally, CHAMPVA does not engage VA contractors to provide health care to CHAMPVA beneficiaries. The only instance where a CHAMPVA beneficiary could possibly receive care from a VA contractor working in that capacity is where a beneficiary who is not eligible for Medicare receives care in a VA medical facility on a space available basis through the CHAMPVA In-house Treatment Initiative (CITI). In that instance, if the VA provider is operating in the VA medical facility on a contractual basis the provider works under the same rules as a health care provider who is a VA employee. The transitional steps listed by the commenter are beyond the scope of this rulemaking, and we make no changes based on this comment.

§ 17.274 Cost Sharing

This section addresses cost sharing and deductibles. Proposed paragraph (b) focuses on annual deductibles ($50 per beneficiary or $100 per family) as well as instances where the deductible is waived. One commenter expressed concern with the patients' inability to afford medically necessary care. The commenter stated that the escalation in deductibles is limiting access to care, and higher deductibles create a financial disconnect between individuals, their primary care physician, and the broader health care system. CHAMPVA does not have a high deductible plan but an annual deductible of $50 per beneficiary or $100 per family. CHAMPVA deductible amounts have not escalated and have remained unchanged since at least 1999. The commenter's general concern regarding escalating deductibles limiting access to care does not apply to the CHAMPVA program. We make no changes based on this comment.

However, we are making one minor edit to paragraph (a)(1)(v) to clarify that CHAMPVA beneficiary cost-share requirements do not apply to various other preventive services as determined by the Secretary of Veterans Affairs. VA determined that this subparagraph was not specific enough in that it did not specify that ''preventive'' services as determined by the Secretary is not subject to CHAMPVA beneficiary cost-share requirements.

§ 17.275 CHAMPVA Determined Allowable Amount Calculation

We proposed adding a new § 17.275 to describe the various payment methodologies used by CHAMPVA to calculate the CHAMPVA determined allowable amount for covered services and supplies. We stated that CHAMPVA uses the same or similar payment methodologies to establish allowable reimbursement amounts for providers as TRICARE, and that proposed payment methodologies would be consistent with current VA practice.

One commenter expressed concerns regarding CHAMPVA's non-VA provider reimbursement amounts not being equal to Medicare reimbursement amounts in response to CHAMPVA's clarification of a provider accepting assignment. When feasible, CHAMPVA determines its allowable charges using TRICARE's reimbursement methodologies. In this instance, CHAMPVA uses TRICARE's physician fee schedule, which is equivalent to Medicare's physician fee schedule, to determine the CHAMPVA Maximum Allowable Charge. Additionally, this commenter stated that VA should offer contracts at least at the Medicare rate, so family physicians and other non-VA entities can afford to treat veterans. CHAMPVA does not contract with providers to treat veterans. CHAMPVA is a family member health benefits program for dependents of permanently and totally disabled and certain other veterans and certain caregivers. Under it, VA uses the TRICARE physician fee schedule amount, which is equivalent to the Medicare physician fee schedule amount, to determine the CHAMPVA Maximum Allowable Charge. We make no changes based on this comment.

Proposed paragraph (h) provided that reimbursement for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) would be based on the same amounts established under the Centers for Medicare & Medicaid Services (CMS) DMEPOS fee schedule under 42 CFR part 414, subpart D, which is the same methodology used in TRICARE regulations to calculate DMEPOS payments. *See* 32 CFR 199.14(k). The allowed amount would be that which is in effect in the specific geographic location at the time CHAMPVA-covered services and supplies are provided to a CHAMPVA beneficiary.

One commenter urged VA to review Medicare's current policies related to the Medicare benefit for DMEPOS to evaluate potential access to care for our beneficiaries. The commenter stated that Medicare's fee schedules in non-competitive bidding areas, which are based on single payment amounts, results in reduced access to DMEPOS and inadequate payment to suppliers. Although we understand the commenter's concern, we chose to revise our regulations to be consistent with the Medicare fee schedule because TRICARE uses the Medicare fee schedule. Also, we believe that matching TRICARE payment methodologies as closely as possible is the best way to provide for medical care in the same or similar manner as TRICARE pursuant to 38 U.S.C. 1781(b). The rates at which VA pays for care are an integral part of the ''provision'' of care, and therefore, we think this is an area where VA should remain in line with TRICARE. We thank the commenter for their suggestion, but make no changes to the rule based on this comment.

In paragraph (j) we proposed establishing in regulation the current CHAMPVA reimbursement methodology for hospice care. This methodology uses rates in the CMS hospice per diem rate payment system, which is the same methodology used in TRICARE regulations to calculate hospice payments. See 32 CFR 199.14(g)(9).

One commenter inquired whether CHAMPVA will use Medicare rates for each year by hospice level of care, including two tiers of payment for routine home care. Although TRICARE regulations do not reflect the two-tiered payment system, it is reflected in its reimbursement manual. See TRICARE Reimbursement Manual 6010.61–M, April 1, 2015, Chapter 11, Section 4, Subsection 3.1.1.3. TRICARE

implemented the two-tiered payment rates for routine home care (RHC) levels of care effective January 1, 2016. CHAMPVA cannot, however, implement the two-tiered payment system due to current IT system limitations. We will consider adopting this methodology in the future, dependent on increased system capabilities. CHAMPVA already uses Medicare's annual hospice rates and utilizes Medicare's rates for each level of hospice service, with the exception of the ''61-day and over'' routine home care (RHC) rates. For RHC, CHAMPVA currently only reimburses Medicare's 1–60 day RHC rate for all routine home care days, regardless of the number of days RHC is provided. For RHC provided for 61 days or more, CHAMPVA reimburses at a higher rate than allowable under Medicare rules. The final rule codifies these practices.

In addition, the commenter asked how CHAMPVA will track any updates that Medicare makes in the structure of its hospice payment system. CHAMPVA annually reviews Medicare's hospice proposed rules and final rules in the **Federal Register** to maintain awareness of any potential change in TRICARE reimbursement methodologies. If TRICARE implements any Medicare reimbursement updates in the future, CHAMPVA will assess the feasibility of implementing such changes.

The commenter inquired as to whether changes in the hospice payment structure by CMS are mirrored by CHAMPVA in the same time frame as Medicare. CHAMPVA is not based on the Medicare program, but instead must operate in the same or similar manner as TRICARE.

Finally, the commenter asked about communication regarding hospice updates to Veterans Integrated Service Networks (VISNs) and local VA facilities and offered suggestions for improving communications. Internal VA processes, including avenues of communication between a VA medical facility and the VISN, are not typically addressed via regulation. Rather, internal processes and procedures are more properly delineated in agency policy. We make no changes to this rulemaking based on these comments.

Changes to paragraph (g). In addition, we are making a technical edit to paragraph (g). In the proposed rule, we proposed revising this paragraph to state that the CHAMPVA Skilled Nursing Facility (SNF) care reimbursement methodology is based on the CMS Prospective Payment System for SNFs under 42 CFR part 413, subpart J (Medicare Resource Utilization Group (RUG) rates). *See* 83 FR 2411. Medicare replaced the RUG rates in fiscal year 2020 with Patient Driven Payment Model (PDPM) rates. Therefore, in this rulemaking, we are removing the phrase ''Medicare Resource Utilization Group (RUG) rates'' in the parenthetical. We note that the PDPM reporting mechanism decreases the administrative burden on providers but does not impact reimbursement rates. VA makes no other changes in this paragraph.

Changes to paragraph (k). We are also making a technical edit to paragraph (k) to conform with minor changes to Medicare payment methodologies that went into effect after the public comment period closed. In the proposed rule, we proposed revising paragraph (k) to state that the CHAMPVA home health care reimbursement methodology, based on Medicare's home health prospective payment system, uses a fixed case-mix and wage-adjusted national 60-day episode payment amount to act as payment in full for costs associated with furnishing home health services with exceptions allowing for additional payment to be established. See 83 FR 2396. Additionally, we explained that we would make the change of adopting TRICARE's reimbursement methodology for intermittent or part-time home health services, which itself is based on Medicare's reimbursement methodology. In other words, the proposed substantive rule for this paragraph is that CHAMPVA will reimburse these services in a manner similar to TRICARE, which adopts Medicare's methodology. We received no comments on proposed 17.275(k).

Since the proposed rule was published (January 17, 2018), Medicare has finalized changes that change aspects of its methodology for paying for home health services. More specifically, on November 13, 2018, CMS published a final rule with comment period (RIN 0938–AT29) that amended 42 CFR part 484 to, inter alia, update the Home Health Prospective Payment System (HH PPS) payment methodology, effective January 1, 2020. See 83 FR 56406. Of relevance here, that CMS final rule changed its regulations from requiring a 60-day episode payment to a 30-day episode payment.

The ''60-day episode of care'' language in the proposed rule at 38 CFR 17.275(k) referred to the substantive content in that paragraph, which was the proposed use of Medicare's HH PPS payment methodology when determining payment for intermittent or part-time home health care consistent with that used by TRICARE. The inclusion of the reference to the length of the episode of care was intended to be informative in nature and aligned with Medicare rules as of the date the proposed rule published. In this final rulemaking we are not changing the payment methodology that CHAMPVA utilizes when determining payment for intermittent or part-time home health care. However, we are removing the reference to a specific episode of care length in reference to Medicare's HH PPS payment methodology, which no longer uses a 60-day episode of care. As discussed above, Medicare has adopted a 30-day episode of care in its final rule, effective January 1, 2020 (see RIN 0938–AT39 (83 FR 56406) published November 13, 2018). Removing reference to a specific length for an episode of care as it relates to payment for intermittent or part time home health care will preserve needed flexibility to adequately implement and update our HH PPS in a manner consistent with any changes made by TRICARE. The public was fairly apprised of the potential scope and substance of the proposed rule—that we would be using Medicare's HH PPS payment methodology for payment for intermittent or part time home health care, and that remains the same in the final rule. This rulemaking revises paragraph (k) to state that the CHAMPVA home health care reimbursement methodology, based on TRICARE's home health prospective payment system, uses a fixed case-mix and wage-adjusted episode payment amount to act as payment in full for costs associated with furnishing home health services with exceptions allowing for additional payment to be established. Because the proposed substantive rule for paragraph (k) is unchanged here, removing the detail describing how it is currently calculated under Medicare is a technical fix to avoid the need for future updates of such details.

§ 17.277 Appeals

This section addresses appeals. If a CHAMPVA beneficiary or provider disagrees with a determination concerning CHAMPVA-covered services and supplies or calculation of benefits, a request for reconsideration may be made. If the beneficiary or provider disagrees with the reconsideration determination, the denial of CHAMPVA benefits based on legal eligibility requirements may be appealed to the Board of Veterans' Appeals (BVA). Although we received no public comments on this section, changes are necessary to address issues raised by the Veterans Appeals Improvement and Modernization Act of 2017 (Pub. L. 115–55) (''the AMA''). The AMA revised processes for resolving VA benefits

claims and appeals of VA benefits decisions. In February 2019, VA promulgated rules to implement the AMA under 38 CFR parts 3 and 8, 14, 19, 20, and 21. 84 FR 138 (January 18, 2019).

On February 21, 2020, VA published a proposed rule to revise several sections of 38 CFR part 17 including 17.276. *See* 85 FR 10118. In that proposed rule, we updated 38 CFR 17.276 to reflect that reconsideration within the VHA appeals process is only available in legacy claims. *Id.* The comment period ended on April 21, 2020. VA received no comments on the proposed changes to 17.276. Given the effect these changes have on the CHAMPVA program, VA adopts the proposed changes to 17.276 from 85 FR 10118 in this rulemaking and redesignates the section as 17.277.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final payment methods in this rulemaking will include new reimbursement rates for the Outpatient Prospective Payment System (OPPS), Home Health Prospective Payment System (HH PPS), and Sole Community Hospitals (SCHs) reimbursement methodologies. These revised methodologies will not significantly affect small businesses due to the following reasons: (1) The health care industry, to include Medicare and TRICARE, is currently using these payment methods and most providers are used to these reimbursement rates, if not expecting to receive them; (2) CHAMPVA's beneficiary population is relatively small compared to these other health care payers. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined this rule to be a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on state, local, or tribal governments, or on the private sector.

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; and 64.019, Veterans Rehabilitation Alcohol and Drug Dependence.

Congressional Review Act

This regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801–808, because it may result in an annual effect on the economy of $100 million or more. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this Regulation and the Regulatory Impact Analysis (RIA) associated with the Regulation.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 8, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs (VA) amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The general authority citation for part 17 continues and authority citations for §§ 17.270, 17,271, 17.278 and 17.279 are added in numerical order to read as follows to read as follows

38 U.S.C. 501, and as noted in specific sections.

* * * * *

Sections 17.270, and 17.272 through 17.277 are also issued under 38 U.S.C. 1781.

Section 17.271 is also issued under 38 U.S.C. 1720G(a)(7)(A) and 1781.

Section 17.278 is also issued under 38 U.S.C. 1781 and 42 U.S.C. 2651.

Section 17.279 is also issued under 5 U.S.C. 552 and 552a; 38 U.S.C. 1781, 5701, and 7332.

* * * * *

■ 2. Revise § 17.270 to read as follows:

§ 17.270 General provisions and definitions.

(a) *Overview of CHAMPVA.* CHAMPVA is the Civilian Health and Medical Program of the Department of Veterans Affairs (VA). Generally, CHAMPVA furnishes medical care in the same or similar manner, and subject to the same or similar limitations, as medical care furnished to certain dependents and survivors of active duty and retired members of the Armed Forces under chapter 55 of title 10, United States Code (CHAMPUS), commonly referred to as the TRICARE Select plan. Under CHAMPVA, VA shares the cost of medically necessary services and supplies with eligible beneficiaries within the 50 United States, the District of Columbia, the U.S. territories, and abroad. Under

CHAMPVA, medical services and supplies may be provided as follows:

(1) By an authorized non-VA provider.

(2) By a VA provider at a VA facility, on a resource-available basis through the CHAMPVA In-house Treatment Initiative (CITI) to CHAMPVA beneficiaries who are not also eligible for Medicare.

(3) Through VA Medications by Mail (MbM).

(i) Only CHAMPVA beneficiaries who do not have any other type of health insurance that pays for prescriptions, including Medicare Part D, may use MbM.

(ii) Smoking cessation pharmaceutical supplies will only be provided through MbM and only to CHAMPVA beneficiaries that are not also eligible for Medicare.

(b) *Definitions.* The following definitions apply to CHAMPVA (§§ 17.270 through 17.278):

Accepted assignment refers to the action of an authorized non-VA provider who accepts responsibility for the care of a CHAMPVA beneficiary and thereby agrees to accept the CHAMPVA determined allowable amount as full payment for services and supplies rendered to the beneficiary. (The provider's acceptance of the CHAMPVA determined allowable amount extinguishes the beneficiary's payment liability to the provider with the exception of applicable cost-shares and deductibles.)

Authorized non-VA provider means an individual or institutional non-VA provider of CHAMPVA-covered medical services and supplies that meets any of the following criteria:

(i) Is licensed or certified by a state to provide the medical services and supplies; or

(ii) Where a state does not offer licensure or certification, is otherwise certified by an appropriate national or professional association that sets standards for the specific medical provider.

Calendar year means January 1 through December 31.

CHAMPVA beneficiary means a person enrolled under § 17.271.

CHAMPVA-covered services and supplies mean those medical services and supplies that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded under § 17.272(a)(1) through (84).

CHAMPVA determined allowable amount has the meaning set forth in § 17.272(b)(1).

CHAMPVA In-house Treatment Initiative (CITI) means the initiative under 38 U.S.C. 1781(b) under which participating VA medical facilities provide medical services and supplies to CHAMPVA beneficiaries who are not also eligible for Medicare, subject to availability of space and resources.

Child has the definition established in 38 U.S.C. 101.

Claim means a request by an authorized non-VA provider or by a CHAMPVA beneficiary for payment or reimbursement for medical services and supplies provided to a CHAMPVA beneficiary.

Fiscal year means October 1 through September 30.

Medications by Mail (MbM) means the initiative under which VA provides outpatient prescription medications through the mail to CHAMPVA beneficiaries.

Other health insurance (OHI) means health insurance plans or programs (including Medicare) or third-party coverage that provide coverage to a CHAMPVA beneficiary for expenses incurred for medical services and supplies.

Payer refers to OHI, as defined in this section, that is obligated to pay for CHAMPVA-covered medical services and supplies. In a situation in which, in addition to CHAMPVA, one or more payers is/are responsible to pay for such services and supplies (*i.e.,* a ''double coverage'' situation), there would be a primary payer (*i.e.,* the payer obligated to pay first), secondary payer (*i.e.,* the payer obligated to pay after the primary payer), etc. In double coverage situations, CHAMPVA would be the last payer.

Service-connected has the definition established in 38 U.S.C. 101.

Spouse refers to a person who is married to a veteran and whose marriage is valid as determined under 38 U.S.C. 103(c).

Surviving spouse refers to a person who was married to and is the widow(er) of a veteran as determined under 38 U.S.C. 103(c).

(c) *Discretionary authority.* When it is determined to be in the best interest of VA, VA may waive any requirement in §§ 17.270 through 17.278, except any requirement specifically set forth in 38 U.S.C. 1781, or otherwise imposed by statute. Such discretionary authority would be used only under very unusual and limited circumstances and not to deny any individual any right, benefit, or privilege provided to him or her by statute or these regulations. Any such waiver will apply only to the individual circumstance or case involved and will in no way be construed to be precedent-setting.

■ 3. Amend § 17.271 by:

■ a. Removing the word ''and'' at the end of paragraph (a)(3);

■ b. Redesignating paragraph (a)(4) as paragraph (a)(5);

■ c. Adding a new paragraph (a)(4);

■ d. Removing the authority citation following paragraph (a); and

■ e. Removing the authority citation following paragraph (b)(5).

The addition and revision read as follows:

§ 17.271 Eligibility.

(a) * * *

(4) An individual designated as a Primary Family Caregiver, under 38 CFR 71.25(f), who is not entitled to care or services under a health-plan contract (as defined in 38 U.S.C. 1725(f)(2)); and

* * * * *

■ 4. Amend § 17.272 by:

■ a. Revising paragraph (a)(2);

■ b. In paragraph (a)(3) introductory text, removing the phrase ''(Medicaid excluded)'';

■ c. Adding paragraphs (a)(3)(iii) and (iv);

■ d. Revising paragraph (a)(21)(ix);

■ e. Removing paragraph (a)(26);

■ f. Redesignating paragraphs (a)(27) through (38) as paragraphs (a)(26) through (37), respectively;

■ g. In newly redesignated paragraph (a)(30), revising the introductory text and paragraphs (a)(30)(v) and (vi) and adding paragraphs (a)(30)(xi) through (xiv);

■ h. Removing paragraph (a)(39);

■ i. Redesignating paragraphs (a)(40) through (56) as paragraphs (a)(38) through (54), respectively;

■ j. In newly redesignated paragraph (a)(40)(iv), removing ''(a)(42)(iii)(A)'' and adding in its place ''(a)(40)(iii)(A)'';

■ k. Revising redesignated paragraph (a)(49);

■ l. Removing paragraph (a)(57);

■ m. Redesignating paragraphs (a)(58) through (71) as paragraphs (a)(55) through (68), respectively;

■ n. Revising newly redesignated paragraphs (a)(57) through (59);

■ o. Removing paragraph (a)(72);

■ p. Redesignating paragraphs (a)(73) through (86) as paragraphs (a)(69) through (82), respectively;

■ q. Revising newly redesignated paragraph (a)(76);

■ r. Adding paragraphs (a)(83) and (84);

■ s. Revising paragraph (b); and

■ t. Removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 17.272 Benefits limitations/exclusions.

(a) * * *

(2) Services and supplies required as a result of an occupational disease or

injury for which benefits are payable under workers' compensation or similar protection plan (whether or not such benefits have been applied for or paid) except when such benefits are exhausted and the services and supplies are otherwise not excluded from CHAMPVA coverage.

(3) * * *

(iii) Indian Health Service.

(iv) CHAMPVA supplemental policies.

* * * * *

(21) * * *

(ix) Treatment for stabilization of myofascial pain dysfunction syndrome, also referred to as temporomandibular joint disorder (TMD). Authorization is limited to initial imaging such as radiographs, Computed Tomography, or Magnetic Resonance Imaging; up to four office visits; and the construction of an occlusal splint.

* * * * *

(30) Preventive care (such as employment-requested physical examinations and routine screening procedures). The following exceptions apply, including but not limited to:

* * * * *

(v) Cervical cancer screening.

(vi) Breast cancer screening.

* * * * *

(xi) Colorectal cancer screening.

(xii) Prostate cancer screening.

(xiii) Annual physical examination.

(xiv) Vaccinations/immunizations.

* * * * *

(49) Food, food substitutes, vitamins or other nutritional supplements, including those related to care for a home patient whose condition permits oral feeding, except for prenatal vitamins which are medically necessary as a component of prenatal care and prescribed by a VA provider or an authorized non-VA provider as defined in § 17.270 of this part.

* * * * *

(57) Unless a waiver for extended coverage is granted in advance: Inpatient mental health services in excess of 30 days in any calendar year (or in an admission), in the case of a patient 19 years of age or older; 45 days in any calendar year (or in an admission), in the case of a patient under 19 years of age; or 150 days of residential treatment care in any calendar year (or in an admission).

(58) Outpatient mental health services in excess of 23 visits in a calendar year unless a waiver for extended coverage is granted in advance.

(59) Institutional services for partial hospitalization in excess of 60 treatment days in any calendar year (or in an admission) unless a waiver for extended coverage is granted in advance.

* * * * *

(76) Over-the-counter products except for pharmaceutical smoking cessation supplies that are approved by the U.S. Food and Drug Administration, prescribed, and provided through MbM, and insulin and related diabetic testing supplies and syringes.

* * * * *

(83) Medications not approved by the U.S. Food and Drug Administration (FDA), excluding FDA exceptions to the approval requirement.

(84) Services and supplies related to the treatment of dyslexia.

(b) Costs of services and supplies to the extent such amounts are billed over the CHAMPVA determined allowable amount are specifically excluded from coverage.

(1) The CHAMPVA determined allowable amount is the maximum level of payment by CHAMPVA to an authorized non-VA provider for the provision of CHAMPVA-covered services and supplies to a CHAMPVA beneficiary. The CHAMPVA determined allowable amount is determined before consideration of cost sharing and the application of deductibles or OHI.

(2) A Medicare-participating hospital must accept the CHAMPVA determined allowable amount for inpatient services provided to a CHAMPVA beneficiary as payment in full. See 42 CFR 489.25.

(3) An authorized non-VA provider who accepts responsibility for the care of a CHAMPVA beneficiary thereby agrees to accept the CHAMPVA determined allowable amount as full payment for services and supplies rendered to the beneficiary (*i.e.,* accepted assignment). The provider's acceptance of the CHAMPVA determined allowable amount extinguishes the beneficiary's payment liability to the provider. Any attempts to collect any additional amount from the CHAMPVA beneficiary may result in the provider being excluded from Federal benefits programs. See 42 CFR 1003.105.

■ 5. Amend § 17.273 by:

■ a. Revising the introductory text and paragraph (d);

■ b. Removing paragraph (e);

■ c. Redesignating paragraph (f) as paragraph (e);

■ d. Adding new paragraph (f); and

■ e. Removing the authority citation at the end of the section.

The revisions and addition read as follows:

§ 17.273 Preauthorization.

Preauthorization or advance approval is required for any of the following, except when the benefit is covered by the CHAMPVA beneficiary's other health insurance (OHI):

* * * * *

(d) Dental care. For limitations on dental care, see § 17.272(a)(21)(i) through (xii).

* * * * *

(f) CHAMPVA will perform a retrospective medical necessity review during the coordination of benefits process if:

(1) It is determined that CHAMPVA is the responsible payer for services and supplies but CHAMPVA preauthorization was not obtained prior to delivery of the services or supplies; and,

(2) The claim for payment is filed within the appropriate one-year period.

■ 6. Amend § 17.274 by:

■ a. Revising paragraphs (a), (b), and (c);

■ b. Adding a heading to paragraph (d);

■ c. Adding paragraph (e); and

■ d. Removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 17.274 Cost sharing.

(a) *Cost sharing generally.* CHAMPVA is a cost sharing program in which the cost of covered services is shared with the CHAMPVA beneficiary. CHAMPVA pays the CHAMPVA determined allowable amount less the CHAMPVA deductible, if applicable, and less the CHAMPVA beneficiary cost-share.

(1) CHAMPVA beneficiary cost-share requirements do not apply to the following:

(i) Supplies provided through VA MbM.

(ii) Any medical services and supplies provided to a CHAMPVA beneficiary through CITI.

(iii) The following services, even if not provided through CITI:

(A) Colorectal cancer screening.

(B) Breast cancer screening.

(C) Cervical cancer screening.

(D) Prostate cancer screening.

(E) Annual physical exams.

(F) Vaccinations/immunizations.

(G) Well child care from birth to age six, as described in § 17.272(a)(30)(i).

(iv) Hospice services.

(v) Or other preventive services as determined by the Secretary of Veterans Affairs.

(2) [Reserved]

(b) *Deductibles.* In addition to the CHAMPVA beneficiary cost-share, an annual (calendar year) outpatient deductible requirement ($50 per beneficiary or $100 per family) must be satisfied prior to VA payment of outpatient benefits. The deductible requirement is waived for:

(1) CHAMPVA-covered services and supplies provided through VA MbM or through CITI.

(2) Inpatient services.

(3) Preventive services listed in paragraph (a)(1)(iii) of this section.

(4) Hospice services.

(5) Or other services as determined by the Secretary of Veterans Affairs.

(c) *Cost sharing limitations.* To provide financial protection against the impact of a long-term illness or injury, there is a $3,000 calendar year limit or ''catastrophic cap'' per CHAMPVA eligible family on the CHAMPVA beneficiary's out-of-pocket costs for allowable services and supplies. After a family has paid $3,000 in out-of-pocket costs, to include both cost-share and deductible amounts, in a calendar year, CHAMPVA will pay the full allowable amounts for the remaining CHAMPVA-covered services and supplies through the end of that calendar year. Credits to the annual catastrophic cap are limited to the applied annual deductible(s) and the CHAMPVA beneficiary cost-share amount. Costs above the CHAMPVA determined allowable amount, as well as costs associated with non-covered medical services and supplies, are not credited toward the catastrophic cap calculation.

(d) *Non-payment.* * * *

(e) *Cost-share calculation.* The CHAMPVA beneficiary's cost-share amount, if not waived under paragraph (a)(1) of this section, is 25 percent of the CHAMPVA determined allowable amount in excess of the annual calendar year deductible (see § 17.275 for procedures related to the calculation of the allowable amount for CHAMPVA-covered services and supplies), except for the following:

(1) For inpatient services subject to the CHAMPVA Diagnosis Related Group (DRG) payment system, the cost-share is the lesser of:

(i) The per diem rate multiplied by the number of inpatient days;

(ii) 25 percent of the hospital's billed amount; or

(iii) The base CHAMPVA DRG rate.

(2) For inpatient mental health low volume hospitals and units (less than 25 mental health discharges per federal fiscal year), the cost-share is the lesser of:

(i) The fixed per diem rate multiplied by the number of inpatient days; or

(ii) 25 percent of the hospital's billed charges.

■ 7. Redesignate §§ 17.275 through 17.278 as §§ 17.276 through 17.279.

■ 8. Add new § 17.275 to read as follows:

§ 17.275 CHAMPVA determined allowable amount calculation.

CHAMPVA calculates the allowable amount in the following ways, for the following covered services and supplies:

(a) *Inpatient hospital services (non-mental health).* Unless exempt or subject to a methodology under paragraph (b) or (c) of this section, inpatient hospital services provided in the 50 states, the District of Columbia, and Puerto Rico are subject to the CHAMPVA Diagnosis Related Group (DRG)-based reimbursement methodology. Under the CHAMPVA DRG-based payment system, hospitals are paid a predetermined amount per discharge for inpatient hospital services, which will not exceed the billed amount. Certain inpatient services will be reimbursed under the CHAMPVA Cost-to-Charge (CTC) reimbursement methodology.

(b) *Inpatient hospital services (mental health).* The CHAMPVA inpatient mental health per diem reimbursement methodology is used to calculate reimbursement for inpatient mental health hospital care in specialty psychiatric hospitals and psychiatric units of general acute hospitals that are exempt from the CHAMPVA DRG-based payment system. The per diem rate is calculated by multiplying the daily rate by the number of days (length of stay). The daily rate is updated each fiscal year for both high volume hospitals (25 or more discharges per fiscal year) and low volume hospitals (fewer than 25 discharges per fiscal year).

(c) *Other inpatient hospital services.* (1) The CHAMPVA CTC reimbursement methodology is used to calculate reimbursement for inpatient care furnished by hospitals or facilities that are exempt from either of the methodologies in paragraph (a) or (b) of this section. Such hospitals or facilities will be paid at the CHAMPVA CTC ratio times the billed charges that are customary and not in excess of rates or fees the hospital or facility charges the general public for similar services in a community.

(2) The following hospitals and services are subject to the CHAMPVA CTC payment methodology:

(i) Any hospital that qualifies as a cancer hospital under Medicare standards and has elected to be exempt from the Centers for Medicare & Medicaid Services (CMS) prospective payment system.

(ii) Christian Science sanatoriums.

(iii) Critical Access Hospitals.

(iv) Any hospital outside the 50 states, the District of Columbia, or Puerto Rico.

(v) Hospitals within hospitals.

(vi) Long-term care hospitals.

(vii) Non-Medicare participating hospitals.

(viii) Non-VA Federal Health Care Facilities (*e.g.,* military treatment facilities, Indian Health Service).

(ix) Rehabilitation hospitals.

(x) Hospital or hospital-based services subject to state waiver in any state that has implemented a separate DRG-based payment system or similar payment system in order to control costs.

(xi) Hospitals and services as determined by the Secretary of Veterans Affairs.

(d) *Outpatient hospital services.* The CHAMPVA outpatient prospective payment system (OPPS) is used to calculate the allowable amount for outpatient services provided in hospitals subject to Medicare OPPS. This will include the utilization of TRICARE's reimbursement methodology to include specific coding requirements, ambulatory payment classifications (APCs), nationally established APC amounts, and associated adjustments.

(e) *Outpatient and inpatient non-hospital services.* Payments to individual authorized non-VA providers (not hospitals) for CHAMPVA-covered medical services and supplies provided on an outpatient or inpatient basis, including but not limited to, anesthesia services, laboratory services, and other professional fees associated with individual authorized non-VA providers, are reimbursed based on the lesser of:

(1) The CHAMPVA Maximum Allowable Charge;

(2) The prevailing amount, which is the amount equal to the maximum reasonable amount allowed providers for a specific procedure in a specific locality; or,

(3) The billed amount.

(f) *Pharmacy services and supplies.* The CHAMPVA pharmacy services and supplies payment methodology is based on specific CHAMPVA pharmacy points of service, which dictate the amounts paid by VA. VA pays:

(1) For services and supplies obtained from a retail in-network pharmacy, the lesser of the billed amount or the contracted rate; or

(2) For supplies obtained from a retail out-of-network pharmacy, the lesser of the billed amount plus a dispensing fee or the average wholesale price plus a dispensing fee.

(g) *Skilled Nursing Facility (SNF) care.* The CHAMPVA SNF reimbursement methodology is based on the CMS prospective payment system for SNFs under 42 CFR part 413, subpart J.

(h) *Durable medical equipment, prosthetics, orthotics, and supplies*

(DMEPOS). The CHAMPVA DMEPOS reimbursement methodology is based on the same amounts established under the CMS DMEPOS fee schedule under 42 CFR part 414, subpart D. The CHAMPVA determined allowable amount for DMEPOS is the amount in effect in the specific geographic location at the time CHAMPVA-covered medical services and supplies are provided to a CHAMPVA beneficiary.

(i) *Ambulance services.* CHAMPVA adopts Medicare's Ambulance Fee Schedule (AFS) for ambulance services, with the exception of services furnished by a Critical Access Hospital (CAH). Ambulance services are paid based on the lesser of the Medicare AFS or the billed amount. Ambulance services provided by a CAH are paid on the same bases as the CTC method under paragraph (c) of this section.

(j) *Hospice care.* CHAMPVA hospice reimbursement methodology uses Medicare per diem hospice rates.

(k) *Home health care (intermittent or part-time).* CHAMPVA home health care reimbursement methodology, based on Medicare's home health prospective payment system, uses a fixed case-mix and wage-adjusted episode payment amount to act as payment in full for costs associated with furnishing home health services with exceptions allowing for additional payment to be established.

(l) *Ambulatory surgery.* The CHAMPVA reimbursement methodology for facility charges associated with procedures performed in a freestanding ambulatory surgery center is based on a prospectively determined amount, similar to that used by TRICARE. These facility charges do not include physician fees, anesthesiologist fees, or fees of other authorized non-VA providers; such independent professional fees must be submitted separately from facility fees and are calculated under the methodology in paragraph (e) of this section.

(m) *CHAMPVA-covered medical services and supplies provided outside the United States.* VA shall determine the appropriate reimbursement method(s) for CHAMPVA-covered medical services and supplies provided by authorized non-VA providers outside the United States.

(n) *Sole Community Hospitals.* The CHAMPVA reimbursement methodology for inpatient services provided in a Sole Community Hospital (SCH) will be the greater of: the allowable amount determined by multiplying the billed charges by the SCH's most recently available cost-to-charge ratio from the CMS Inpatient Provider Specific File or the DRG reimbursement rate.

■ 9. Amend newly redesignated § 17.276 by:

■ a. Revising paragraphs (a) introductory text and (b);

■ b. Adding paragraphs (c) and (d); and

■ c. Removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 17.276 Claim-filing deadlines.

(a) Unless an exception is granted under paragraph (b) of this section, claims for medical services and supplies must be filed no later than:

* * * * *

(b) Requests for an exception to the claim filing deadline must be submitted in writing and include a complete explanation of the circumstances resulting in late filing along with all available supporting documentation. Each request for an exception to the claim filing deadline will be reviewed individually and considered on its own merit. VA may grant exceptions to the requirements in paragraph (a) of this section if it determines that there was good cause for missing the filing deadline. For example, when dual coverage exists, CHAMPVA payment, if any, cannot be determined until after the primary insurance carrier has adjudicated the claim. In such circumstances an exception may be granted provided that the delay on the part of the primary insurance carrier is not attributable to the beneficiary. Delays due to provider billing procedures do not constitute a valid basis for an exception.

(c) Claims for CHAMPVA-covered services and supplies provided before the date of the event that qualifies an individual under § 17.271 are not reimbursable.

(d) CHAMPVA is the last payer to OHI, as that term is defined in § 17.270(b). CHAMPVA benefits will generally not be paid until the claim has been filed with the OHI and the OHI has issued a final payment determination or explanation of benefits. CHAMPVA is secondary payer to Medicare per the terms of § 17.271(b).

■ 10. Revise newly redesignated § 17.277 to read as follows:

§ 17.277 Appeals.

(a) This section applies only to legacy claims.

(b) Notice of the initial determination regarding payment of CHAMPVA benefits will be provided to the CHAMPVA beneficiary on a CHAMPVA Explanation of Benefits (EOB) form. The EOB form is generated by the CHAMPVA automated payment processing system. If a CHAMPVA beneficiary or provider disagrees with the determination concerning CHAMPVA-covered services and supplies or calculation of benefits, he or she may request reconsideration. Such requests must be submitted to VA in writing within one year of the date of the initial determination. The request must state why the CHAMPVA claimant believes the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the claimant without further consideration. After reviewing the claim and any relevant supporting documentation, VA will issue a written determination to the claimant that affirms, reverses, or modifies the previous decision. If the claimant is still dissatisfied, within 90 days of the date of the decision he or she may make a written request for review by VA. After reviewing the claim and any relevant supporting documentation, VA will issue a written determination to the claimant that affirms, reverses, or modifies the previous decision. The decision of VA with respect to benefit coverage and computation of benefits is final. When a CHAMPVA beneficiary has other health insurance (OHI), an appeal must first be filed with the OHI, and a determination made, before submitting the appeal to CHAMPVA with limited exceptions such as if the OHI deems the issue non-appealable. Denial of CHAMPVA benefits based on legal eligibility requirements may be appealed to the Board of Veterans' Appeals in accordance with 38 CFR part 20. Medical determinations are not appealable to the Board. 38 CFR 20.101.

■ 11. Revise newly redesignated § 17.278 to read as follows:

§ 17.278 Medical care cost recovery.

VA will actively pursue medical care cost recovery in accordance with applicable law.

§ 17.279 [Amended]

■ 12. In newly redesignated § 17.279, remove the authority citation at the end of the section.

[FR Doc. 2022–14285 Filed 7–12–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R10–RCRA–2018–0661; FRL–9414–02–R10]

Hazardous Waste Management System; Final Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) (also, ''the Agency ''or ''we'' in this preamble) is granting a petition submitted by Emerald Kalama Chemical, LLC, in Kalama, Washington to exclude (or ''delist'') up to 3,500 cubic yards of U019 (benzene) and U220 (toluene) industrial wastewater biological solids (IWBS) per year from the list of Federal hazardous wastes under the Resource Conservation and Recovery Act.

DATES: This final rule is effective on July 13, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–RCRA–2018–0661. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may 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 electronically through *www.regulations.gov.* Due to restrictions related to COVID–19, docket materials are not available in hard copy form at this time. If you have further questions concerning docket materials, we recommend you telephone Dr. David Bartus at (206) 553–2804.

FOR FURTHER INFORMATION CONTACT: Dr. David Bartus, EPA, Region 10, 1200 6th Avenue, Suite 155, M/S 15–H04, Seattle, Washington 98070; telephone number: (206) 553–2804; email address: *bartus.dave@epa.gov.*

As discussed in Section V of this document, the Washington State Department of Ecology is making a separate but parallel decision regarding the Petitioner's petition under state authority. Information on Ecology's action may be found at *https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Industrial-facilities-permits/Emerald-Kalama-Chemical.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
II. EPA's Evaluation of Public Comments
III. Final Rule
A. What are the terms of this exclusion?
B. When is the delisting effective?
C. How does this action affect the states?
IV. Statutory and Executive Order Reviews

I. Overview Information

Emerald Kalama Chemical, LLC located in Kalama, Washington submitted a petition to the EPA to exclude (or ''delist'') an annual volume of up to 3,500 cubic yards of U019 (benzene) and U220 (toluene) industrial wastewater biological solids (IWBS) hazardous waste per year from the list of hazardous waste set forth in 40 CFR 261.33. The EPA published a proposed exclusion and request for comment at 87 FR 3053 (January 20, 2022). After consideration of comments received on the EPA's proposed exclusion, the EPA is finalizing with certain changes responsive to public comment as described in the following section.

II. EPA's Evaluation of Public Comments

The EPA received six sets of comments on the proposed exclusion, two of which appear to be duplicate. One set of comments was received directly by the EPA from the Petitioner rather than through *regulations.gov.* The EPA has placed this comment in the docket.

Comment 1. This commenter raised issues relating to communicable waterborne diseases and impacts on the costs of health care.

Response 1. While the EPA appreciates the comment, the EPA lacks authority to consider communicable disease vectors associated with wastes subject to the Resource Conservation and Recovery Act. The commenter also recommended that a continuous monitoring or audit mechanism along with a public communication plan through an email or push notification should be in place. The EPA notes that Condition 3 includes detailed verification sampling and analysis requirements, and a provision that the Petitioner must provide the EPA with an annual report containing the results of verification testing. These data can be made available to interested members of the public through the Freedom of Information Act. Given this, the EPA does not believe that a public communications plan as recommended is necessary. No changes to the proposed exclusion are necessary based on this comment.

Comment 2. This commenter raised various issues related to benzene and toluene as listed hazardous wastes. The first point raised by this commenter relates to Table 5 in the proposed rulemaking, noting ''Table 5 shows a fault in the test sampling. According to the outline of the case, Table 5 provides the verification of constituents and compliance concentrations for the waste being addressed.''

The second point raised by this commenter states ''in many of the materials listed the total constituent concentrations exceeded 100%, providing inaccurate data.''

The third point raised by the commenter raised various issues related to sampling and analysis for benzene. These include the analytical detection limit used as DRAS input, consistency between benzene analytical data, testing for the characteristic of ignitability, and changes in physical state for benzene. The commenter noted that DRAS input for the detection limit for analysis of a TCLP extract of the waste for benzene is 0.5 mg/l, presumably on the basis of Table 1. This model input is used to calculate the actual risk of a modelled waste stream when analytical data are reported as non-detect at a specified level of detection. However, this number does not reflect the required analytical method sensitivity required for waste characterization data and for verification sampling and analysis—for these purposes, the method detection limits must be less than the compliance value, which for benzene is 0.166 mg/l for a TCLP extract of the waste. The actual waste characterization data provided by the Petitioner do in fact reflect a level of sensitivity (or detection limit) below the compliance value for benzene. The EPA does acknowledge there is some variability in the analytical data for most, if not all constituents of concern, which is to be expected. For benzene, all of the reported data are well below the calculated compliance level, and thus support the EPA's conclusion is that the candidate waste can be excluded from the applicable waste listings, subject to required verification sampling.

The fourth point raised by the commentor relates to the Petitioner's sampling of the candidate waste for hazardous characteristics (*e.g.,* ignitability and toxicity), noting that there is no evidence of testing for the characteristic of ignitability based on the potential presence of benzene. This point also noted that benzene may exist in multiple physical phases (*i.e.,* solid, liquid and gas), such that the concentration of benzene in the waste

may vary depending on the state of benzene.

The fifth and final point raised by the commentor proposed applying a ''cradle to grave'' approach to the excluded waste, on the basis that such an approach, including consideration of transportation of the excluded waste, would be necessary to be protective with respect to benzene.

Response 2. Regarding the first point raised by the commentor, the comment appears to incorrectly interpret the data in Table 5—these data are the output from the Delisting Risk Assessment Software (DRAS) model and represent the maximum allowable concentration of constituents of concern in the candidate waste for the waste to meet the specified risk levels documented in Table 1 and thus can be excluded from the specific listed waste codes documented in the proposed rule. These data do not represent the actual concentration of any particular sample of the candidate waste. As discussed in the preamble of the proposed rulemaking, the Petitioner provided the EPA with extensive sampling and analysis of the candidate waste, which appear in the docket. The EPA has determined that no additional sampling of the candidate waste is necessary before finalization of the proposed exclusion.

Regarding the second point raised by the commentor, this statement applies to model output presented in Table 2, but not Table 5. See Footnote 2 to Table 2 and Section IV.B of the proposed rulemaking preamble for a more detailed discussion of this issue. No change is necessary to address this second point.

Regarding the third point raised by the commentor, the cited model input is used to calculate the actual risk of a modelled waste stream when analytical data are reported as non-detect at a specified level of detection. However, this number does not reflect the required analytical method sensitivity required for waste characterization data and for verification sampling and analysis—for these purposes, the method detection limits must be less than the compliance value, which for benzene is 0.166 mg/l for a TCLP extract of the waste. The actual waste characterization data provided by the Petitioner do in fact reflect a level of sensitivity (or detection limit) below the compliance value for benzene. The EPA does acknowledge there is some variability in the analytical data for most, if not all constituents of concern, which is to be expected. For benzene, all reported data are well below the calculated compliance level, and thus support the EPA's conclusion that the candidate waste can be excluded from the applicable waste listings, subject to required verification sampling. No change is warranted in response to this point.

Regarding the fourth point raised by the commentor, the EPA notes that under the hazardous waste exclusion regulatory provisions of 40 CFR 260.22, a petitioner is not required to demonstrate a candidate waste does not exhibit a hazardous characteristic–rather, this authority is specific to granting relief for wastes that designate for one or more listed waste numbers, but not for characteristic wastes. As provided for under 40 CFR 260.22(a)(2), however, a waste excluded from applicable waste listings may in fact continue to be hazardous if it exhibits a characteristic. Independent of an approved delisting petition, a facility is always responsible for demonstrating through direct testing or process knowledge that the waste does not exhibit a hazardous characteristic. The EPA notes, however, that since the waste characterization data provided by the Petitioner document that benzene is present only at sub-parts-per-million levels, a level far below the corresponding toxicity characteristic regulatory level and similarly well below the level that would cause the waste to exhibit the characteristic of ignitability, the waste is not expected to ever exhibit either characteristic. Similarly, the very low concentration of benzene strongly supports a conclusion that benzene will not appear as a separate phase, whether solid or liquid. No change is warranted in response to this point.

Regarding the fifth point raised by the commentor, the EPA notes that the purpose of the DRAS model used as the basis for this proposed exclusion is to demonstrate that when a candidate waste meets the conditions of the exclusion, and subject to a reasonable worst-case mismanagement scenario, the excluded waste does not pose an unacceptable risk to human health or the environment. In the case of the Petitioner's wastes, the reasonable worst-case mismanagement is defined as placement in an unlined landfill (See Section III.E of the proposed rulemaking preamble). Therefore, the EPA does not consider the ''cradle to grave'' approach to be necessary. No change is warranted in response to this point.

Comment 3. This commentor noted that while the proposed exclusion addressed benzene and toluene as listed hazardous wastes, benzene may also exhibit the toxicity characteristic. The commentor further asserted that the Petitioner has failed to show how benzene ''is suddenly no longer displaying such characteristics.'' The commenter acknowledged that benzene and toluene in small amounts may not cause extreme health reactions but noted that if multiple facilities release these constituents even in small amount, there may be a significant aggregate effect on the environment and wildlife, specifically including aquatic life and the Columbia River. The commentor encouraged the EPA to protect clean water and the endangered and threatened species in the Columbia. Finally, the commentor asserted that even if the proposed exclusion is finalized, facilities would still have to apply for permit ''to dump these chemicals,'' creating more work for permitting agencies, and questioned whether permitting agencies have the resources to issue such permits and oversee their implementation.

Response 3. The EPA appreciates and shares the commentors concern for the environment, wildlife, and the Columbia River. In responding to questions raised regarding the waste potentially exhibiting the toxicity characteristic for benzene or toluene, please see the discussion of this issue in response to Comment 2 above, and the language appearing in Section II.B of the proposed rulemaking preamble. No change is warranted in response to this point.

Regarding the potential impact of multiple facilities discharging these constituents to the environment, the EPA notes this exclusion does not authorize discharge of any hazardous waste or constituents to the environment, and that even if the waste is mismanaged will not pose an unacceptable risk to health or the environment. Finally, the proposed exclusion is conditioned on the requirement that candidate wastes be disposed of in a solid waste landfill after the Petitioner demonstrates compliance with the exclusion criteria. Therefore, the excluded waste will not be dumped into the environment, and no discharge permits are required or are appropriate for management of the waste under the conditions of this exclusion. No change is warranted in response to this point.

Comments 4 and 5. These two comments appear to be duplicative and are addressed concurrently.

In the first point raised by the commentor, the commentor objected to the proposed changes in the hazardous status of U019 (benzene) and U220 (toluene) and noted the Petitioner claims that these chemicals do not meet the criteria for which the EPA listed it.

In the second point raised by the commentor, the commentor asked what assurance is available that the Petitioner will provide accurate and evidence-based information.

Responses 4 and 5. The EPA appreciates the concerns raised in this comment. With respect to the first point raised by the commentor, the commentor appears to reflect a misunderstanding of the effect of the proposed exclusion. The exclusion does not at all change the hazardous listing status of either benzene or toluene. Rather it reflects a determination that this candidate waste differs from benzene or toluene as listed as a discarded commercial chemical product, off-specification species, container residues or spill residues thereof, and that on this basis the candidate waste does not warrant continued management as a listed hazardous waste. The proposed exclusion does not in any way affect the listed status of benzene or toluene in the form of discarded commercial chemical compounds. No change is warranted in response to this point.

With respect to the second issue raised by the commentor, the EPA will, on an on-going basis, critically review records that the Petitioner must maintain demonstrating satisfaction of the conditions of the exclusion, including verification sampling and analysis. Where necessary or appropriate, the EPA may exercise its enforcement authorities under the Resource Conservation and Recovery Act to evaluate the Petitioners compliance with the exclusion, and to take such enforcement actions as may be necessary or appropriate. No change is warranted in response to this point.

Comment 6. The Petitioner provided comments that generally supported the proposed exclusion but raised concerns with implementation of the proposed sampling verification plan. In particular, the Petitioner asserted that the proposed verification sampling requirements will create logistical difficulties and inefficiencies and proposed specific modifications to the verification sampling requirements.

The first issue raised by the Petitioner's comment focused on the proposed requirement to sample IWBS at a rate of one sample per every ten roll-off boxes. The comment noted that this sampling frequency for non-cobalt constituents of concern will create logistical difficulties due to laboratory availability and turnaround time and will create a backlog of roll-off boxes that cannot be accommodated on-site while the Petitioner awaits the sampling results. More Specifically, given anticipated testing turnaround times, sampling results on the 10th bin might not be available until the 13th or 14th bin has been filled. The Petitioner asserted that logistically, it is impossible to hold that many bins onsite while awaiting results and requested clarification on how to handle bins awaiting analysis and subsequent bins that are filled in the time between sampling of the 10th bin and receipt of sampling results.

The second issue raised by the Petitioner noted that because there are no Washington State accredited laboratories to test for acetaldehyde, benzaldehyde, and formic acid (as noted in the proposed rule's preamble), the EPA is allowing the Petitioner to use laboratories that are accredited for other analytes to conduct sampling for acetaldehyde, benzaldehyde, and formic acid. However, the Petitioner also stated that there are not many labs in Washington State that can perform tests on the IWBS for acetaldehyde, benzaldehyde, and formic acid, especially in reasonable proximity to the Petitioner's facility.

Response 6. With respect to the first issue raised by this comment, the EPA appreciates the logical concerns raised by this comment. In response, the EPA agrees to extend the required sampling frequency to one sample every 14th bin. With this change, the Petitioner may sample the 10th bin of each set of 14 bins but may manage the 11th through 14th bins according to the results of analytical data from the previous set of 14 bins. That way, results from the 10th bin will be available by the time the next set of 14 bins begins to be filled, eliminating the logistical challenges raised by this comment. Given that data provided by the Petitioner that for non-cobalt constituents, all waste constituents are expected to be well below the delisting exclusion limits, and that sampling of one bin per set of 14 as described will provide adequate assurance of compliance exclusion limits.

With respect to the second issue raised by this comment, the EPA acknowledges the Petitioner's concern, acetaldehyde, benzaldehyde, and formic acid are constituents of concern (COCs) for the reasons listed in proposed rule's preamble. As such, the EPA believes it is appropriate to require testing as outlined in the proposed rule. Because the EPA is already providing some relief by changing the sampling frequency from every 10th bin to every 14th bin, the EPA expects that the Petitioner will need confirmatory laboratory services only about 12 times per year. While the EPA appreciates the Petitioner's concern that suitable laboratories may not be located conveniently close to the facility, some additional burden to ship samples to a less conveniently located laboratory is warranted due to the EPA's determination that acetaldehyde, benzaldehyde, and formic acid are COCs, and that verification sampling data are essential for ensuring full compliance with delisting criteria. No change is warranted in response to this point.

III. Final Rule

A. What are the terms of this exclusion?

EPA is finalizing the proposed exclusion based on the Petitioner's petition with certain changes based on comments received, as discussed in Section II of this preamble.

B. When is the delisting effective?

This rule is effective July 13, 2022. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

C. How does this action affect the states?

This exclusion modification is being issued under the Federal RCRA delisting program. Therefore, only states subject to Federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Moreover, the exclusion modifications may not be effective in states having a dual system that includes Federal RCRA requirements and their own requirements. The EPA allows states to impose their own regulatory requirements that are more stringent than the EPA's, under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. As noted in the notice of proposed rulemaking, Ecology is expected to make a parallel delisting decision under their separate state authority.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The action approves a modification of an existing delisting petition under RCRA for the petitioned waste at a particular facility.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. This final rule maintains meaningful burden reduction afforded by the existing exclusion consistent with changes necessary to allow management of liquid effluents expected from startup and operation of Hanford's Waste Treatment and Immobilization Plant.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it only applies to a particular facility.

D. Regulatory Flexibility Act

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

F. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

G. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

K. National Technology Transfer and Advancement Act

This action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272).

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

The EPA believes that this action does not have disproportionately high or 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). The EPA has determined that this action will not have disproportionately high or adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

M. Congressional Review Act

This action is exempt from the Congressional Review Act (5 U.S.C. 801 *et seq.*) because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection; Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: July 5, 2022.

Timothy Hamlin,

Director, Land, Chemicals and Redevelopment Division.

For the reasons set out in the preamble, the EPA amends 40 CFR part 261 as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Amend table 1 of appendix IX to part 261, by adding an entry for ''Emerald Kalama Chemical, LLC'' in alphabetical order to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* * * * *
Emerald Kalama Chemical, LLC.	Kalama, Washington	Wastewater treatment sludges, U019 (benzene) and U220 (toluene), generated at Emerald Kalama Chemical, LLC in Kalama, Washington at a maximum annual rate of 3,500 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of July 13, 2022. 1. *Delisting Levels:*

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		The constituent concentrations in a representative sample of the waste must not exceed the following levels. Total concentrations (mg/kg): Cobalt–62,300; Copper–463,000; Nickel–402,000; Benzene–276,000; Formic Acid–145,000. TCLP Concentrations (mg/l in the waste extract): Acetaldehyde–8.65; Barium–74.8; Copper–19.0; Nickel–29.2; Zinc–426; Benzaldehyde–6.08; Benzene–0.166; Benzoic Acid–5,000; Formic Acid–174; Benzyl Alcohol–125; Methanol–2,500; Phenol–375; Toluene–32.6. For the cobalt concentration in an extract of the waste, the exclusion is based on a demonstration of being within a cobalt budget defined as 2000 yds^3-mg/L. The Petitioner must calculate a running total starting with the effective date of this exclusion, and for each annual period. The running total shall be the sum of V_iC_i from i=1 to n, where: V_i = the volume of each batch in cubic yards (yd^3) C_i = the concentration of cobalt in a TCLP extract of each batch as per Condition 3 of this exclusion (mg/L) n = number of batches generated per year The Petitioner may conduct analysis for cobalt in an extract of the IWBS biosolids using the in-house method documented in ''Cobalt Content In Sludge Extract Prepared According to Toxicity Characteristic Leaching Procedure (TCLP Cobalt), Revision 1.0, 11/24/2021 as placed in the rulemaking docket. The Petitioner may monitor the quantity of waste in each batch on a weight basis, converting to volume using a documented density of 0.67 tons/cubic yard. Provided that the cumulative cobalt budget remains less than the limit of 2000 yds^3-mg/L each batch will be considered in compliance with the exclusion limit for cobalt in an extract of the waste. However, any batch with a cobalt concentration greater than 1.99 mg/l in a TCLP extract of the waste cannot be managed under this exclusion and must remain subject to RCRA Subtitle C regulation. For the first year following the effective date of this exclusion, the Petitioner shall also document the density of IWBS for each batch of IWBS using ASTM Method ASTM E1109–19 or other equivalent method for purposes of verifying the 0.67 tons/cubic yard density. In addition, the Petitioner shall, on an on-going monthly basis, obtain analysis of one spit aliquot of the TCLP extract of IWBS biosolids for cobalt from an independent laboratory accredited by the Washington State Department of Ecology subject to the provision of Condition 2 below. 2. *Reporting.* Within 60 days of each anniversary of the effective date of this exclusion, or such other time as the EPA may approve in writing, the Petitioner shall provide a written report to the EPA documenting all data gathered regarding extraction and analysis of the extract for cobalt pursuant to the requirements of this exclusion, including the results of IWBS density measurement (first year report only) and the independent laboratory data for cobalt required by Condition 1. This report must be accompanied by the signed certification language appearing at 40 CFR 270.1(d)(1). After review of the density data presented in this report, the EPA may provide the Petitioner written approval to use some other numerical density than 0.67 tons/cubic yard for purposes of subsequent implementation of cobalt budget calculations pursuant to Condition 1. Following submission of the first annual report, the Petitioner may request relief from the spilt aliquot analysis requirement in Condition 1. Upon receipt of written approval of the request from the EPA, the Petitioner will be relieved of the spilt aliquot analysis requirement in Condition 1.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		3. *Verification Testing:* To verify that the waste does not exceed the delisting concentrations specified in Condition 1 (except for cobalt), the Petitioner must collect and analyze one representative waste sample of every group of 14 roll-off boxes of wastewater treatment sludge, with the sample being obtained from the 10th box of each group of 14. If this sampling is expected to occur on a weekend or a Federal holiday, the Petitioner may substitute sampling of the 9th or 11th box in each batch of 14 boxes, with sampling of subsequent batches resuming the original schedule of sampling the 10th roll-off box of each batch of 14 boxes. The Petitioner may manage the 10th through 14th box of each group of 14 according to the verification sampling results of the previous group of 14 boxes pending receipt of verification sample results from the 10th box of the current set of boxes. The EPA notes that the Washington State Department of Ecology does not currently accredit any laboratory in the state of Washington for analysis of acetaldehyde, benzaldehyde, or formic acid in samples of solid material. The EPA will accept laboratory analyses result for acetaldehyde, benzaldehyde and formic acid from a laboratory that otherwise holds accreditations for all other analytes. For cobalt, sampling must occur once per batch (as defined by a single roll-off box). All sampling and analysis must be conducted using methods with appropriate detection concentrations and elements of quality control. Sampling data must be provided to the EPA no later 60 days following each anniversary of the effective date of this delisting, or such later date as the EPA may agree to in writing. No earlier than the first anniversary of the effective date of this delisting, the Petitioner may request that the EPA approve changes to the sampling frequency under this condition. Such a request must include data and analysis that demonstrated that the revised sampling frequency will ensure that all wastes subject to this exclusion will consistently satisfy the delisting exclusion criteria under Condition 1. The Petitioner must conduct all verification sampling according to a written sampling plan and associated quality assurance project plan which is approved in advance by the EPA that ensures analytical data are suitable for their intended use. The Petitioner's annual submission must also include a certification that all wastes satisfying the delisting concentrations in Condition 1 have been disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. 4. *Changes in Operating Conditions:* The Petitioner must notify the EPA in writing if it significantly changes the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process. The Petitioner must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting concentrations in Condition 1, demonstrated that no new hazardous constituents listed in Appendix VIII of part 261 have been introduced into the manufacturing process or waste treatment process, and it has received written approval from the EPA that it may continue to manage the waste as non-hazardous. 5. *Data Submittals:* The Petitioner must submit the data obtained through verification testing or as required by other conditions of this rule to the Director, Land, Chemical, & Redevelopment Division, U.S. EPA Region 10, 1200 6th Avenue, Suite 155, M/S 15–H04, Seattle, Washington, 98101 or his or her equivalent. The annual verification data and certification of proper disposal must be submitted within 60 days after each anniversary of the effective date of this delisting exclusion, or such later date as the EPA may agree to in writing. The Petitioner must compile, summarize, and maintain on-site for a minimum of five years, records of analytical data required by this rule, and operating conditions relevant to those data. The Petitioner must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). If the Petitioner fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA may, at its discretion, consider such failure a sufficient basis to reopen the exclusion as described in paragraph 5. 6. *Reopener Language:* (A) If, any time after disposal of the delisted waste, the Petitioner possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent is at a higher than the specified delisting concentration, then the Petitioner must report such data, in writing, to the Director, Land, Chemical, & Redevelopment Division, EPA Region 10 at the address above, or his or her equivalent, within 10 days of first possessing or being made aware of those data.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) Based on the information described in Condition 4 or 6(A) and any other information received from any source, the EPA will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the EPA determines that the reported information does require Agency action, the EPA will notify the Petitioner in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the Petitioner with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The Petitioner shall have 30 days from the date of the EPA's notice to present the information. (D) If after 30 days the Petitioner presents no further information or after a review of any submitted information, the EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the EPA's determination shall become effective immediately unless the EPA provides otherwise.
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[FR Doc. 2022–15009 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2022–0395; FRL–9794–02–R4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on the authorization of Tennessee's changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes were outlined in an application to the EPA and correspond to certain Federal rules promulgated between January 1, 1983, and June 30, 2021. We have determined that these changes satisfy all requirements needed for final authorization.

DATES: This authorization is effective on September 12, 2022 without further notice, unless the EPA receives adverse comment by August 12, 2022. If the EPA receives such comment, it will publish a timely withdrawal of this direct final action in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2022–0395, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.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, 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.*

The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Robin Billings, the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Please also contact Robin Billings 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.

All documents in the docket are listed in the *www.regulations.gov* index. Publicly available docket materials are available electronically in *www.regulations.gov.* For alternative access to docket materials, please contact Robin Billings, the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Robin Billings; RCRA Programs and Cleanup Branch; Land, Chemicals and Redevelopment Division; U.S. Environmental Protection Agency; Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8515; fax number: (404) 562–9964; email address: *billings.robin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is the EPA using a direct final action?

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse

comment. This action is a routine program change. However, in the ''Proposed Rules'' section of this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule allowing the public an opportunity to comment. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later rule.

II. Why are revisions to state programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time they take effect in unauthorized states. Thus, the EPA will implement those requirements and prohibitions in Tennessee, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

III. What decisions has the EPA made in this rule?

Tennessee submitted a complete program revision application, dated September 24, 2021, seeking authorization of changes to its hazardous waste program corresponding to certain Federal rules promulgated between January 1, 1983, and June 30, 2021 (including Recent Requirements (1–8) Cluster [1] (Checklist [2] 2 only), HSWA Cluster I (Checklists SR1 and SI only), HSWA Cluster II (Checklist 44C [3] only), Non-HSWA Cluster V (Checklist 61 only), RCRA Clusters III (Checklists 117A and 117B [4] only), VIII (Checklist 167F only), XVI (Checklist 212 only), XVII (Checklist 214 only), XIX (Checklists 219, 220, and 221 [5]), XX (Checklists 222, 223, and 224 [6]), and XXI through XXIX). The EPA concludes that Tennessee's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants Tennessee final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section VI of this document.

Tennessee has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of HSWA, as discussed above.

IV. What is the effect of this authorization decision?

The effect of this decision is that the changes described in Tennessee's authorization application will become part of the authorized State hazardous waste program and will therefore be federally enforceable. Tennessee will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA will maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing Tennessee are already effective under State law and are not changed by this action.

V. What has Tennessee previously been authorized for?

Tennessee initially received final authorization on January 22, 1985, effective February 5, 1985 (50 FR 2820), to implement the RCRA hazardous waste management program. The EPA granted authorization for changes to Tennessee 's program on the following dates: June 12, 1987, effective August 11, 1987 (52 FR 22443); June 1, 1992, effective July 31, 1992 (57 FR 23063); May 8, 1995, effective July 7, 1995 (60 FR 22524); August 24, 1995, effective October 23, 1995 (60 FR 43979); May 23, 1996, effective July 22, 1996 (61 FR 25796); January 30, 1998, effective March 31, 1998 (63 FR 4587); September 15, 1999, effective November 15, 1999 (64 FR 49998); October 26, 2000, effective December 26, 2000 (65 FR 64161); December 26, 2001, effective February 25, 2002 (66 FR 66342); April 11, 2003, effective June 10, 2003 (68 FR 17748); March 14, 2005, effective May 13, 2005 (70 FR 12416); May 11, 2006, effective July 10, 2006 (71 FR 27405); October 5, 2012, effective December 4, 2012 (77 FR 60919); and March 20, 2015, effective May 19, 2015 (80 FR 14847).

VI. What changes is the EPA authorizing with this action?

Tennessee submitted a complete program revision application, dated September 24, 2021, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. This application included changes associated with Checklists SI, SR1, 2, 61, 117A, 167F, 212, 214, 219, 220, 222, 223, 225 through 240, 242, and 243. The EPA has determined, subject to receipt of written comments that oppose this action, that Tennessee's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to

[1] A ''cluster'' is a grouping of hazardous waste rules that the EPA promulgates from July 1st of one year to June 30th of the following year.

[2] A ''checklist'' is developed by the EPA for each Federal rule amending the RCRA regulations. The checklists document the changes made by each Federal rule and are presented and numbered in chronological order by date of promulgation.

[3] Checklist 44C was submitted for authorization in the September 2021 application, but Tennessee will need to make a regulatory change to remove its analog to 40 CFR 265.1(c)(2). Therefore, Checklist 44C is not being authorized at this time.

[4] Checklist 117B was submitted for authorization in the September 2021 application, but Tennessee was already authorized for Checklist 117B in May 1995.

[5] Checklist 221 was submitted for authorization in the September 2021 application, but this Checklist was vacated and is not being authorized.

[6] Checklist 224 was submitted for authorization in the September 2021 application, but this Checklist was vacated and is not being authorized.

qualify for final authorization.[7] Therefore, the EPA grants final authorization to Tennessee for the following program changes:

Description of Federal requirement	**Federal Register** date and page	Analogous State Authority [1]
Checklist SR1,[2] Existing and newly regulated surface impoundments.	49 FR 44633, 11/8/84.	0400–12–01–.05(11)(b).
Checklist SI,[3] Sharing of Information with the Agency for Toxic Substances and Disease Registry.	50 FR 28702, 7/15/85.	Tennessee Code Annotated (TCA) 68–212–102(2) and TCA 68–212–107(d).
Checklist 2, Permit Rules—Settlement Agreement.	48 FR 39611, 9/1/83.	0400–12–01–.07(2)(a)7(i) and (iii), and (2)(a)10(i); 0400–12–01–.07(8)(a)4.
Checklist 61, Changes to Interim Status Facilities for Hazardous Waste Management; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting.	54 FR 9596, 3/7/89	0400–12–01–.07(7)(i)1–2; 0400–12–01–.07(7)(k); 0400–12–01–.07(1)(b)2; 0400–12–01–.07(2)(a)3; 0400–12–01–.07(6); 0400–12–01–.07(10), Appendix I (f)1(i)–(iii), (f)3, (f)4(i)–(ii), (g)1(i)–(ii) and (v), (g)5(i)–(iv), (h)5(iii)–(iv), and (j)6(iii)–(iv); 0400–12–01–.07(3)(c)1(i)–(v), (3)(c)2(i)–(vi), and (3)(d)5–7.
Checklist 117A,[4] Reissuance of the ''Mixture'' and ''Derived-From'' Rules.	57 FR 7628, 3/3/92; 57 FR 23062, 6/1/92; 57 FR 49278, 10/30/92.	0400–12–01–.02(1)(c)1(i)–(ii), (1)(c)1(ii)(I)–(V), including (1)(c)1(ii)(V) I–V, (1)(c)2–3, (1)(c)3(i)–(ii), (1)(c)3(ii)(I)–(II), including (1)(c)3(ii)(II) I–III, (1)(c)4(i)–(ii).
Checklist 167F, Exclusion of Recycled Wood Preserving Wastewaters.	63 FR 28556, 5/26/98.	0400–12–01–.02(1)(d)1(ix)(III), including (1)(d)1(ix)(III) I–V.
Checklist 212, National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II).	70 FR 59402, 10/12/05.	0400–12–01–.01(2)(b)1 and 2; 0400–12–01–.06(15)(a)2(i) and (iii); 0400–12–01–.05(15)(a)2(i); 0400–12–01–.09(8)(a)2(i) and (iii)–(iv); 0400–12–01–.07(2)(h)1, (2)(h)1(i), (2)(h)1(i)(I)–(IX), and (2)(h)1(ii) [reserved]; 0400–12–01–.07(5)(b)5(v), (5)(b)8, (5)(b)10(iv)(III), and (5)(b)11(v)(III); 0400–12–01–.07(8)(b)2(iii); 0400–12–01–.07(9)(c)5(x)(I)–(III), (9)(c)5(xi)(I), (9)(c)5(xi)(I) I–IV, (9)(c)5(xi)(II), and (9)(c)5(xi)(II) I–II; 0400–12–01–.07(10), Appendix I, Item (l)10; 0400–12–01–.07(1)(e) and (j); and 0400–12–01–.07(12)(a)1(i)–(ii), (12)(a)2(i)(I), (12)(a)2(ii), (12)(a)3, and (12)(a)3(i)–(ii).

[7] The EPA has determined that certain provisions are more stringent or broader in scope than the Federal program. See discussion in Section VII of this document.

Description of Federal requirement	Federal Register date and page	Analogous State Authority [1]
Checklist 214, Corrections to Errors in the Code of Federal Regulations.	71 FR 40254, 7/14/06.	0400–12–01–.01(2)(a); 0400–12–01–.05(5)(a) and (b); 0400–12–01–.02(1)(b)3(i)(I), (1)(c)1(ii)(I), (1)(d)1(xxii)(V), (1)(d)2(ii)(II), (1)(d)2(vi)(I) II, (1)(d)2(vi)(II), (1)(d)2(vi)(II) IV, (1)(d)2(vi)(II) VI, (1)(d)2(ix), (1)(d)5(ii)(VI), (1)(d)5(iii)(I), (1)(f)1(ii)(I)–(IV), and (1)(f)3(ii); 0400–12–01–.02(3)(b)1(iii), (3)(b)1(iii)(I), (3)(b)1(iii)(II), (3)(b)1(iii)(II) I–IV, (3)(b)1(iv), (3)(b)1(iv)(I), (3)(b)1(iv)(I) I–IV, and (3)(e)2; 0400–12–01–.02(4)(b)1 Table, (4)(c)1 Table (Entries for K107 and K069), (4)(d)5 including Comment and Table, and (4)(d)6 including Comment and Table; 0400–12–01–.02(30), Appendices VII and VIII; 0400–12–01–.06(1)(b)2(ii); 0400–12–01–.06(2)(d)2(vii)(III) II, (2)(h)2, and (2)(i)2(iii)(III); 0400–12–01–.06(6)(h)1(i), (6)(h)1(i)(I), (6)(h)9(v), (6)(i)1(ii), (6)(i)7(iv)(I), (6)(j)8(ii), and (6)(l)4; 0400–12–01–.06(7)(c)2(ix), (7)(f)–(g), (7)(i)3, and (7)(j)2(i)(II); 0400–12–01–.06(8)(a)4(i), (8)(c)2(ii), (8)(g)2(vii), (8)(g)5(v), (8)(g)1(iii)(I), (8)(f)2, (8)(g)8(x), (8)(n)8(i), (8)(p)2, (8)(p)6–7, (8)(p)7 Item 3, (8)(p)7 Part A, Alternative I, Item 3, (8)(p)7 Part B, Alternative I, Item 10, (8)(p)7 Part B, Alternative I, Item 15, (8)(p)7 Part B, Alternative II, Item 7, (8)(p)8(ii) [Guarantee for Liability Coverage], (8)(p)9, (8)(p)10(ii)(IV), (8)(p)11–12, (8)(p)13 Section 8(III), and (8)(p)14(i) Sections 3(III)I, 3(V)III, 12, and 16; 0400–12–01–.06(9)(f)2(i); 0400–12–01–.06(10)(d)3(iv) Note, (10)(d)4(iv), (10)(d)5(ii)(II)–(III), (10)(d)5(ii)(V) I–II, (10)(d)5(iii)(I)–(II), (10)(d)7(i)(III)–(IV), and (10)(d)7(ii)(I) I; 0400–12–01–.06(11)(b)3(i)(I) II, (11)(b)3(ii)(II), (11)(b)5(i), (11)(b)5(ii)(I) II–III, (11)(b)5(ii)(I) III, (11)(d)2(i), and (11)(g)1(ii); 0400–12–01–.06(12)(b)1(ii)(I) I and (12)(c)1–2; 0400–12–01–.06(13)(k)3(vii), (13)(k)4, and (13)(n)1; 0400–12–01–.06(14)(b)3(ii), (14)(b)5(ii)(I) II, (14)(c)1–2, (14)(e)2(i), (14)(o)5(ii), and (14)(r)1; 0400–12–01–.06(15)(e)2; 0400–12–01–.06(22)(c)5(iv)(III), (22)(c)5(iv)(IV) VI, (22)(c)5(vi)(III) V, (22)(e)1, and (22)(f)5(vi); 0400–12–01–.06(26)(d)1(i), (26)(d)1(iv)(I), (26)(d)1(v), (26)(d)2, and (26)(d)3(ii)–(iii); 0400–12–01–.06(27)(a), (27)(b)1, (27)(b)2(xi), and (27)(b)3(iv);0400–12–01–.06(30)(a)3, (30)(d)6(ii)(VII) II, (30)(e)2(ii), and (30)(f)3(iv)(I)–(II); 0400–12–01–.06(31)(a)6 and (31)(i)3(i); 0400–12–01–.06(32)(a)3; 0400–12–01–.06(33)(b)2(iii)(III), (33)(b)3(iii), (33)(b)3(iii)(I), (33)(b)4, and (33)(c)1; 0400–12–01–.06(57)(a) Appendix I, Table 1 and Appendix II, Table 2; 0400–12–01–.05(1)(b)2(iii); 0400–12–01–.05(2)(e)2(i), (2)(g)2, and (2)(j)3(ii); 0400–12–01–.05(4)(g)2; 0400–12–01–.05(6)(a)4; 0400–12–01–.05(7)(a)2(iv), (7)(b)3, (7)(c)2(v), (7)(c)4(iv), (7)(d)2, (7)(d)5(iv), and (7)(j)2(i)(II); 0400–12–01–.05(8)(a)2, (8)(a)2(ii), (8)(c)1, (8)(g)7(x), and (8)(n)1(i)(I)–(II); 0400–12–01–.05(9)(e); 0400–12–01–.05(10)(d)5(ii)(V) I–II, (10)(d)9(ii), (10)(e)2(i)–(ii), and (10)(h)2; 0400–12–01–.05(11)(b)1, (11)(b)4(ii)(I) I–II, (11)(e)2(i), (11)(j)1(ii)(III) IV, (11)(j)2(ii), and (11)(k)2(ii)–(iii); 0400–12–01–.05(12)(f)2 and (12)(j)2(i); 0400–12–01–.05(13)(k)1(iv) and (13)(l)1(i); 0400–12–01–.05(14)(b)1, (14)(b)4(i),[5] (14)(b)4(ii)(I)II, (14)(c)2, (14)(d)2(i), (14)(m)1(i), (14)(o)5(i)(II), (14)(o)6(ii), (14)(q), and (14)(q)3–4; 0400–12–01–.05(17)(f)1(i)(I); 0400–12–01–.05(23)(d)1(iv)(I), (23)(d)2, and (23)(f)2; 0400–12–01–.05(27)(d)6(ii)(II), (27)(f)2(ii), (27)(f)2(ii)(I), and (27)(f)3(iv)(I); 0400–12–01–.05(28)(n)2(iv)(II); 0400–12–01–.05(29)(a)1, (29)(f)8(iii), (29)(h)2, and (29)(k)6(i); 0400–12–01–.05(30)(a)4, (30)(b)2(iii)(I) II, (30)(b)2(iii)(III), (30)(b)3(iii), and (30)(b)4; 0400–12–01–.05(53)(a), Appendices I (Tables 1 and 2), V (Table), and VI; 0400–12–01–.09(6)(a)1; 0400–12–01–.09(8)(a)2(ii)(IV), (8)(a)4(iii)(I) I, (8)(a)7, (8)(c)1(ii)(VI), (8)(c)5(iii)(I) V, (8)(c)5(v)(I) III, (8)(c)5(vi)(II) II B, (8)(c)5(viii)(III), (8)(d)1(iv)(VII), (8)(d)2(ii)(V) II B, (8)(d)2(v)(II) I, (8)(d)3(i)(I), (8)(d)3(i)(II) I B, (8)(d)3(i)(IX), (8)(d)3(i)(IX) I, (8)(d)3(iv)(IV) III A, (8)(d)7(i)(I), (8)(g)4(i), (8)(j)1(ii)(II), and (8)(j)2; 0400–12–01–.09(14); 0400–12–01–.09(30), Appendices III–VI, VIII, and XIII (Item 14); 0400–12–01–.10(1)(b)1, (1)(d)1(iii), (1)(g)1(i), (1)(g)1(iii)(II), (1)(g)1(iv) Table (Entry 8), (1)(g)2(iii)(II) Table (Entry 5), (1)(g)2(iv)(II), (1)(g)3(ii), (1)(g)4, (1)(g)4(i), (1)(g)4(i)(I)–(III), (1)(g)4(ii)–(iii), and (1)(n)2–3; 0400–12–01–.10(3)(a)7, (3)(a) Treatment Standards Table, (3)(c) Table 1, (3)(f) Table 1, (3)(i) Universal Treatment Standards Table, and (3)(j)4; 0400–12–01–.10(4)(a)3 and (4)(a)7; 0400–12–01–.10(5), Appendix VIII; 0400–12–01–.07(2)(f) and (2)(a)10(ii); 0400–12–01–.07(5), (5)(a)1(xi)(II) II, (5)(a)1(xix)(III), (5)(a)1(xxi), (5)(b)3(vi), (5)(b)4(ii), (5)(b)4(vii), and (5)(b)6(ix)(II); 0400–12–01–.07(9)(c)6 and (9)(c)5(iv)(II); 0400–12–01–.07(10), Appendix I; 0400–12–01–.07(3)(c)2(ii); 0400–12–01–.12(1)(i); 0400–12–01–.12(2)(d)2 and (2)(e)1; 0400–12–01–.12(3)(e)1; 0400–12–01–.11(1)(a); 0400–12–01–.11(2)(a)2(ii), (2)(b), and (2)(b) Table 1; 0400–12–01–.11(5)(d)3(iii)(I), (5)(d)3(v), (5)(e)1, and (5)(e)3(ii); 0400–12–01–.11(6)(c)1–2, (6)(c)2(i)(II), (6)(c)2(vi)(II)–(III), (6)(f)1, (6)(g)1(ii), (6)(h)1(ii)(II), and (6)(j); 0400–12–01–.11(7)(d)2(iii) and (7)(e)5; 0400–12–01–.11(8)(a)2(i).
Checklist 220, Academic Laboratories Generator Standard.	73 FR 72912, 12/1/08.	0400–12–01–.03(1)(d)3(vi)–(vii), (1)(a)2(xi), and (1)(a)2(xi)(I)–(II); 0400–12–01–.03(10)(a)–(q), including (10)(q)1–2 [Addition of Subpart K].

Description of Federal requirement	**Federal Register** date and page	Analogous State Authority [1]
Checklist 222, OECD Requirements; Export Shipments of Spent Lead-Acid Batteries.	75 FR 1236, 1/8/10	0400–12–01–.03(1)(a)2(iv);0400–12–01–.03(9)(a)1–2 and (9)(b); 0400–12–01–.01(2)(a); 0400–12–01–.03(9)(c)1–5, including (9)(c)5(i)–(ii), (9)(d)1–5, and (9)(e)1–5; 0400–12–01–.04(1)(a)5; 0400–12–01–.06(2)(c)1(ii); 0400–12–01–.06(5)(b)1(iii) and (5)(b)4; 0400–12–01–.05(2)(c)1(ii); 0400–12–01–.05(5)(b)1(iii) and (5)(b)4; 0400–12–01–.09(7)(a)1(vi)–(vii) Table Sections 6 and 7.
Checklist 223, Hazardous Waste Technical Corrections and Clarifications.	75 FR 12989, 3/18/10; 75 FR 31716, 6/4/10.	0400–12–01–.01(2)(a); 0400–12–01–.01 [Removal of Appendix I]; 0400–12–01–.02(1)(a)3(x) and (1)(b)3 Table 1; 0400–12–01–.02(1)(d)1(xvii)(VI), (1)(f)1(ii), (1)(f)1(ii)(II), (1)(f)1(iii), (1)(g)1(i)–(ii), (1)(g)2(i), and (1)(g)2(iii); 0400–12–01–.02(3)(d)1(viii); 0400–12–01–.02(4)(a)3–4, (4)(b)1 (listing for F037), (4)(c)1 Table, and (4)(d)6 (listing for U239); 0400–12–01–.02(30), Appendix VII; 0400–12–01–.03(3)(d)6 and (3)(d)6(i)–(iv); 0400–12–01–.03(5)(c)1(i)–(ii), (5)(c)3, (5)(c)3(i)–(ii), and (5)(c)2 Note; 0400–12–01–.06(4)(c)2 and (4)(g)4(ii); 0400–12–01–.06(5)(c)5(vi), (5)(c)6(i), and (5)(c)6(vii)–(viii); 0400–12–01–.06(14)(o)4 and (14)(q)2; 0400–12–01–.06(22)(c)1(iii)(II)–(IV) and (22)(c)5(iv)(IV) VI; 0400–12–01–.05(4)(c)2 and (4)(g)4(ii); 0400–12–01–.05(5)(c)5(vi), (5)(c)6(i), and (5)(c)6(vii)–(viii); 0400–12–01–.05(14)(o)5 and (14)(q)2; 0400–12–01–.10(3)(a) Treatment Standards Table and (3)(i)1 Universal Treatment Standards Table; 0400–12–01–.07(8)(g)1(i), (8)(g)1(i)(I)–(IV), and (8)(g)1(ii).
Checklist 225, Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents.	75 FR 78918, 12/17/10.	0400–12–01–.02(4)(d)6; 0400–12–01–.02(30), Appendix VIII; 0400–12–01–.10(3)(a) Treatment Standards Table; and 0400–12–01–.10(5), Appendix VII (Table 1).
Checklist 226, Academic Laboratories Generator Standards Technical Corrections.	75 FR 79304, 12/20/10.	0400–12–01–.03(10)(a), (10)(a)1, (10)(g)2(iii)(I), (10)(m)5(i), (10)(o)1(i), and (10)(o)2(i).
Checklist 227, Revision of the Land Disposal Treatment Standards for Carbamate Wastes.	76 FR 34147, 6/13/11.	0400–12–01–.10(3)(a) Treatment Standards Table and (3)(i)1 Universal Treatment Standards Table.
Checklist 228, Hazardous Waste Technical Corrections and Clarifications.	77 FR 22229, 4/13/12.	0400–12–01–.02(4)(c)1 (Entry for K107); 0400–12–01–.09(3)(a)2.
Checklist 229, Conditional Exclusions for Solvent Contaminated Wipes.	78 FR 46448, 7/31/13.	0400–12–01–.01(2)(a); 0400–12–01–.02(1)(d)1(xxvi), (1)(d)1(xxvi)(I)–(VI), (1)(d)2(xviii), (1)(d)2(xviii)(I)–(VI), including (1)(d)2(xviii)(VI)I–II
Checklist 230, Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities..	79 FR 350, 1/3/14	0400–12–01–.01(2)(a); 0400–12–01–.02(1)(d)8, (1)(d)8(i)–(iv), including (1)(d)8(iv)(I)–(III).
Checklist 231, Hazardous Waste Electronic Manifest System; Final Rule.	79 FR 7518, 2/7/14	0400–12–01–.01(7)(a)1(i)(I)–(II); 0400–12–01–.01(2)(a); 0400–12–01–.03(3)(a)1(iii), (3)(a)1(iii)(I)–(II), (3)(e), (3)(e)1–6, (3)(f), and (3)(f)1–2; 0400–12–01–.04(3)(a)1(i)–(vii), (3)(f), and (3)(f)1; 0400–12–01–.06(5)(b)1(ii), (5)(b)1(ii)(I)–(V), (5)(b)1(ii)(VI), (5)(b)6–11, and (5)(b)11(i); 0400–12–01–.05(5)(b)1(ii), (5)(b)1(ii)(I)–(V), (5)(b)(ii)(VI), (5)(b)6–11, and (5)(b)11(i).
Checklist 232, Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule.	79 FR 36220, 6/26/14.	0400–12–01–.01(2)(a); 0400–12–01–.02(5)(b)1(v)(I) VI, (5)(b)1(v)(X), (5)(b)1(v)(X) I–III, (5)(b)1(v)(XI), and (5)(d)1–2.
Checklist 219, Revisions to the Definition of Solid Waste [6].	73 FR 64668, 10/30/08; 80 FR 1694, 1/13/15; 83 FR 24664, 5/30/18.	0400–12–01–.01(4)(c)3, including (4)(c)3(i)–(v), (4)(g), and (4)(g)3–5; 0400–12–01–.01(5)(c), including (5)(c)1–2.
Checklist 233, Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule.		
Checklist 233A, Checklist A—Changes affecting all non-waste determinations and variances.		
Checklists 233B, Legitimacy-related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained.		0400–12–01–.01(2)(a); 0400–12–01–.01(5)(d) and (5)(d)1–2, including (5)(d)2(i)–(ii); 0400–12–01–.02(1)(b)1(ii)(II) [reserved], (1)(b)2(iii)–(iv), and (1)(b)7.
Checklist 233C, Speculative Accumulation.		0400–12–01–.02(1)(a)3(viii).
Checklist 233D2, 2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule.		0400–12–01–.01(2)(a); 0400–12–01–.01(4)(b), (4)(b)2, (4)(b)4–5, (4)(g), (4)(g)1, (4)(e), (4)(e)1–3, including (4)(e)3(i)–(v); 0400–12–01–.02(1)(a)3(iv), (1)(b)3(iii) and (iv) Table 1, and (1)(d)1(xxiii)–(xxv), through and including (1)(d)1(xxv)(I)–(XII); 0400–12–01–.02(8)(a)–(l) [Addition of Subpart H]; 0400–12–01–.02(11) and (12) [reserved]; 0400–12–01–.02(13)(a)–(d),[7] through and including (13)(d)6(ix)(I)–(VII) [Addition of Subpart M]; 0400–12–01–.07(10)(a)9–10 Appendix I.

Description of Federal requirement	Federal Register date and page	Analogous State Authority [1]
Checklist 233E, Remanufacturing exclusion.		0400–12–01–.01(2)(a);0400–12–01–.02(1)(b)3(iii), (1)(b)3(iv) Table 1, and (1)(d)1(xxvii)(I)–(VI), including (1)(d)1(xxvii)(VI)I–VI;0400–12–01–.02(9)(a)–(j) [Addition of Subpart I]; 0400–12–01–.02(10)(a)–(k) [Addition of Subpart J] [including (10)(c), (10)(d)5, and (10)(f) all reserved]; 0400–12–01–.02(27)(a)–(f),[8] including (27)(f)1–6 [Addition of Subpart AA] [including (27)(d)1(ii) reserved]; 0400–12–01–.02(28)(a)–(o), including (28)(o)1–13 [Addition of Subpart BB]; 0400–12–01–.02(29)(a)–(j), including (29)(j)1–8 [Addition of Subpart CC] [including (29)(a)2, (29)(d)2, (29)(f), and (29)(g)2(ii) all reserved].
Checklist 234, Vacatur of the Comparable Fuels Rule and the Gasification Rule.	80 FR 18777, 4/8/15.	0400–12–01–.01(2)(a); 0400–12–01–.02(1)(d)1(xii) and (1)(d)1(xvi) [reserved]; 0400–12–01–.02(5)(a) [reserved]
Checklist 235, Disposal of Coal Combustion Residuals from Electric Utilities.	80 FR 21302, 4/17/15.	0400–12–01–.02(1)(d)2(iv)(I)–(II), including (1)(d)2(iv)(II) I–VIII.
Checklist 236, Imports and Exports of Hazardous Waste.	81 FR 85696, 11/28/16; 82 FR 41015, 8/29/17; 83 FR 38262, 8/6/18.	0400–12–01–.01(2)(a) and (2)(b)1–2; 0400–12–01–.02(1)(d)4(i), (1)(d)4(iv), (1)(d)5(i), (1)(d)5(iv), (1)(f)1(iii)(I), and (1)(f)1(v); 0400–12–01–.02(5)(b)1(v)(II), (5)(b)1(v)(V)–(VI), (5)(b)1(v)(IX), and (5)(b)1(v)(XI); 0400–12–01–.03(1)(a)2(iv) and (1)(i)4; 0400–12–01–.03(5)(b)4; 0400–12–01–.03(7)–(8) [Removal of Subparts E and F]; 0400–12–01–.03(9)(a)–(e), including (9)(e)1–8 and (9)(e)8(i)–(iv), and (9)(f)–(j) [reserved]; 0400–12–01–.04(1)(a)5; 0400–12–01–.04(3)(a)1(ii), (3)(a)3, (3)(a)5(ii), (3)(a)6(ii) and Note, (3)(a)7, (3)(a)7(i)–(iv), including (3)(a)7(iv)(I)–(II); 0400–12–01–.06(2)(c)1, (2)(c)1(i)–(iv), and (2)(c)1(iv)(I)–(II); 0400–12–01–.06(5)(b)1(iii), (5)(b)1(iii)(I)–(II), and (5)(b)4; 0400–12–01–.05(2)(c)1, (2)(c)1(i)–(iv), including (2)(c)1(iv)(I)–(II); 0400–12–01–.05(5)(b)1(iii), (5)(b)1(iii)(I)–(II), and (5)(b)4; 0400–12–01–.09(6)(a)2 and (6)(a)2(i)–(iii); 0400–12–01–.09(7)(a)1(vi)–(x); 0400–12–01–.12(2)(k);0400–12–01–.12(3)(j)1 and 2, and (3)(k); 0400–12–01–.12(4)(g); 0400–12–01–.12(5)(c)1; 0400–12–01–.12(6)(a) and (6)(a)1–3.
Checklist 237, Hazardous Waste Generator Improvements Rule.	81 FR 85732, 11/28/16.	0400–12–01–.01(1)(b);0400–12–01–.01(2)(a) and (2)(b)1–2;0400–12–01–.02(1)(a)1(i), (1)(a)3(vi), (1)(d)1(vii), (1)(e) [reserved], and (1)(f)3(ii)(IV); 0400–12–01–.02(4)(d)5–6; 0400–12–01–.02(13)(d)7;0400–12–01–.03(1)(a)1, (1)(a)1(i)–(ii), (1)(a)2(i), (1)(a)2(i)(I), (1)(a)2(i)(I) I, (1)(a)2(i)(I) I A–D, (1)(a)2(i)(I) II, (1)(a)2(i)(I) II A–G and I, (1)(a)2(i)(I) III, (1)(a)2(i)(I) III A–F and H, (1)(a)2(i)(II)–(III), (1)(a)2(ii), (1)(a)2(iv), (1)(a)2(vii)(I)–(II), (1)(a)2(x) [reserved], (1)(a)2(xi), (1)(a)2(xi)(I)–(II), (1)(b), (1)(b)1–7, (1)(c) [reserved], and (1)(d)–(i), including (1)(d)(i)1–40400–12–01–.03(2)(d) and (2)(d)1(i)–(ii);0400–12–01–.03(3) and (4) (headings); 0400–12–01–.03(4)(c)2–4, (4)(e) [reserved], and (4)(f); 0400–12–01–.03(5)(a) (heading), (5)(a)3, (5)(b), (5)(b)1, (5)(b)3–4, and (5)(d)–(e); 0400–12–01–.03(10)(a)1, (10)(a)11, (10)(b)1–2, (10)(c)1–2, (10)(d)1–2, (10)(e)1, (10)(g)2(iii)(III), (10)(h)4(ii), (10)(i)1(i)–(ii), (10)(i)4(ii), (10)(i)4(ii)(I)–(II), (10)(j)2, (10)(k)1, (10)(k)2(iii), (10)(k)4(ii), (10)(l)3–4, (10)(l)5(iii), (10)(m)4, (10)(n)1(i)–(iii), (10)(n)2(ii), (10)(o)2(v), and (10)(q)1–2; 0400–12–01–.03(11)(a)–(d), including (11)(d)1–3 [Addition of Subpart L]; 0400–12–01–.03(12)(a–(m),[9] including (12)(m)9(i)–(vi) [Addition of Subpart M]; 0400–12–01–.04(1)(c)4–5, including (1)(c)5(i)–(ii); 0400–12–01–.06(1)(b)2(i) and (1)(b)2(iii); 0400–12–01–.06(2)(f)2(iv); 0400–12–01–.06(5)(b)3 and (5)(f); 0400–12–01–.06(9)(a) and (9)(e); 0400–12–01–.06(10)(b)1 and (10)(f)5 [reserved];0400–12–01–.06(30)(a)2(ii);0400–12–01–.06(31)(a)2(iii); 0400–12–01–.06(33)(b)3(iv); 0400–12–01–.05(1)(b)2(i), (1)(b)2(iv), (2)(f)2(iv), and (2)(f)2(v) [reserved]; 0400–12–01–.05(5)(b)3 and (5)(f);0400–12–01–.05(9)(e); 0400–12–01–.05(10)(f)4 [reserved] and (10)(l) [reserved]; 0400–12–01–.05(27)(a)2(ii)–(iii); 0400–12–01–.05(28)(a); 0400–12–01–.05(30)(b)3(iv);0400–12–01–.09(7)(a)1(vi) and (viii)–(x); 0400–12–01–.09(14)(f)1(i); 0400–12–01–.10(1)(a)5(i) and (1)(g)1(v); 0400–12–01–.10(4)(a)1(i), (4)(a)1(ii)(I), and (4)(a)1(ii)(I) I–IV; 0400–12–01–.07(1)(b)4 and (1)(b)4(i)–(ii);0400–12–01–.12(1)(c) and (1)(c)1(ii); 0400–12–01–.12(7)(b)2; 0400–12–01–.11(2)(a)2(iii).
Checklist 238, Confidentiality Determinations for Hazardous Waste Export and Import Documents.	82 FR 60894, 12/26/17.	0400–12–01–.01(7)(a)1 and (Note) and (7)(a)1(ii)(I)–(II); 0400–12–01–.02(5)(b)1(v)(IV); 0400–12–01–.03(9)(d)2(v), (9)(d)6(ix), (9)(e)2(iv), and (9)(e)6(viii).
Checklist 239, Hazardous Waste Electronic Manifest User Fee Rule.	83 FR 420, 1/3/18	0400–12–01–.01(1)(d), (1)(d)1, including (1)(d)1(i)–(iv), (1)(e), (1)(e)1–2, including (1)(e)2(i)–(ii); 0400–12–01–.03(3)(a)1(i)–(ii), (3)(e)3, (3)(e)3(i) and (ii) [reserved], (3)(e)5, (3)(e)7 [reserved], and (3)(e)8; 0400–12–01–.03(13) [Appendix removed]; 0400–12–01–.04(3)(a)1(viii) [reserved] and (ix), and (3)(b)1–3, including (3)(b)3(i)–(ii); 0400–12–01–.06(5)(b)1(ii), including (5)(b)1(ii)(I)–(VI), (5)(b)10, (5)(b)10(i)–(ii), (5)(b)12, and (5)(b)12(i)–(v); 0400–12–01–.06(32)(g)3(iv)(I) and (32)(g)4(iv)(I); 0400–12–01–.05(5)(b)1(ii), including (5)(b)1(ii)(I)–(VI), (5)(b)10(i)–(ii), (5)(b)12, and (5)(b)12(i)–(v); 0400–12–01–.05(29)(h)3(iv)(I) and (29)(h)4(iv)(I);.
Checklist 240, Safe Management of Recalled Airbags.	83 FR 61552, 11/30/18.	0400–12–01–.01(2)(a); 0400–12–01–.02(1)(d)9 [reserved], (1)(d)10(i)–(iii); 0400–12–01–.03(1)(e)1(v)(IX)–(X) [both reserved] and (1)(e)1(v)(XI).

Description of Federal requirement	**Federal Register** date and page	Analogous State Authority [1]
Checklist 242, Universal Waste Regulations: Addition of Aerosol Cans.	84 FR 67202, 12/9/19.	0400–12–01–.01(2)(a); 0400–12–01–.02(1)(j)3–5; 0400–12–01–.06(1)(b)2(x)(III)–(V); 0400–12–01–.05(1)(b)2(xii)(III)–(V); 0400–12–01–.10(1)(a)6(iii)–(v); 0400–12–01–.07(1)(b)4(ix)(III)–(V); 0400–12–01–.12(1)(a)1(iii)–(v), (1)(c)2(ii), (1)(f)1–3, including (1)(f)3(i)–(ii), and (1)(i); 0400–12–01–.12(2)(d)3(ii)(III)–(IV), (2)(d)5, (2)(d)5(i)–(iv), including (2)(d)5(iv)(I)–(VII), and (2)(e)6; 0400–12–01–.12(3)(c)2(iv), (3)(d)3(ii)(III)–(IV), (3)(d)5, (3)(d)5(i)–(iv), including (3)(d)5(iv)(I)–(VII), and (3)(e)6.
Checklist 243, Modernizing Ignitable Liquids Determinations.	85 FR 40594, 7/7/20.	0400–12–01–.01(2)(b) and (2)(b)1–2; 0400–12–01–.02(3)(b)1(i), (3)(b)1(iii)(II), (3)(b)1(iii)(II)I–II, (3)(b)1(iii)(III)–(IV) (removed), (3)(b)1(iv), (3)(b)1(iv)(I)I, (3)(b)1(iv)(I)IV, and (3)(b)2 (removed Notes 1–4).

Notes

[1] The Tennessee regulatory citations are from the Tennessee Rules of the Division of Solid Waste Management (Hazardous Waste Program), Chapter 0400–12–01, as amended through June 3, 2021.

[2] Checklist SR1 corresponds to two HSWA statutory provisions relating to existing and newly regulated surface impoundments (RCRA sections 3005(j)(1) and 3005(j)(6)(A)). The 1988 deadline in RCRA section 3005(j)(1) has passed making this provision moot. The statutory requirement at RCRA section 3005(j)(6)(A) has been codified at 40 CFR 265.221(h) by Checklist 109. Tennessee was authorized for Checklist 109 in 1995. The EPA is including Checklist SR1 in this authorization for completeness.

[3] Checklist SI relates to a state's authority to share landfill or surface impoundment permit application information with the Agency for Toxic Substances and Disease Registry (ATSDR). There is no regulatory analog to this provision at the Federal or State level; therefore, the Tennessee *statutory* provisions providing for the State's authority to share information with ATSDR are listed above.

[4] Checklist 117A has been superseded by Checklist 192A, Mixture and Derived-From Rule Revisions. Tennessee was previously authorized for Checklist 192A, effective February 7, 2005. The EPA is including Checklist 117A in this authorization for completeness.

[5] Tennessee's 0400–12–01–.05(14)(b)4(i) contains an incorrect cross-reference to Rule 0400–12–01–.02(3)(d). The correct reference to the Toxicity Characteristic Rule is 0400–12–01–.02(3)(e). Tennessee will correct this cross-reference in a subsequent rulemaking.

[6] Tennessee has adopted the 2008 Federal Revisions to the Definition of Solid Waste Rule, as amended on January 13, 2015, and May 30, 2018.

[7] The Federal regulations at 40 CFR part 261, subpart M, still contain references to the verified recycler variance under 40 CFR 260.31(d), which has been removed. Tennessee has appropriately removed these references throughout its 0400–12–01–.02(13); however, in several places, Tennessee's regulations replace the reference to the verified recycler variance with the phrase ''or an intermediate or reclamation facility *excluded from regulation under subpart (1)(d)1(xxiv) of this rule.*'' Note that it is not the facility that is excluded under 0400–12–01–.02(1)(d)1(xxiv); it is the hazardous secondary material that is potentially excluded from regulation. Tennessee will amend its regulations to clarify this distinction in a subsequent rulemaking.

[8] The Tennessee regulation at 0400–12–01–.02(27)(d)14(i)(II) contains an incorrect cross-reference to paragraphs (30) and (32) of 0400–12–01–.06. The correct cross-reference should be to 0400–12–01–.02(27) and (29). Tennessee will amend its regulations to correct this cross-reference in a subsequent rulemaking.

[9] The EPA is excluding from this authorization part (12)(j)4 of 0400–12–01–.03(12)(j), which is the analog to 40 CFR 262.262. The waiver from making ''arrangements'' with the local fire department and other emergency response organizations at 40 CFR 262.256(c) was not intended to exempt facilities with 24-hour response capabilities from providing copies of their contingency plans and quick reference guides to local emergency responders who may be called upon to provide emergency services. Tennessee will be removing this provision from its regulations in a subsequent rulemaking.

VII. Where are the revised State rules different than the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, the EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable.

The following Tennessee provisions are more stringent than the Federal program:

- Tennessee is more stringent than the Federal program at 0400–12–01–.02(1)(d)1(xxiii)(I) II–III and at 0400–12–01–.02(1)(d)8(iv)(I)–(II) by adding a clause that the certifications must be made under penalty of perjury.
- Tennessee is more stringent than the Federal program at 0400–12–01–.02(1)(d)1(xxiv)(VI) III by requiring confirmations to be sent within thirty (30) days of receipt.
- Tennessee is more stringent than the Federal program at 0400–12–01–.02(1)(f)3(ii)(IV) by requiring annual reporting instead of biennial reporting.
- Tennessee is more stringent than the Federal program at 0400–12–01–.03(1)(e)1 by requiring additional episodic and other reporting requirements for very small quantity generators.
- Tennessee is more stringent than the Federal program at 0400–12–01.03(1)(g)2(ii)(IV) II, (g)2)(iii)(III) II, (g)2(iii)(IV) II, (g)2(iv)(III) III, (h)1(i)(V) II, (h)1(ii)(II), (h)1(iii)(I), and (h)1(iii)(III) III by requiring that records for large and small quantity generator inspections be kept for at least three (3) years and that such records include specific information.
- Tennessee is more stringent than the Federal program at 0400–12–01–.03(1)(a)2(i)(I) II C, 0400–12–01–.03(1)(a)(2)(i)(I) III C, and 0400–12–01–.03(2)(d)1–3 in that these provisions require re-notification to the Commissioner within thirty (30) days after certain changes, annual updates to the notification information on file for large and small quantity generators, and notification of cessation of operations and closure.
- Tennessee is more stringent than the Federal program at 0400–12–01–.03(5)(b)1–3 by requiring annual reporting for large and small quantity generators, as opposed to biennial reporting.
- Tennessee is more stringent than the Federal program at 0400–12–01–.03(11)(c)1(v) and 0400–12–01–.03(11)(c)2(v) by requiring annual reporting for small and very small quantity generators.
- Tennessee is more stringent than the Federal program at 0400–12–01–.04(1)(c)4–5 by imposing additional requirements on transfer facilities, including personnel training and security.
- Tennessee is more stringent than the Federal program at 0400–12–01–.06(5)(f) and 0400–12–01–.05(5)(f) by requiring annual reporting as opposed to biennial reporting.
- Tennessee is more stringent than the Federal program at 0400–12–01–.11(2)(a)2(iii) by regulating mixtures of used oil exhibiting the characteristic of

ignitability as a hazardous waste rather than as used oil.

Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive authorization for such regulations, and they are not federally enforceable. The following Tennessee provisions are broader in scope than the Federal program:

- Tennessee is broader in scope than the Federal program at 0400–12–01–.03(1)(a)2(i)(I) II H and (I) III G by requiring a hazardous waste reduction plan for large and small quantity generators.
- Tennessee is broader in scope than the Federal program at 0400–12–01–.03(1)(i)3 by requiring that transporters have a permit and not just an EPA Identification Number.

In the definition of legitimate recycling found at 0400–12–01–.01(5)(d), which corresponds to 40 CFR 260.43, Tennessee includes two (2) clarifying notes regarding legitimate recycling that are based on the preamble discussion in the 2015 final Definition of Solid Waste Rule (see 80 FR 1720–22, January 13, 2015). These notes do not affect a facility's obligation to legitimately recycle, nor do any of the material-specific exclusions from the definition of solid waste negate the requirement that the hazardous secondary material must be legitimately recycled as required by 0400–12–01–.01(5)(d). Per part (1)(b)6 of Rule 0400–12–01–.02 (equivalent to 40 CFR 261.2(f)), respondents in an enforcement action would be required to provide appropriate documentation in order to demonstrate that any recycling exemptions or exclusions claimed are based on the material being legitimately recycled. Tennessee will be removing or clarifying these notes in a subsequent rulemaking.

There are certain regulatory provisions for which the states cannot be authorized to administer or implement. These provisions include the requirements associated with the operation of the national E-Manifest system and the user fee provisions associated with the operation of such system contained in the Hazardous Waste Electronic Manifest Rule (Checklist 231) and the Hazardous Waste Electronic Manifest User Fee Rule (Checklist 239). Although Tennessee has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references in order to preserve the EPA's authority to implement these non-delegable provisions.

Because of the Federal Government's special role in matters of foreign policy, the EPA does not authorize states to administer the Federal import/export functions associated with the OECD Requirements for Export Shipments of Spent Lead-Acid Batteries (Checklist 222), the Revisions to the Export Provisions of the Cathode Ray Tube Rule (Checklist 232), the Imports and Exports of Hazardous Waste Rule (Checklist 236), and the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule (Checklist 238). Although Tennessee has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references in order to preserve the EPA's authority to implement these provisions.

VIII. Who handles permits after the authorization takes effect?

When final authorization takes effect, Tennessee will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits that the EPA issued prior to the effective date of authorization until they expire or are terminated. The EPA will not issue any new permits or new portions of permits for the provisions listed in the table above after the effective date of the final authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Tennessee is not yet authorized. The EPA has the authority to enforce State-issued permits after the State is authorized.

IX. What is codification and is the EPA codifying Tennessee's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. The EPA is not codifying the authorization of Tennessee's revisions at this time. However, the EPA reserves the ability to amend 40 CFR part 272, subpart RR, for the authorization of Tennessee's program changes at a later date.

X. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. I certify that this action 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.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, 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. As required by section 3 of Executive Order 12988 (61

FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) 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. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

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 document 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 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). This final action will be effective September 12, 2022.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: June 28, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–14512 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2022–0061]

RIN 2127–AL93

Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the test procedure in section S6.7.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 141, *Minimum Sound Requirements for Hybrid and Electric Vehicles,* as proposed in the September 17, 2019, notice of proposed rulemaking (NPRM), to specify the single point in time that should be used when determining one-third octave band levels of ambient noise measurements used in compliance tests. The agency has chosen not to adopt the remaining portions of the NPRM, including a proposal which would have allowed manufactures of hybrid and electric vehicles (HEVs) to install a number of driver-selectable pedestrian alert sounds in each HEV they manufacture. The driver-selectable alert sounds proposal is not being adopted because of a lack of supporting data. In addition, this final rule acknowledges that a proposed technical change included in the September 17, 2019, NPRM to correct two dates in NHTSA's phase-in reporting requirements for FMVSS No. 141 is no longer needed. That change was addressed previously by the agency's September 1, 2020, interim final rule that extended the FMVSS No. 141 compliance deadline and phase-in dates by six months. The interim final rule included adjustments to NHTSA's reporting dates, superseding the need for the proposed corrections.

DATES: This final rule is effective on August 12, 2022.

ADDRESSES: All correspondence, comments and other information relating to this document should refer to the docket number shown in the heading and should be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pyne, NHTSA Office of Crash Avoidance Standards, by email to *mike.pyne@dot.gov* or at 202–366–4171, or Mr. Paul Connet, NHTSA Office of the Chief Counsel, by email to *paul.connet@dot.gov* or at 202–366–5547.

SUPPLEMENTARY INFORMATION: On September 17, 2019, NHTSA issued an NPRM to amend FMVSS No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (the ''quiet vehicles'' rule) to remove the numerical limit on compliant sounds that a manufacturer may choose to install in a vehicle.[1] Under the proposal, a manufacturer would be allowed to install any number of compliant sounds on each HEV make/model/body style/trim they produce for sale in the United States. NHTSA requested comment on that proposal and on whether the safety standard should allow more than one compliant sound and if so, what the allowable number should be.

The NPRM included two other proposed changes, one to amend the FMVSS No. 141 test procedure for measuring ambient sound levels during compliance tests, and the other to correct phase-in reporting dates.

Background

To protect pedestrians and other road users, FMVSS No. 141 requires HEVs to emit a pedestrian alert sound while operating in certain conditions.[2] The alert sound on a given vehicle is allowed to change with vehicle operating speed or direction—the standard defines five different operating conditions: stationary in neutral or forward gear and with constant forward speed less than 10 km/h; reverse; and moving at constant forward speed from 10 km/h up to but not including 20 km/

[1] 84 FR 48866.

[2] Final Rule, Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles 81 FR 90416, effective September 5, 2017; docket No. NHTSA–2016–0125.

h, from 20 km/h up to 30 km/h, and at or just above 30 km/h. Beyond that speed, alert sounds are no longer required by FMVSS No. 141 as other sounds such as tires and airflow produce enough sound to make the vehicle detectable.

Section 5.5 of the standard, titled ''Sameness requirement'', requires any two vehicles of the same make, model, model year, body type, and trim level to have the same pedestrian alert sound per operating condition.[3] The sameness requirement prevents manufacturers from equipping multiple sounds for the same operating condition. Additional details of NHTSA's implementation of the sameness requirement are discussed in the preamble of the FMVSS No. 141 final rule.[4]

The sameness requirement in FMVSS No. 141 originates from section 3(a)(2) of the Pedestrian Safety Enhancement Act (PSEA) of 2010 which states that the Federal regulation ''shall allow manufacturers to provide each vehicle with one or more sounds that comply with the motor vehicle safety standard at the time of manufacture.''[5] Section 3(a)(2) further states that the regulation ''shall require manufacturers to provide, within reasonable manufacturing tolerances, the same sound or set of sounds for all vehicles of the same make and model and shall prohibit manufacturers from providing any mechanism for anyone other than the manufacturer or the dealer to disable, alter, replace, or modify the sound or set of sounds.''[6] The PSEA did not provide any further specifics about the number of sounds that hybrid and electric vehicles may have or how sounds may vary among vehicles of the same make and model.

In the original proposal for FMVSS No. 141, NHTSA interpreted this section of the PSEA to mean that a manufacturer may choose to equip different sounds for the different operating modes described above.[7] In a joint comment to the proposal, several commenters stated that the PSEA permitted the regulation to allow for multiple sounds to be equipped for each operating conditions from which drivers could choose from, and requested the agency to adopt driver-selectable sounds.[8] As discussed in the final rule establishing FMVSS No. 141, NHTSA reaffirmed its understanding that the PSEA language restricted the agency from promulgating a rule that would permit vehicles to be equipped with more than one alert sound for a given operating condition, hence foreclosing the possibility of driver-selectable sounds.[9]

Alliance/Global Petition on Driver-Selectable Sounds

The issue of permitting driver-selectable sounds was raised as one aspect of a multi-part petition for reconsideration that was jointly submitted to NHTSA in 2017 by the Alliance of Automobile Manufacturers (Alliance) and Global Automakers (Global).[10] Their petition requested several amendments, one of which was that NHTSA modify the sameness requirement in section S5.5 of FMVSS No. 141 to allow each HEV to be equipped with multiple compliant pedestrian alert sounds from which a vehicle owner/operator could select according to their preference.[11]

As the agency weighed the petition for reconsideration, the agency concluded that amending the standard to permit driver-selectable sounds would represent a significant—and likely unforeseeable—change in the agency's position. The agency determined that it was in the public's best interest to publish a new proposal on the issue to facilitate comment. The agency published an NPRM in September 2019 soliciting public comment on a proposal to allow unlimited sounds on HEVs, provided the manufacturer certified that each sound complies with the requirements of FMVSS No. 141, as well as related questions including whether the safety standard should be amended to allow only a limited number of sounds.

In their petition, Alliance/Global stated that NHTSA's implementation of FMVSS No. 141 adopted an inflexible approach to ensuring sameness and did not account for specific statutory language in the PSEA that permits multiple alert sounds per vehicle. Alliance/Global stated that the words ''one or more sounds'' in Section 3(a)(2) of the PSEA provide this flexibility. Alliance/Global said that providing a selection of sounds is essential for customer acceptance of HEVs, stating:

> Satisfying our customers is a primary concern for OEMs [Original Equipment Manufacturers]. Since 'one size does not fit all' neither will one alert sound for a given make, model, trim level and model year satisfy all those consumers purchasing all these same vehicles.

The petition also discussed comments submitted to the agency in February 2014 jointly by the Alliance, Global, the American Council of the Blind (ACB), and the National Federation of the Blind (NFB), in which the commenters, including the two advocate organizations, recognized the need to provide consumers with a reasonable number of driver-selectable sound choices for customer acceptance reasons.[12]

In a March 2017 follow-up letter, Alliance/Global supplemented their petition with additional information and included a recommendation that not more than five sounds should be allowed per vehicle. The letter included the following explanation:[13]

> Because every additional driver-selectable choice of sound requires a separate certification test as well as a compliance test, the number of driver-selectable choices provided by manufacturers would naturally be limited for practical reasons. However, to address potential concerns that manufacturers might provide too many optional sounds, we recommend that the number of permitted driver-selectable sounds be limited to no more than five driver-selectable alert sounds for any make, model, trim level, model year vehicle.

Alliance/Global did not provide data in the form of consumer surveys, research, or economic impact analysis to support the request to allow multiple sounds in their petition. Similarly, besides the qualitative explanation mentioned above, the specific recommendation of not-more-than-five sounds per HEV was not accompanied by supporting research or analysis.

[3] Section S5.5.1 of FMVSS No. 141, as published in December 2016, allowed the alert sound to vary by model year as well as make and model (see 81 FR 90472). This was further amended on February 26, 2018, to allow alert sounds to vary by trim level and body style within a make/model/model year (*see* 83 FR 8189).

[4] *See* 81 FR 90416, 90472.

[5] Public Law 111–373, 124 Stat. 4086 (January 4, 2011).

[6] *Id.*

[7] *See* 78 FR 2798, 2804.

[8] *See* 81 FR 90416, 90475.

[9] In the 2016 final rule, NHTSA stated: ''Given our understanding of the PSEA, we are not including provisions requested by these commenters that would allow for driver-selectable pedestrian alert sounds. . . . We believe that this approach is necessary to satisfy the requirements contained in the PSEA language and that allowing a means for owners to select or modify alert sounds . . . would be in conflict with the language of the PSEA. Furthermore, by not allowing driver-selectable sounds, the final rule adheres more closely to the PSEA requirement that vehicles of a given make and model must have the same alert sound.'' 81 FR 90416, 90475.

[10] Docket No. NHTSA–2016–0125–0012. At the time of their petition, Alliance and Global were separate entities. Subsequently, they joined to form a single entity called the Alliance for Automotive Innovation with member companies.

[11] NHTSA issued a final rule on February 26, 2018, to address the other requested actions in the Alliance/Global petition for reconsideration (83 FR 8182). In that petition response, the agency announced that it was planning to publish a notice of proposed rulemaking to allow driver-selectable sounds.

[12] Docket No. NHTSA–2011–0148–0322.

[13] Docket No. NHTSA–2016–0125–0016.

Proposed Rule on Driver-Selectable Sounds

In response to the Alliance/Global petition, NHTSA proposed amending FMVSS No. 141 to allow an unlimited number of pedestrian alert sounds per vehicle for any operating condition. In the proposal, NHTSA acknowledged that the PSEA language regarding the sameness of sounds was subject to more than one interpretation, and that alternative readings of the statute could accommodate an amendment to allow vehicles to be equipped with multiple FMVSS No. 141-compliant sounds for the same operating conditions. The proposal reasoned that consumer preferences depend on subjective factors, such as how a vehicle sounds. The NPRM also suggested that the proposal to allow multiple alert sounds in theory should not impair safety as all additional sounds would still have to comply with FMVSS No. 141.

NHTSA requested comment and supporting information on any safety implications, compliance issues, consumer-acceptance factors, cost issues, or other possible alternatives that were relevant to allowing an unlimited number of compliant driver-selectable sounds in FMVSS No. 141. In particular, the NPRM asked for comments on the potential safety issues related to HEV recognition by pedestrians if a multitude of new compliant driver-selectable sounds are available, and the extent to which having an unlimited number of sounds would lead to the potential for a pedestrian to be unable to identify the sounds as coming from a motor vehicle.[14]

Summary of Comments on the NPRM

NHTSA received comments from a variety of sources, including some in favor of the proposal, some opposing it, and other comments offering additional information, not all of it directly related to the proposal.[15] Fifty-two commenters responded to the NPRM: four were from advocacy groups representing people who are blind, have low vision or other disabilities, including the National Federation of the Blind (NFB), the American Council of the Blind (ACB), the Consortium for Citizens with Disabilities (CCD), and The Seeing Eye; two were from organizations representing the automotive industry, including a joint comment from the Alliance and Global Automakers and a comment from SAE International; one submittal was from an educational institution, the Perkins School for the Blind; and 45 were from individual members of the public.

The NFB commented that a ''reasonable number'' of sounds that meet the requirements should be allowed so that HEVs with alert sounds are more palatable to consumers but did not recommend any specific limit on the number of allowable sounds. The NFB stated that it fully supports the Alliance/Global petition, including the assertion that the number of sounds per HEV will be effectively limited by the cost to certify.

Other advocacy groups including the ACB, The Seeing Eye, and the CCD expressed safety concerns about allowing an unlimited number of sounds. The ACB comment diverged from the position it had supported previously in the joint comment letter of February 2014, discussed above. In response to the NPRM, the ACB urged NHTSA to limit the number of sounds from which car owners can select and stated that uniformity is imperative for safety. The ACB stated, ''a distinguishable and uniform sound is necessary to assist the blind community in quickly identifying hybrid or electric cars.'' ACB said that sounds need to be recognizable as a vehicle, ideally that of a car engine, and said that car owners should not be involved in selecting sounds. The CCD reiterated these same comments.

The Seeing Eye commented, ''For recognition purposes, it is important that all vehicles emit the same standardized sound regardless of manufacturer.'' Furthermore, it said that restricting the number of sounds is not enough, and that clear specifications for the types of sounds are needed.

The Perkins School for the Blind submitted a spreadsheet containing 554 individual comments from students, staff members, and others associated with the school.[16] Of these, more than half (282) consisted of nearly identical responses that included the following statement or a very similar one:

> I believe silent cars should be required to emit a set of clear, consistent and recognizable sounds. These sounds should be researched and set by a national governing body. I feel strongly that owners should not be allowed to select from a menu of sounds.

A few commenters in this group elaborated on that core statement, providing statements of fact, opinions, or personal experiences with quiet vehicles in traffic. The large collection of comments from the Perkins School also included the following:

- In addition to the 282 pro forma comments, 57 comments conveyed a similar message in the commenters' own words; many of these elaborated on the general need for 'silent' vehicles to emit a sound or sounds for pedestrian safety.
- Another 117 comments called for a consistent, recognizable sound or sounds in vehicles so blind persons can detect that a vehicle is nearby. Of these, 109 called for a single, uniform sound.
- Eighty comments were generally supportive of finding a solution to quiet car dangers but did not address the question of allowing multiple sounds.
- Fourteen addressed miscellaneous issues outside the scope of the proposal, and four comments focused on opposing the idea of a menu of sound options (though these seem to have mistakenly assumed that drivers could create their own sounds).

There were 45 comments submitted to the docket by individual members of the public, some of which did not directly address the proposal in the NPRM to allow unlimited driver-selectable alert sounds. Among those that did address the proposal, almost all did not support it. These comments did not provide additional data or research, though some offered anecdotal evidence. Many comments from individuals focused on other issues that were out of scope, including one or more of the following:

- expressing a general like or dislike for the concept of adding noise to HEVs;
- pointing out the beneficial reduction in traffic noise that electric vehicles make possible;
- suggesting that quiet gas-engine vehicles should be subject to the same requirements as HEVs.

Based on statements in some of these comments, it seems likely there was some misunderstanding of either the proposal or NHTSA's existing minimum sound requirements. For example, it was apparent that one or more of the commenters believed that vehicle owners would be allowed to create their own sounds or use random recorded sounds, or that the existing NHTSA regulation specifies a single, universal alert sound for all HEVs. Others did not acknowledge that every additional driver-selectable alert sound allowed under the proposal would have to meet the minimum safety requirements.

The Alliance/Global comment fully supported the proposal for an unlimited number of driver selectable sounds and

[14] The NPRM also noted that an international regulation, United Nations Economic Commission for Europe (ECE) Regulation No. 138 on Audible Vehicle Alerting Systems, allows vehicle manufacturers to define alternative sounds which can be selected by the driver and does not specify a particular limit on the number of alternative sounds that may be provided.

[15] Docket No. NHTSA–2019–0085.

[16] As a general note, some of NHTSA's earliest research on quiet vehicle human factors during the 2011 timeframe utilized volunteers from the Perkins School for the Blind located in Cambridge, MA, to evaluate detectability of different vehicle sounds.

reiterated their position that ''offering drivers a selection of pedestrian alert sounds . . . facilitates an increase in consumer choice and promotes consumer satisfaction and acceptance.'' The comment stated that compliance costs will be prohibitive enough to limit the number of sounds that automakers install in a vehicle and will thus prevent them from offering more than a reasonable number.[17] The Alliance/Global comment did not recommend any specific limit on the allowable number of sounds or mention their previous recommendation of not more than five allowable sounds. They maintained their position that a ''reasonable number of choices should be permitted as long as each selectable choice meets the minimum sound requirements.''

Prior to issuing the NPRM, NHTSA considered alternatives to the proposal to allow an unlimited number of alert sounds. One alternative entailed proposing to allow a limited number of driver-selectable alert sounds. The NPRM did not include that specific proposal, but it sought comment on allowing a limited number and, in that case, how many alert sounds should be allowed. NHTSA did not receive any comments in response to the alternative of allowing a limited number of sounds.

The SAE International provided a comment that did not pertain to the proposed rulemaking on selectable sounds but focused exclusively on the test procedure issue raised in the NPRM concerning ambient noise measurement, as discussed later in this document.

Comment Analysis

The great majority of the comments on the NPRM, including those submitted by organizations and people who are blind or who have low vision, did not favor the proposal to allow HEVs to have an unlimited number of different pedestrian alert sounds. To the contrary, most of those comments were in favor of more uniformity, rather than less, in the number and types of alert sounds allowed on HEVs. In fact, while out-of-scope of the NPRM, at least one organization expressed a preference for permitting only a single, uniform sound for all HEVs regardless of vehicle make or model. These commenters stated that having greater uniformity makes it easier for sight-impaired pedestrians to recognize vehicles, and thus safer for them to navigate in traffic. Several comments from individuals included descriptions of unsafe encounters with quiet vehicles.

The joint comment from the Alliance/Global supported the proposal to amend FMVSS No. 141 to allow HEVs to have an unlimited number of pedestrian alert sounds. Similarly, the comment from the NFB favored providing drivers with a ''reasonable number'' of sounds per vehicle from which drivers could choose a preferred sound.

However, these comments were not accompanied by any data or analysis to show that unlimited sounds would have no impact on pedestrian safety. The Alliance/Global and the NFB did not provide information such as data from research or analyses, like consumer surveys for example, or other information to support an amendment to allow either multiple alert sounds or an unlimited number of sounds. They also did not provide any economic or market analysis to support their contention that allowing multiple alert sounds is likely to increase acceptance of HEVs in the U.S. new-vehicle market. Furthermore, the agency has no specific information of its own that addresses these questions of safety and consumer acceptance.

In addition, the Alliance and the NFB submitted a late comment in the form of a letter to the agency on March 17, 2022. The organizations stated that material, including tutorials, guides, and videos, is currently available online to assist individuals that would like to disable the pedestrian alert sound, a mandated vehicle safety system, required under FMVSS No. 141. The organizations asserted that individuals that dislike the alert sound provided by a vehicle manufacturer may seek to disable the sound but that, if provided the option to choose from alternative sounds, such individuals would be more likely to select one than to disable the system. The organizations suggested that NHTSA should therefore allow up to five driver-selectable sounds as a means to ensure that the benefits associated with the requirements contained FMVSS No. 141 are not eliminated.

The agency notes that these commenters did not provide any data or analysis as part of the late comment to support their claims. FMVSS No. 141 sets requirements that apply to manufacturers, modifiers, repair shops, and others, but does not set requirements for end-users. Furthermore, the use and treatment of vehicles by individual end-users generally is not subject to NHTSA's vehicle safety regulations. However, States may choose to require individuals to maintain vehicles after first sale in such a way that they comply with Federal motor vehicle safety standards. In addition, states regulate insurance companies, which may impose deterrents on individuals to dissuade them from disabling important vehicle safety systems such as the one required by FMVSS No. 141. The organizations did not provide any data or analysis about the potential actions of individuals to intentionally make inoperative a required vehicle safety system, nor did they provide any data or analysis to quantify how their requested action to allow multiple driver-selectable sounds would cause individuals determined to silence their vehicle alert sound required by FMVSS No. 141 to instead just select a different sound from among those that could be installed on their vehicle. The agency finds it speculative to suggest that allowing multiple driver-selectable sounds might dissuade vehicle owners from disabling a safety system required by FMVSS No. 141, especially given that a vocal minority of commenters over the course of several rulemakings have argued that HEVs should not be required to have any alert sound because they prefer quiet vehicles, not that there is a lack of preferrable alternative sounds.

Although the commenters that opposed the proposal also did not provide substantial information in the form of research or analyses to support their position, NHTSA believes it prudent to err on the side of caution and safety in the absence of data or other evidence.

While the current standard does not require a uniform sound across manufacturers or even carlines, by restricting the variation of sounds among make/model/trim groups there is an incentive to manufacturers to apply sounds that appeal to a broader range of tastes. Removing this restriction would allow manufacturers to make more obscure sounds that only appeal to a small minority of HEV owners.

After reviewing the comments, NHTSA also is concerned about the potential compliance and safety impacts of the proposal. There are unanswered questions relating to the cost/benefit impact of unlimited driver-selectable sounds including:

- How can the costs and benefits be accurately determined?
- Is it reasonable to expect costs of certification to be the primary factor in limiting the number of driver-selectable sounds?

[17] The agency notes that, under the self-certification statute in the Motor Vehicle Safety Act, manufacturers have some discretion in how they certify, and there is no explicit requirement for a manufacturer to test each sound. However, in certifying compliance, the manufacturer must exercise reasonable care, and NHTSA would find a vehicle noncompliant if an alert sound failed to meet the standard when tested by NHTSA.

• What is the safety impact? Will HEV recognition be compromised as the number of allowable sounds increases, and can that be quantified?
• Will selectable sounds increase consumer acceptance?
• Will there be unintended consequences, *e.g.,* incentives for manufacturers to develop a larger number of customized sounds that appeal to narrow driver populations?

Considering the comments and all other factors, NHTSA has concluded that there is insufficient data or other compelling information to support amending FMVSS No. 141 to allow more than one pedestrian alert sound per HEV, and there is significant opposition from many commenters to the proposal to allow unlimited driver-selectable sounds.

As a result, the agency has concluded that the existing requirement—that HEVs of the same make, model, model year, body style, and trim level, must have the same alert sound—should remain in effect, and the provisions in S5.5 of FMVSS No. 141 should not be amended at this time.

Accordingly, NHTSA is not adopting the proposal from the September 17, 2019, NPRM relating to driver-selectable alert sounds.

Amendment To Clarify Ambient Noise Measurement Procedure

The NPRM proposed modifying the text of section 6.7.3 in FMVSS No. 141 to remove ambiguity in the procedure for evaluating ambient (background) noise during compliance tests. This issue was raised by the Alliance and Global in an April 2018 letter.[18]

Evaluation of ambient sounds during vehicle compliance tests as required in section S6.7 of FMVSS No. 141 is necessary to ensure ambient noise remains acceptably low and to apply ambient corrections to vehicle measurements. Ambient sound is any background noise that is present at the test site during a vehicle compliance evaluation that is not emitted by the test vehicle itself. Table 8 and Table 9 of FMVSS No. 141 specify ambient noise limits for overall sound level and one-third octave band level, respectively, relative to the sound level of the test vehicle.

In prescribing how ambient one-third octave band levels are to be evaluated for correction of vehicle measurements, section S6.7.3 indicates that the ambient levels used are the minimum levels at any point in time over the required 60 seconds of recorded ambient noise. The wording used in S6.7.3 implies that the levels of different one-third octave bands may be evaluated at different times. This was not NHTSA's intention. The correct method intended by the agency is to evaluate ambient levels of all 13 one-third octave bands at the same point in time for an individual microphone. For each microphone, the point in time used is the unique point during the 60 seconds (or more) of recorded ambient noise when the overall sound pressure level of the ambient is at a minimum for that same microphone, as identified in the preceding step, S6.7.2, in the test procedure. Consequently, the point used for computing the 13 one-third octave bands may vary across microphones but, for a single microphone, all 13 one-third octave bands are computed at the same point in time.

To resolve this, NHTSA proposed amending S6.7.3 to state the intended method of evaluating ambient one-third octave bands more clearly for the purpose of applying corrections to measurements of vehicle sound.

There was one comment submitted on this topic in response to the NPRM, from SAE International (SAE). SAE did not comment on the details of the proposed amendment of S6.7.3, but rather expressed a broader concern with NHTSA's approach to ambient noise measurement more generally. This is something SAE has written to the agency about on a previous occasion.[19] SAE's present comment maintained that FMVSS No. 141 compliance test procedures should not use the minimum ambient sound level. SAE stated the correct method is to ascertain and apply the maximum ambient sound level. However, NHTSA considered that approach in the past and was not persuaded to change the ambient correction methodology in FMVSS No. 141.

Because the SAE comment did not specifically address the proposal to reword S6.7.3 and instead focused on a broader test procedure concern that NHTSA has previously considered but chose not to adopt, the agency is proceeding with a final rule to adopt the amended test procedure as proposed.

An amended S6.7.3 is included below. This amendment is scheduled to take effect 30 days after the date of publication in the **Federal Register**.

Proposed Correction of Phase-In Reporting Dates

The NPRM included a proposal to correct two dates in the part 585 phase-in reporting requirements associated with FMVSS No. 141. However, those changes are no longer necessary.

The FMVSS No. 141 final rule published in December 2016 required vehicle manufacturers to report on their production of compliant HEVs during a one-year phase-in period from September 1, 2018, to August 31, 2019.[20] NHTSA later acknowledged that part 585, subpart N, incorrectly refers to this one-year period in two places as ''the production year ending August 31, 2018'' instead of ''the production year ending August 31, 2019.'' When NHTSA granted a petition for reconsideration in February 2018 to extend the FMVSS No. 141 phase-in and compliance deadlines by one year, the reporting dates in part 585, subpart N, were all adjusted by adding one year.[21] However, because those two dates were off by one year, the adjusted dates also were off by one year. In the NPRM, NHTSA proposed correcting this discrepancy.

On September 1, 2020, NHTSA published an interim final rule (IFR) to extend the FMVSS No. 141 phase-in and compliance deadlines by an additional six months to provide relief to automakers experiencing vehicle manufacturing disruptions resulting from the Covid-19 national health emergency.[22] The IFR included six-month adjustments to the due dates for FMVSS No. 141 phase-in reporting contained in part 585, subpart N.[23] Those newly adjusted reporting dates supersede the corrections NHTSA proposed in September 2019 and obviate the need for any further changes. In addition, the agency did not receive any comments on the proposed date change. Therefore, in this document, NHTSA is making no changes to the phase-in reporting dates.[24]

Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563,

[18] See Docket No. NHTSA–2018–0018–0004.

[19] *See* SAE comment, Docket No. NHTSA–2016–0125–0021, at p. 1.

[20] The reporting requirements and associated due dates for phase-in of compliance with FMVSS No. 141 are contained in 49 CFR part 585, subpart N.

[21] 85 FR 8182.

[22] 85 FR 54273.

[23] As per normal procedure, the interim final rule allowed for public comment. In response to the IFR, there were no comments submitted on the topic of phase-in reporting dates for FMVSS No. 141.

[24] As stipulated in the IFR, the phase-in period for FMVSS No. 141, covering 50 percent of a manufacturer's HEV production, ran from March 1, 2020, through February 28, 2021. Full compliance with FMVSS No. 141, covering 100 percent of each manufacturer's HEV production, began on March 1, 2021.

and the Department of Transportation Order 2100.6, ''Policies and Procedures for Rulemakings.'' This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' Given the minimal impact of the rule, in accordance with the Department's regulatory policies and procedures, we have not prepared a full regulatory evaluation.[25] The agency has further determined that the impact of this rule is so minimal that the preparation of a full regulatory evaluation is not required.

This final rule does not add any cost, as it does not change the scope or applicability of FMVSS No. 141 and does not add new requirements or increase design or production burden for vehicle manufacturers.

This final rule does not have any effect on safety, as the modification of a step in the test procedures related to ambient noise correction does not change the safety requirements in the standard that apply to all pedestrian alert sounds.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. This final rule would directly impact manufacturers of hybrid and electric vehicles. Most manufacturers affected by this final rule are not small businesses. To the extent any manufacturers of hybrid or electric vehicles are small businesses, we do not believe this final rule would have a significant economic impact on any small businesses as this final rule would not impose any additional costs on manufacturers.

C. Executive Order 13132 (Federalism)

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under chapter 301, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under chapter 301. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e).

Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See Geier v. American Honda Motor Co., 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rulemaking action could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this final rule and finds that this rule prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

D. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before

[25] Department of Transportation, Adoption of Regulatory Policies and Procedures, 44 FR 11034 (Feb. 26, 1979).

parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to E.O. 12988, NHTSA notes that the issue of preemption is discussed separately in this final rule. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

E. Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final rule is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. There is not any new information collection requirement associated with this final rule.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.'' Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the SAE International, and the American National Standards Institute. If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

NHTSA considered and utilized voluntary consensus standards in the development of the FMVSS No. 141 standard. NHTSA utilized SAE J2889 as a basis for the test procedures in FMVSS No. 141, as discussed in the preamble to the original final rule establishing the safety standard in 2016.[26] NHTSA's test procedures include a specific deviation from the J2889 procedures for reasons discussed in the original final rule preamble. That deviation was raised in a comment and is addressed in this final rule document in the discussion of comments pertaining to the amended test procedure.

There are no other voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this final rule.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule will not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

I. National Environmental Policy Act

NHTSA analyzed the original FMVSS No. 141 final rule for the purposes of the National Environmental Policy Act. The agency determined that implementation of that rule would not have any significant impact on the quality of the human environment.[27]

The final rule amends FMVSS No. 141 in a way that would not change the impact for the purposes of the National Environmental Policy Act. Therefore, the agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products.

For the reasons set forth in the preamble, the National Highway Traffic Safety Administration amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

[26] 81 FR 90416.

[27] Docket no. NHTSA–2016–0125, *https://www.regulations.gov/document?D=NHTSA-2016-0125-0009.*

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.141 by revising paragraph S6.7.3 to read as follows:

§ 571.141 Standard No. 141; Minimum Sound Requirements for Hybrid and Electric Vehicles.

* * * * *

S6.7.3 For each microphone, compute an ambient level for each of the 13 one-third octave bands using the time that is associated with the minimum A-weighted overall ambient identified in S6.7.2 of this section.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–14733 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220527–0125; RTID 0648–XC133]

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Extension of Emergency Decisions of the Western and Central Pacific Fisheries Commission

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

ACTION: Temporary specification.

SUMMARY: NMFS is extending the effective date of a temporary specification that implements a short-notice decision of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). NMFS issued temporary specifications on June 11, 2021, to implement short-notice WCPFC decisions regarding purse seine observer coverage, purse seine transshipments at sea, and transshipment observer coverage. NMFS is extending the effective date of the temporary specification on purse seine observer coverage until December 31, 2022. NMFS is also revoking the temporary specification on transshipment observer coverage. NMFS is undertaking this action under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to satisfy the obligations of the United States as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention).

DATES: The temporary specification on purse seine observer coverage is in effect from July 13, 2022 until December 31, 2022. The temporary specification on transshipment observer coverage is revoked from July 13, 2022.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS Pacific Islands Regional Office, 808–725–5033.

SUPPLEMENTARY INFORMATION: Under authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), NMFS published an interim final rule that established a framework to implement short-notice WCPFC decisions (50 CFR 300.228). NMFS simultaneously issued temporary specifications to implement three short-notice WCPFC decisions until September 14, 2021. Additional background information on the Commission, the Convention, the interim final rule, and temporary specifications, is available in the **Federal Register** document that includes the interim final rule and temporary specifications (86 FR 31178; June 11, 2021). Pursuant to a WCPFC decision, NMFS extended the effective date of the temporary specifications for purse seine observer coverage and transshipment observer coverage until June 10, 2022, and revoked the temporary specification on purse seine transshipment at sea (87 FR 21812; April 13, 2022). Under the interim final rule at 86 FR 31178, temporary specifications can only remain in effect for less than one year. NMFS published a final rule on June 7, 2022, to make final this interim rule, effective on July 7, 2022 (87 FR 34580).

In response to the ongoing COVID–19 pandemic, NMFS published another interim final rule to extend the time period that temporary specifications issued to implement short-notice WCPFC decisions related to the COVID–19 pandemic may remain in effect(87 FR 34584; June 7, 2022). Such temporary specifications may be continued, as appropriate, until December 31, 2023. NMFS simultaneously extended the temporary specifications on purse seine observer coverage and at-sea transshipment observer coverage until July 15, 2022 (87 FR 34584; June 7, 2022).

Based on a recent WCPFC decision, NMFS is now extending the temporary specification on purse seine observer coverage until December 31, 2022, and revoking the temporary specification on transshipment observer coverage.

WCPFC Emergency Decisions

On April 8, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID–19, the Commission made an intersessional decision to suspend the requirements for observer coverage on purse seine vessels on fishing trips in the Convention Area through May 31, 2020. The Commission subsequently extended that decision several times, and the current extension is effective until December 31, 2022.

On April 20, 2020, in response to the international concerns over the health of vessel crews and port officials due to COVID–19, the Commission made an intersessional decision to modify the prohibition on at-sea transshipment for purse seine vessels as follows—purse seine vessels can conduct at-sea transshipment in an area under the jurisdiction of a port State, if transshipment in port cannot be conducted, in accordance with the domestic laws and regulations of the port State. The Commission decided not to extend that decision past March 15, 2022.

On May 13, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID–19, the Commission made an intersessional decision to suspend the requirements for observer coverage for at-sea transshipments. The Commission decided not to extend that decision past June 15, 2022.

Extension of Temporary Specification

NMFS is using the framework as set forth at 50 CFR 300.228 to extend the effective date of the temporary specification implementing one of the three recent WCPFC intersessional decisions (WCPFC decision dated April 8, 2020), described above, that is in effect until December 23, 2022. The regulations to implement short-notice WCPFC decisions at 50 CFR 300.228 provide that short-notice decisions related to the COVID–19 pandemic may be continued, as appropriate, until December 31, 2023.

Accordingly, the requirements of the following regulations are waived. Such waiver shall remain in effect until December 31, 2022, unless NMFS earlier rescinds this waiver by publication in the **Federal Register**:

- 50 CFR 300.223(e)(1). During the term of this waiver, U.S. purse seine vessels are not required to carry WCPFC

observers [1] on all fishing trips in the Convention Area. However, the regulations at 50 CFR 300.215(c)(1) that require all vessels with WCPFC Area Endorsements or for which WCPFC Area Endorsements are required to carry WCPFC observers when directed by NMFS remain in effect.

Revocation of Temporary Specification

NMFS is using the framework as set forth at 50 CFR 300.228 to revoke the temporary specification that implemented the WCPFC decision dated May 13, 2020, to waive the regulations on at-sea transshipment observer coverage at 50 CFR 300.215(d) and 50 CFR 300.216(b)(2).

Classification

NMFS issues this action pursuant to the WCPFC Implementation Act and the regulations at 50 CFR 300.228. This action is exempt from review under Executive Order 12866.

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the temporary measures included in this action, because prior notice and the opportunity for public comment is unnecessary and would be contrary to the public interest. Opportunity for public comment is unnecessary because the regulations establishing the framework and providing notice of the Commission's decisions described above have already been subject to notice and public comment, and all that remains is to notify the public of the extension of the Commission decision. NMFS has responded to public comments received on the interim final rule to establish the framework and those Commission decisions in a separate final rule (87 FR 34580; June 7, 2022). NMFS will be responding to any public comments received on the interim final rule to extend the time period to implement WCPFC decision related to the COVID–19 pandemic in a separate final rule (see 87 FR 34584; June 7, 2022).

[1] A WCPFC Observer means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme. See 50 CFR 300.211.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective dates for the temporary measures.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: July 8, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–14954 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC095]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2022 total allowable catch of Pacific cod allocated to catcher/processors using trawl gear in the Central Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 8, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

The 2022 total allowable catch (TAC) of Pacific cod allocated to catcher/processors using trawl gear in the Central Regulatory Area of the GOA is 616 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish of the GOA (87 FR 11599, March 2, 2022).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2022 TAC of Pacific cod allocated to catcher/processors using trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that Pacific cod caught by catcher/processors using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(a)(2).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 7, 2022.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: July 8, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–14950 Filed 7–8–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 133
Wednesday, July 13, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0872; Project Identifier AD–2022–00431–R]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–19–08, which applies to certain Robinson Helicopter Company (Robinson) Model R44 and R44 II helicopters. AD 2021–19–08 requires checking each tail rotor blade (blade) for any crack and removing any cracked blade from service. AD 2021–19–08 also requires removing all affected blades from service and prohibits installing any affected blade on any helicopter. Since the FAA issued AD 2021–19–08, it was determined that an additional model helicopter and additional blades are affected by the unsafe condition. This proposed AD would require the same actions as AD 2021–19–08 and would add certain Robinson Model R66 helicopters to the applicability and add additional part-numbered and serial-numbered blades to the applicability. 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 August 29, 2022.

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 Robinson Helicopter Company, 2901 Airport Drive, Torrance, CA 90505, United States; phone: (310) 539–0508; email: *ts1@robinsonheli.com;* website: *https://robinsonheli.com/.* You may view this service information 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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0872; 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: James Guo, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5357; email *james.guo@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–2022–0872; Project Identifier AD–2022–00431–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 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 James Guo, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5357; email *james.guo@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–19–08, Amendment 39–21726 (86 FR 49915, September 7, 2021) (AD 2021–19–08), for Robinson Model R44 and R44 II helicopters with a blade part number (P/N) C029–3 with serial number (S/N) 9410 through 9909 inclusive, installed. AD 2021–19–08 was prompted by reports of spanwise cracks found along the leading edge of P/N C029–3 blades, S/N 9410 through 9909. These affected blades were factory-installed or shipped as spares between March and December 2019. The cracks were found at different inspection intervals ranging from preflight inspections to 100-hour inspections. In one instance, a cracked blade was suspected when the pilot felt

abnormal vibrations during flight; subsequent investigation determined that the blade was cracked. The cause of the cracks was determined to be a manufacturing defect in the properties of the blade skin that makes the blades prone to stress corrosion cracking. This condition, if not addressed, could result in reduced controllability and subsequent loss of control of the helicopter. AD 2021–19–08 requires checking each blade for any crack and removing any cracked blade from service. AD 2021–19–08 also requires removing all affected blades from service and prohibits installing any affected blade on any helicopter. The agency issued AD 2021–19–08 to address the unsafe condition on these products.

Actions Since AD 2021–19–08 Was Issued

Since the FAA issued AD 2021–19–08, two additional cracked blades were discovered; these blades also exhibited stress corrosion cracking, however they were not part of the lot of affected blades that are included in AD 2021–19–08. These new affected blades are from a batch of blades manufactured from a separate lot of material, and testing determined that they are also susceptible to stress corrosion cracking and can be installed on Robinson Model R44, R44 II, and R66 helicopters. Additionally, while AD 2021–19–08 was issued as a Final rule; request for comments, the FAA has determined that, because the risk model predictions for the additional helicopter model and blades are lower, providing notice and opportunity for public comment is appropriate.

Since the issuance of 2021–19–08, the FAA received one comment from Robinson requesting that the FAA correct an inaccurate statement in the background section of the preamble text. Discovery of the incident was incorrectly described as a pilot feeling abnormal vibrations during flight. The incident was actually discovered when the ground crew noticed an abnormal noise during a shipboard landing.

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 designs.

Related Service Information

The FAA reviewed Robinson R44 Service Bulletin SB–108, dated June 30, 2021. This service bulletin specifies removing P/N C029–3 blades with S/N 9410 through 9909 from service. For continued operation until the affected blades are replaced, the service bulletin specifies a preflight inspection to be performed by the pilot.

The FAA also reviewed Robinson R44 Service Bulletin SB–110, which specifies removing P/N C029–3 blades with S/N 9910 through 10659 from service and Robinson R66 Service Bulletin SB–40, which specifies removing P/N F029–1 blades with S/N 2410 through 2589 from service. Both of these service bulletins are dated January 6, 2022 and specify that a preflight inspection is to be performed by the pilot for continued operation until the affected blades are replaced.

Proposed AD Requirements in This NPRM

This proposed AD would continue to require, before further flight and thereafter before each flight, checking each affected blade for any crack along the leading edge of the blade. An owner/operator (pilot) holding at least a private pilot certificate may perform this proposed check and would have to enter compliance with the applicable paragraph of this proposed AD in the helicopter maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). A pilot may perform this check because it involves visually checking each blade for a crack. This action could be performed equally well by a pilot or a mechanic. This check is an exception to the FAA's standard maintenance regulations. This proposed AD would also continue to require, before further flight, removing from service any cracked blade and would prohibit installing the affected blades on any helicopter. This proposed AD would also require, within three months after the effective date of AD 2021–19–08 or within six months after the effective date of this AD, as applicable, removing all affected blades from service. Finally, this proposed AD would revise the applicability by adding blades with P/N C029–3 with S/N 9910 through 10659 inclusive to the applicability for Robinson Model R44 and R44 II helicopters and would also expand the applicability by adding Robinson Model R66 helicopters with blade P/N F–029–1 with S/N 2410 through 2589 inclusive installed.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 432 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Checking a blade for any crack would take about 0.25 work-hour for an estimated cost of up to $44 per helicopter (up to two affected blades per helicopter) and up to $19,008 for the U.S. fleet per check. Replacing a blade would take about 3.5 work-hours and parts would cost about $3,320 for an estimated cost of $3,618 per blade and up to $3,125,952 for the U.S. fleet.

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 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 2021–19–08, Amendment 39–21726 (86 FR 49915, September 7, 2021); and

■ b. Adding the following new airworthiness directive:

Robinson Helicopter Company: Docket No. FAA–2022–0872; Project Identifier AD–2022–00431–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by August 29, 2022.

(b) Affected ADs

This AD replaces AD 2021–19–08, Amendment 39–21726 (86 FR 49915, September 7, 2021) (AD 2021–19–08).

(c) Applicability

This AD applies to the following Robinson Helicopter Company (Robinson) helicopters, certificated in any category:

(1) Robinson Model R44 and R44 II helicopters with a tail rotor blade (blade) part number (P/N) C029–3 with serial number (S/N) 9410 through 9909 inclusive, installed;

(2) Robinson Model R44 and R44 II helicopters with a blade P/N C029–3 with S/N 9910 through 10659 inclusive, installed; and

(3) Robinson Model R66 helicopters with a blade P/N F029–1 with S/N 2410 through 2589 inclusive, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by reports of cracked blades. The FAA is issuing this AD to detect and prevent cracks in the affected blades. The unsafe condition, if not addressed, could result in reduced controllability and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD and thereafter before each flight, check each blade at the leading edge for a crack. This action may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(2) If there is any crack, before further flight, remove the blade from service.

(3) For helicopters identified in paragraph (c)(1) of this AD, within 3 months after September 22, 2021 (the effective date of AD 2021–19–08) remove from service any blade identified in paragraph (c)(1) of this AD.

(4) For helicopters identified in paragraphs (c)(2) and (3) of this AD, within 6 months after the effective date of this AD, remove from service any blade identified in paragraph (c)(2) or (3) of this AD, as applicable to your model helicopter.

(5) For helicopters identified in paragraph (c)(1) of this AD, as of September 22, 2021 (the effective date of AD 2021–19–08), do not install a blade identified in paragraph (c)(1) of this AD on any helicopter.

(6) For helicopters identified in paragraphs (c)(2) and (3) of this AD, as of the effective date of this AD, do not install a blade identified in paragraph (c)(2) or (3) of this AD, as applicable to your model helicopter, on any helicopter.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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 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 (j) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-REQUESTS@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.

(3) AMOCs approved previously for AD 2021–19–08 are approved as AMOCs for the corresponding requirements in paragraph (g) of this AD.

(j) Related Information

For more information about this AD, contact James Guo, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5357; email *james.guo@faa.gov.*

Issued on July 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–14830 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0873; Project Identifier MCAI–2022–00060–T]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. 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 Embraer S.A. Model EMB–545 and EMB–550 airplanes. This proposed AD was prompted by a report that there is a possibility of the shoulder belt getting stuck during flight due to a step between the divan shroud chamfer and the sideledge panel. This proposed AD would require installing, on the right- and left-hand side divan, a protective fairing covering on the divan shroud and the sideledge panel, as specified in an Agência Nacional de Aviação Civil (ANAC) 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 August 29, 2022.

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 National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this material on the ANAC website

at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* 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. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0873.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0873; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3405; email *ho-joon.lim@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–2022–0873; Project Identifier MCAI–2022–00060–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 Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3405; email *ho-joon.lim@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

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2021–11–01R1, effective January 21, 2022 (ANAC AD 2021–11–01R1) (also referred to as the MCAI), to correct an unsafe condition for certain Embraer S.A. Model EMB–545 and EMB–550 airplanes.

This proposed AD was prompted by a report that there is a possibility of the shoulder belt getting stuck during flight due to a step between the divan shroud chamfer and the sideledge panel. This set up may interfere with the correct kinematics of the shoulder belt during its retraction. The FAA is proposing this AD to address the possibility of a stuck shoulder belt during flight, which could affect the shoulder belt release during turbulence or an emergency landing situation and result in injury to passengers and the flightcrew. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

ANAC AD 2021–11–01R1 specifies procedures for installing, on the right- and left-hand side divan, a protective fairing covering on the divan shroud and the sideledge panel. 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 products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in ANAC AD 2021–11–01R1 described previously, 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 ANAC AD 2021–11–01R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2021–11–01R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by ANAC AD 2021–11–01R1 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0873 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 63 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 14 work-hours × $85 per hour = Up to $1,190	$400	Up to $1,590	Up to $100,170.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Embraer S.A.: Docket No. FAA–2022–0873; Project Identifier MCAI–2022–00060–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 29, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model EMB–545 and EMB–550 airplanes, certificated in any category, as identified in paragraph (a)(2) of Agência Nacional de Aviação Civil (ANAC) AD 2021–11–01R1, effective January 21, 2022 (ANAC AD 2021–11–01R1).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that there is a possibility of the shoulder belt getting stuck during flight due to a step between the divan shroud chamfer and the sideledge panel. This set up may interfere with the correct kinematics of the shoulder belt during its retraction. The FAA is issuing this AD to address the possibility of a stuck shoulder belt during flight, which could affect the shoulder belt release during turbulence or an emergency landing situation and result in injury to passengers and the flightcrew.

(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, ANAC AD 2021–11–01R1.

(h) Exceptions to ANAC AD 2021–11–01R1

(1) Where ANAC AD 2021–11–01R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraph (b)(1) of ANAC AD 2021–11–01R1 do not apply to this AD.

(3) Where paragraph (b)(2) of ANAC AD 2021–11–01R1 specifies that it applies to certain airplanes, replace the text ''airplanes identified in paragraph (a)(2) of this [ANAC] AD, and which are not listed in the paragraph (a)(1) of this [ANAC] AD,'' with ''airplanes identified in paragraph (a)(2) of this [ANAC] AD.''

(4) The ''Alternative method of compliance (AMOC)'' section of ANAC AD 2021–11–01R1 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(j) Related Information

(1) For ANAC AD 2021–11–01R1, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* 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 at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0873.

(2) For more information about this AD, contact Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3405; email *ho-joon.lim@faa.gov.*

Issued on July 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–14867 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0824; Airspace Docket No. 21–ASO–33]

RIN 2120–AA66

Proposed Amendment and Revocation of Area Navigation (RNAV) Routes; Southeastern and Northeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Area Navigation (RNAV) route Q–81 to realign a portion of the route to improve traffic flows, and to remove Canadian RNAV route Q–947 at the request of NavCanada. These changes would support the Northeast Corridor Atlantic Coast Route Project.

DATES: Comments must be received on or before August 12, 2022.

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–2022–0824; Airspace Docket No. 21–ASO–33 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, 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 expands the availability of RNAV routes in the National Airspace System, increases airspace capacity, and reduces complexity in high air traffic volume areas.

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–2022–0824; Airspace Docket No. 21–ASO–33) 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 *http://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–2022–0824; Airspace Docket No. 21–ASO–33.'' 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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, issued August 10. 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this proposed rule. 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 to modify Q–81 in the southeastern United States, and removing Canadian route Q–947 in the northeastern United States.

Q–81: Q–81 currently extends from the TUNSL, FL., waypoint (WP), to the HONID, GA, WP. This proposal would amend the current route segments between the FIPES, OG, WP and the FARLU, FL, WP, by removing the THMPR, FL, WP and the LEEHI, FL, WP, and inserting the ZEILR, FL, Fix, and the PIKKR, OG, WP. The effect of this change would be to realign the track

of Q–81 by between one nautical mile (NM) and 10.5 NM to the west of its current path. This change would assist with traffic flow, conflict avoidance, and prevent excessive coordination for air traffic controllers. In addition, the FAA proposes to remove the following WPs from the legal description of Q–81: MGNTY, FL; BITNY, OG; SNAPY, FL; and IPOKE, GA. Because they do not denote a route turn point, these WPs are not required to be included in the Q–81 legal description. However, these points will continue to be depicted on the IFR En Route charts because they are used for air traffic control purposes. The proposed full route description of Q–81 is set out in the amendments to part 71 below.

The abbreviation ''OG'' is used in place of a state abbreviation for the FIPES, PIKKR, and BITNY WPs. OG means ''Offshore Gulf of Mexico'' indicating that those points overlie international waters.

This action also proposes to remove portions of Canadian RNAV route Q–947.

Q–947: Segments of Q–947 extend from the REVEN, Canada, WP; to the TOPPS, ME, WP; to the CUZWA, ME, WP; then back into Canada at the DUVOK, Canada, WP. NavCanada requested that these segments be removed due to potential conflicts with aircraft departures from Halifax, Nova Scotia (YHZ).

United States Area Navigation Routes are published in paragraph 2006 and Canadian Area Navigation Routes are published in paragraph 2007 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. RNAV routes listed in this document would be subsequently published in and removed from FAA Order JO 7400.11.

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. 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 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 2006 United States Area Navigation Routes.

* * * * *

Q–81 TUNSL, FL TO HONID, GA [AMENDED]

TUNSL, FL	WP	(Lat. 24°54′02.43″ N, long. 081°31′02.80″ W)
KARTR, FL	FIX	(Lat. 25°29′45.76″ N, long. 081°30′46.24″ W)
FIPES, OG	WP	(Lat. 25°41′30.15″ N, long. 081°37′13.79″ W)
ZEILR, FL	WP	(Lat. 26°38′13.17″ N, long. 082°22′27.71″ W)
PIKKR, OG	WP	(Lat. 26°56′24.43″ N, long. 082°41′25.28″ W)
FARLU, FL	WP	(Lat. 27°45′32.56″ N, long. 082°50′43.77″ W)
ENDEW, FL	WP	(Lat. 28°18′01.73″ N, long. 082°55′56.70″ W)
NICKI, FL	WP	(Lat. 29°15′20.19″ N, long. 083°20′31.80″ W)
BULZI, FL	WP	(Lat. 30°22′24.93″ N, long. 084°04′34.47″ W)
HONID, GA	WP	(Lat. 31°38′50.31″ N, long. 084°23′42.60″ W)

* * * * *

Paragraph 2007 Canadian Area Navigation Routes.

* * * * *

Q–947 [Remove]

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Issued in Washington, DC, on July 6, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–14779 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0827; Airspace Docket No. 21–AEA–12]

RIN 2120–AA66

Proposed Amendment and Revocation of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend four jet routes and remove eight jet routes in the eastern United States. This action is associated with the Northeast Corridor Atlantic Coast Route Project and supports the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) to improve the efficiency of the National Airspace System (NAS) and reduce dependency on ground-based navigational systems.

DATES: Comments must be received on or before August 12, 2022.

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: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0827; Airspace Docket No. 21–AEA–12 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.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

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–2022–0827; Airspace Docket No. 21–AEA–12) 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–2022–0827; Airspace Docket No. 21–AEA–12.'' 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 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 ''**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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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 to amend four jet routes and remove eight jet routes in the eastern United States. This action is associated with the Northeast Corridor Atlantic Coast Route Project, and supports the VOR MON Program. Additionally, the proposed jet route changes would reduce aeronautical chart clutter by removing unneeded route segments.

The proposed route changes are as follows:

J–14: J–14 extends from Panhandle, TX to Vulcan, AL; and From Greensboro, NC to Patuxent, MD. The FAA proposes to remove the segments from Greensboro, NC, to Patuxent, MD. This supports the decommissioning of the Patuxent, MD, (PXT) VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC). Existing RNAV Q routes Q–22 and Q–60 partially overlay this segment.

J–24: J–24 extends from Myton, UT, to Hayden, CO; and From Hugo, CO, to Harcum, VA. The FAA proposes to remove the segment from Flat Rock, VA, to Harcum, VA. This segment of the route is no longer used by air traffic control (ATC). Other Performance Based Navigation (PBN) structure is being implemented to reflect current traffic flows in the area. As amended, J–24 would extend from Myton, UT, to Hayden, CO; and From Hugo, CO, to Montebello, VA.

J–52: J–52 extends from Vancouver, BS, Canada, to Vulcan, AL; and From the intersection of the Columbia, SC, 042°, and the Flat Rock, VA, 212° radials to Richmond, VA. The FAA proposes to remove the segments between the Bigbee, MS, and Vulcan, AL; and the segments between the intersection of the Columbia, SC, and Flat Rock, VA, radials and Richmond, VA. RNAV routes Q–87, Q–99, and Q–122 will be extended to replace the segments of J–52. As amended, J–52 would extend from Vancouver, BC, Canada, to Sidon, MS.

J–68: J–68 extends from Gopher, MN, to Flint, MI; and From Hancock, NY, to Nantucket, MA. The FAA proposes to remove the segments from Hancock, NY to Nantucket, MA. These segments are no longer used by ATC. Other PBN route structure will be implemented to reflect current air traffic flows in the area. As amended, J–68 would extend from Gopher, MN, to Flint, MI.

J–165: J–165 extends from the intersection of the Charleston, SC 025° and the Florence, SC 085° radials to

Richmond, VA. The route would be cancelled in its entirety. RNAV route Q–99 will be extended as a partial overlay and replacement of J–165.

J–207: J–207 extends from Florence, SC, to Franklin, VA. J–207 would be removed in its entirety. RNAV route Q–87 will be extended as a substitute for J–207.

J–506: J–506 extends from Millinocket, ME to the intersection of the St John, NB, 267° radial and the United States/Canadian border. The FAA proposes to remove J–506 in its entirety. This route is no longer used by ATC. Currently, RNAV routes Q–947 and Q–806 exist in this area.

J–561: J–561 extends from Presque Isle, ME, to Mont Joli, PQ, Canada. This route is no longer used by ATC. The FAA proposes to remove the route in its entirety.

J–563: J–563 extends from Albany, NY, to Sherbrook, PQ, Canada. This route is no longer used by ATC. The Sherbrooke, PQ, Canada, (YSC) VHF Omnidirectional Range (VOR) has been decommissioned by NavCanada. This action proposes to remove the route in its entirety.

J–573: J–573 extends from Kennebunk, ME, to St John, NB, Canada. The route is no longer used by ATC. The FAA proposes to remove J–573 in its entirety.

J–582: J–582 extends from Presque Isle, ME to Sept Isle, PQ, Canada. The route is no longer used by ATC. This action proposes to remove the route in its entirety.

J–585: J–585 extends from Nantucket, MA, to Yarmouth, NS, Canada. This route is no longer used by ATC. The FAA proposes to remove the route in its entirety.

Jet routes are published in paragraph 2004 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 jet routes listed in this document would be subsequently amended in, or removed, respectively, from FAA Order JO 7400.11

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 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–14 [Amended]

From: Panhandle, TX via Will Rogers, OK; Little Rock, AR; to Vulcan, AL.

* * * * *

J–24 [Amended]

From Myton, UT, to Hayden, CO. From Hugo, CO, Hays, KS; via Salina, KS; Kansas City, MO; St. Louis, MO; Brickyard, IN; Falmouth, KY; Charleston, WV; to Montebello, VA.

* * * * *

J–52 [Amended]

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Texarkana, AR; to Sidon, MS.

* * * * *

J–68 [Amended]

From Gopher, MN, INT Gopher 109° and Dells, WI, 310° radials; Dells; Badger, WI; INT Badger 086° and Flint, MI, 278° radials; to Flint.

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J–165 [Removed]

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J–207 [Removed]

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J–506 [Removed]

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J–561 [Removed]

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J–563 [Removed]

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J–573 [Removed]

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J–582 [Removed]

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J–585 [Removed]

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Issued in Washington, DC, on July 6, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–14778 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0823; Airspace Docket No. 21–AEA–23]

RIN 2120–AA66

Proposed Revocation of VOR Federal Airways in the Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove VOR Federal Airways V–31, V–146, V–447, and V–475 in support of the FAA's VOR Minimum Operation Network (MON) Program.

DATES: Comments must be received on or before August 12, 2022.

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: (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0823; Airspace Docket No. 21–AEA–23 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.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

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–2022–0823; Airspace Docket No. 21–AEA–23) 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–2022–0823; Airspace Docket No. 21–AEA–23.'' 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. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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 proposed rule. 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 to remove VOR Federal Airways V–31, V–146, V–447, and V–475. The routes would be removed in conjunction with VORs being decommissioned under the VOR MON Program. This program aims to improve the efficiency of the National Airspace System by transitioning from ground based navigation systems to satellite based navigation. The proposed changes are described below.

V–31: V–31 currently extends from Patuxent River, MD, to the intersection of the Rochester, NY, 279° and the Buffalo, NY 023° radials. The FAA proposes to remove the entire route in support of the VOR MON Program. A planned United States Area Navigation (RNAV) route, T–445, would overlay segments of V–31.

V–146: V–146 currently extends from Albany, NY, to Nantucket, MA. The FAA proposes to remove the entire route in support of the VOR MON Program. An extension to RNAV route T–291 would overlay a segment of V–146.

V–447: V–447 currently extends from Cambridge, NY, to Sherbrooke, PQ, Canada. The FAA proposes to remove the entire route in support of the VOR MON Program. In addition, NavCanada has decommissioned the Sherbrook, PQ, VOR which was the end point of the route.

V–475: V–475 currently extends from LaGuardia, NY, to Providence, RI. This route is no longer being utilized. Therefore, no RNAV overlay is planned.

Domestic VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document would be subsequently removed from FAA Order JO 7400.11.

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 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–31 [Remove]

* * * * *

V–146 [Remove]

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V–447 [Remove]

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Issued in Washington, DC, on July 7, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–14889 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 559

RIN 3141–AA72

Audit Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On June 1, 2022, the National Indian Gaming Commission published a proposed rule to amend the Agency's facility Audit Standards regulations. The proposed rule specified that comments must be received before July 1, 2022. The Agency has received requests to extend the comment period to allow more time for tribes and interested parties to fully review the proposed rule and submit comments. The Commission is agreeable to the request and is extending the comment period for an additional thirty days.

DATES: The comment period for the proposed rule published in the **Federal Register** on June 1, 2022, at 87 FR 33091, is reopened. Comments should be received on or before August 1, 2022.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: information@nigc.gov.*
- *Mail:* National Indian Gaming Commission, 1849 C Street NW, MS 1621, Washington, DC 20240.
- *Fax comments to:* National Indian Gaming Commission at 202–632–0045.
- *Hand Delivery:* National Indian Gaming Commission, 90 K Street NE, Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, National Indian Gaming Commission; Telephone: (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 2022, the National Indian Gaming Commission published a proposed rule to amend the Agency's audit standards regulations. The proposed rule will amend the regulations to eliminate the Commission waiver requirement for reviewed financial statements and allow all operations grossing less than $2 million in the previous fiscal year to submit reviewed financial statements provided that the tribe or tribal gaming regulatory authority (TGRA) permits the gaming operation to submit reviewed financials. The proposed amendment to the rule will also create a third tier of financial reporting for charitable gaming operations with annual gross revenues of $50,000 or less where, if permitted by the tribe, a charitable gaming operation may submit financial information on a monthly basis to the tribe or the TGRA and in turn, the tribe or TGRA provides an annual certification to the NIGC regarding the charitable gaming operation's compliance with the financial reporting. The proposed amendment also adds a provision clarifying that the submission of an adverse opinion does not satisfy the regulation's reporting requirements.

II. Reopening of Comment Period

At the request of interested parties, the Commission is reopening the comment period until August 1, 2022.

Washington, DC.

Michael Hoenig,

General Counsel.

[FR Doc. 2022–14911 Filed 7–12–22; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE–2022–0005]

Six Mile Munitions Storage Area on Joint Base Elmendorf-Richardson, Alaska; Knik Arm; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to revise its regulations to establish a restricted area within the explosive arc of Six Mile Munitions Storage Area (MSA) on Joint Base Elmendorf-Richardson (JBER). The United States Air Force—Pacific Air Command (USAF PACAF) requested establishment of a restricted area which would be located within the navigable waters of Knik Arm which are a part of the Six Mile MSA explosive arc. The proposed restricted area would extend from the shoreline to the outward limits of the arc. Establishment of the restricted area would prohibit all watercraft navigations and individuals from entering the explosive arc area of the Six Mile MSA at all times except for authorized vessels and individuals in

support of military training and management activities. This restricted area is necessary to avoid inadvertent entry into the explosive arc during an inadvertent detonation, and exposure to hazardous noise and fragments from such a detonation.

DATES: Written comments must be submitted on or before August 12, 2022.

ADDRESSES: You may submit comments, identified by docket number COE–2022–0005, by any of the following methods:

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

Email: david.b.olson@usace.army.mil. Include the docket number, COE–2022–0005, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO–R (David B. Olson), 441 G Street NW, Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2022–0005. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any compact disk you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend its regulations at 33 CFR part 334 to establish a restricted area within the navigable waters of Knik Arm. The proposed amendment to this regulation would allow the USAF PACAF 673rd Air Base Wing to prevent all vessels, watercraft, and individuals from entering the explosive arc area of the Six Mile MSA at JBER at all times, except for authorized vessels and individuals engaged in support of military training and management activities. The proposed restricted area would be in place as a precautionary measure to protect the public from inadvertently entering or being within the explosive arc during an inadvertent detonation, and encountering hazardous noise and fragments from such a detonation. The proposed restricted area would allow USAF PACAF to maintain control and reduce access to this area of Knik Arm, and to maintain the Six Mile MSA's Net Explosive Weight (NEW) storage capabilities. Without designation of a restricted area, the NEW storage capabilities would be required to be reduced, which would have significant impact to USAF PACAF's current operations (*i.e.,* mass re-warehousing would be required) and could affect wartime capabilities.

Procedural Requirements

a. *Regulatory Planning and Review.* This proposed rule is not a ''significant regulatory action'' under Executive Order 12866 (58 FR 51735, October 4, 1993) and it was not submitted to the Office of Management and Budget for review.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments).

The Corps 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. The restricted area is necessary to protect public safety. This restricted regulation would prevent all vessels, watercraft and individuals from entering, or remaining in, an active military range munitions impact area at all times, unless they are authorized by the enforcing agency. Small entities can utilize navigable waters outside of the restricted area. Unless information is obtained to the contrary during the comment period, the Corps expects that the economic impact of the proposed restricted area would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this restricted area regulation on small entities, I certify that this proposed rule would not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of the UMRA.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set forth above, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1303 to read as follows:

§ 334.1303 Navigable waters of Knik Arm within the explosive arc of the Six Mile Munitions Storage Area off the northeastern side of Joint Base Elmendorf-Richardson; restricted area.

(a) *The area.* The restricted area will consist of the waters with an area defined as beginning at a point on shore at latitude 61°17′35″ N, longitude 149°50′3″ W; thence northward in an arc to the mid-arc point at latitude 61°18′19″ N, longitude 149°50′6″ W; continuing northward in an arc to the end point on shore at latitude 61°18′36″ N, longitude 149°49′1″ W. The datum for these coordinates is NAD–83.

(b) *The regulation.* The restricted area is permanently closed for public use at all times. No persons, watercraft, or vessels shall enter, or remain, in the area except for those authorized by the enforcing agency.

(c) *Enforcement.* This regulation will be enforced by the United States Air Force Pacific Air Command 673rd Air Base Wing.

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2022–14723 Filed 7–12–22; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0049; FRL–8150–03–OAR]

RIN 2060–AU96

Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After 10/21/74 & On or Before 8/17/83; Standards of Performance for Steel Plants: Electric Arc Furnaces & Argon-Oxygen Decarburization Constructed After 8/17/83; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 16, 2022, the U.S. Environmental Protection Agency (EPA) proposed a rule titled ''Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After 10/21/74 & On or Before 8/17/83; Standards of Performance for Steel Plants: Electric Arc Furnaces & Argon-Oxygen Decarburization Constructed After 8/17/83.'' The EPA is extending the comment period on this proposed rule that currently closes on July 15, 2022, by 30 days. The comment period will now remain open until August 14, 2022, to allow additional time for stakeholders to review and comment on the proposal.

DATES: The public comment period for the proposed rule published in the **Federal Register** on May 16, 2022 (87 FR 29710), originally ending July 15, 2022, is being extended by 30 days. Written comments must be received on or before August 14, 2022.

ADDRESSES: Submit comments, identified by Docket ID No. EPA–HQ–OAR–2002–0049, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2002–0049 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2002–0049.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2002–0049, 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 operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions. All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. 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: For questions about this action, contact Donna Lee Jones, Metals and Inorganic Chemicals Group, Sector Policies and Programs Division (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5251 fax number: (919) 541–3207 email address: *Jones.DonnaLee@epa.gov.*

SUPPLEMENTARY INFORMATION:

Rationale. Based on consideration of requests received from environmental organizations (GASP (AL), GASP (PA), Fairfield Environmental Justice Alliance, and California Communities Against Toxics) and industry (Steel Manufacturers Association, American Iron and Steel Institute, and Specialty Steel Industry of North America), the EPA is extending the public comment period for an additional 30 days. Therefore, the public comment period will end on August 15, 2022.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2002–0049. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0049. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of

information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. 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 CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

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 and Reading Room 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.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the Docket ID No., mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the Docket ID No. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the Docket ID No. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2002–0049. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2022–14897 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2022–0395; FRL–9794–01–R4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to authorize changes to Tennessee's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes were outlined in an application to the EPA and correspond to certain Federal rules promulgated between January 1, 1983 and June 30, 2021. The EPA reviewed Tennessee's application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, in the ''Rules and Regulations'' section of this **Federal Register**, we are authorizing Tennessee for these changes as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received on or before August 12, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2022–0395, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Robin Billings, the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Please also contact Robin Billings 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.

All documents in the docket are listed in the *www.regulations.gov* index. Publicly available docket materials are available electronically in *www.regulations.gov.* For alternative access to docket materials, please contact Robin Billings, the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Robin Billings; RCRA Programs and Cleanup Branch; Land, Chemicals and Redevelopment Division; U.S. Environmental Protection Agency; Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8515; fax number: (404) 562–9964; email address: *billings.robin@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action on Tennessee's changes to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA), as amended. We have published a direct final rule authorizing these changes in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive an adverse comment, we will withdraw the direct final rule and it will not take effect. We would then address all public comments in a subsequent final rule and base any further decision on the authorization of the State program changes after considering all comments received during the comment period.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Dated: June 28, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–14517 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2021–0162; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BF54

Endangered and Threatened Wildlife and Plants; Removal of the Puerto Rican Boa From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Puerto Rican boa (*Chilabothrus inornatus,* but listed as *Epicrates inornatus*), an endemic snake from Puerto Rico, from the Federal List of Endangered and Threatened Wildlife (List). This determination is based on the best available scientific and commercial data, which indicate that the species has recovered and the threats to the species have been eliminated or reduced to the point that the species no longer meets the definition of an endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act). If this proposal is finalized, the Puerto Rican boa will be removed from the List and the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to the species.

DATES: We will accept comments received or postmarked on or before September 12, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 29, 2022.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2021–0162, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2021–0162, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: This proposed rule and supporting documents, including the species status assessment (SSA) report and references cited, the 5-year review, the Recovery Plan, and draft post-delisting monitoring plan are available at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2021–0162 and at the Caribbean Ecological Services Field Office website at *https://www.fws.gov/southeast/caribbean/.*

FOR FURTHER INFORMATION CONTACT: Edwin Muñiz, Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; email: *Caribbean_es@fws.gov;* telephone: (787) 405–3641.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants protection through listing if it is endangered or threatened. Conversely, a species may be removed from the List if the Act's protections are determined to be no longer required because the species is extinct, the species does not meet the definition of an endangered or a threatened species (because of, for example, recovery), or the listed entity does not meet the statutory definition of a species. We are proposing to remove the Puerto Rican boa from the List due to recovery. Removing a species from the List can be completed only by issuing a rule.

What this document does. This rule proposes to delist the Puerto Rican boa based on its recovery.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species based on the five factors described in section 4(a)(1) of the Act: The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A); overutilization for commercial, recreational, scientific or educational purposes (Factor B); disease or predation (Factor C); the inadequacy of existing regulatory mechanisms (Factor D); and other natural or humanmade factors affecting its continued existence (Factor E). We must consider the same factors in removing a species from the List (delisting).

Under the Act and our implementing regulations at 50 CFR 424.11, we may delist a species if the best available scientific and commercial data indicate that: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species when considering the five factors listed above; or (3) the listed entity does not meet the statutory definition of a species. Here, we have determined that the Puerto Rican boa should be proposed for delisting under the Act because, based on an analysis of the five listing factors, it has recovered and no longer meets the definition of an endangered species or a threatened species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not delist the Puerto Rican boa;

(2) New information on the historical and current status, range, distribution, and population size of the Puerto Rican boa;

(3) New information on the known and potential threats to the Puerto Rican boa, including development and habitat loss, nonnative snakes and other nonnative species, and diseases;

(4) New information regarding the life history, ecology, and habitat use of the Puerto Rican boa;

(5) The extent of protection and management that would be provided by the Commonwealth of Puerto Rico to the Puerto Rican boa as a delisted species; and

(6) The draft post-delisting monitoring plan and the methods and approaches detailed in it.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as endangered, or we may conclude that the species should be reclassified as threatened.

Public Hearing

Section 4(b)(5)(E) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations in title 50 of the Code of Federal Regulations (CFR) at § 424.16(c)(3).

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the Puerto Rican boa. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The SSA report and other materials relating to this proposal can be found at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2021–0162, and at the Caribbean Ecological Services Field Office website at *https://www.fws.gov/southeast/caribbean/.*

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994), our August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we solicited independent scientific reviews of the information contained in the Puerto Rican boa SSA report. We sent the SSA report to nine independent peer reviewers and received eight responses. The SSA report was also submitted to our Federal, Commonwealth, and Tribal partners for scientific review. We received review from seven partners. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the final SSA report, which is the foundation for this proposed rule.

Previous Federal Actions

The Puerto Rican boa (as *Epicrates inornatus*) was originally listed as an endangered species on October 13, 1970 (35 FR 16047), under the Endangered Species Conservation Act of 1969, and remained listed with the passage of the Act in 1973. A recovery plan for the Puerto Rican boa was completed on March 27, 1986 (Service 1986, 21 pp.), and modified on September 27, 2019 (Service 2019, 9 pp.). In 1991, we initiated a 5-year review for the Puerto

Rican boa (56 FR 56882; November 6, 1991), but we did not formally complete that review. We completed a 5-year status review for the Puerto Rican boa on September 16, 2011 (Service 2011, 26 pp.) and did not recommend to reclassify or delist the Puerto Rican boa due to remaining threats and lack of population data (Service 2011, pp. 16–17).

On August 22, 2016, we announced that we were initiating a 5-year review for the Puerto Rican boa and 13 other Caribbean species, and we requested new information that could have a bearing on the status of the Puerto Rican boa (81 FR 56692). We completed an SSA in 2021 (Service 2021, 66 pp.) to inform the most recent Puerto Rican boa 5-year review. This proposed rule also serves as our 5-year review of the species.

For additional details on previous Federal actions, including recovery actions, go to *https://www.fws.gov/program/endangered-species* and search for the species' profile.

Background

A thorough review of the taxonomy, life history, and ecology of the Puerto Rican boa is presented in the SSA report, version 1.1 (Service 2021, 66 pp.), which is available at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2021–0162 and is summarized in this proposed rule.

The Puerto Rican boa is a large, semi-arboreal, nocturnal, nonvenomous snake endemic to Puerto Rico with the largest recorded sizes around 2 meters (m) (6.6 feet (ft)) in length (Reagan 1984, p. 121; Wiley 2003, p. 192). Dorsal coloration of the Puerto Rican boa is variable and has been described from tan to reddish brown to very dark brown, with several dark bars or spots along its body; juveniles may have a reddish color (Rivero 1998, p. 432).

The Puerto Rican boa uses both ambush and active foraging modes, eating smaller prey when young and mostly rats as they get larger (Rivero 1998, p. 432; Wiley 2003, p. 190; Henderson and Powell 2009, p. 349). In general, prey items include rats, mice, bats, lizards, birds (including domestic fowl), and frogs, but even land crabs and insect fragments have been found in stomach contents (Rodríguez and Reagan 1984, p. 219; Rodríguez-Durán 1996, entire; Rivero 1998, p. 432; Wiley 2003, p. 190; Henderson and Powell 2009, p. 349; Puente-Rolón 2012, p. 54).

Although the Puerto Rican boa is considered widely distributed, it is not uniformly abundant across the island and has a reported elevation range from sea level to 1,050 m (3,445 ft) (Henderson and Powell 2009, p. 349). Earlier occurrence records for the Puerto Rican boa described its wide distribution, with the species occurring in protected, rural, and developed areas (Pérez-Rivera and Vélez, Jr. 1978, p. 71). Later descriptions of Puerto Rican boa distribution increased the occurrence records for the species' wide distribution (Bird-Picó 1994, p. 33; Rivero 1998, p. 433; Wiley 2003, p. 190). The Puerto Rican boa has been reported in all of the municipalities on the main island of Puerto Rico (Puente-Rolón 2018, pers. comm.; Service 2021, p. 14).

The Puerto Rican boa is considered a habitat generalist (Reynolds et al. 2016, p. 1883) and tolerates a wide variety of habitat types (terrestrial and arboreal) (Tolson and Henderson 1993, p. 45; Joglar 2005, p. 143; Henderson and Powell 2009, p. 349). Cave systems and their surrounding forests are identified as particularly important for the Puerto Rican boa because of the ecological resources available (*i.e.,* prey, shelter, thermal gradients, and mating opportunities) (Puente-Rolón and Bird-Picó 2004, pp. 349–350).

In general, Puerto Rican boas have smaller home ranges when associated with more productive habitats (*e.g.,* concentrated food resources) like cave ecosystems (Puente-Rolón and Bird-Picó 2004, p. 349; Wunderle et al. 2004, p. 567). In areas where food resources are more dispersed or in lower densities, the Puerto Rican boa needs larger home ranges (Puente-Rolón and Bird-Picó 2004, p. 349; Wunderle et al. 2004, p. 567). However, in urban karst landscapes, such as Fort Buchanan, Puerto Rican boas tend to have intermediate home range sizes that might be due to the scarcity and fragmentation of suitable habitat and the presence of artificial barriers like roads (Mulero-Oliveras 2019, p. 33).

Although the actual life span of Puerto Rican boas in the wild is unknown, they may live between 20 and 30 years (Rivero 1998, p. 433; Henderson and Powell 2009, p. 349). The specific time for a Puerto Rican boa to reach sexual maturity is also unknown, but reproductive females that are older than 17 years of age have been found (Tolson 1991, p. 100).

Courtship and mating of the Puerto Rican boa is seasonal, and reproduction appears to be mostly biennial in the wild (Huff 1978, p. 96; Tolson and Henderson 1993, p. 45; Tolson 1994, p. 355). Although there can be some temporal variability in the Puerto Rican boa's reproductive activity, courtship usually starts in February and March, and mating for most Puerto Rican boas is reported to occur at the beginning of the wet season, from late April to May (Tolson and Henderson 1993, p. 45; Tolson 1994, p. 355; Puente-Rolón 2012, p. 85). Puerto Rican boas are born after a gestation period of approximately 5 to 6 months (Huff 1978, p. 97; Rivero 1998, p. 433; Puente-Rolón 2012, p. 85). Thus, the reproductive cycle of the Puerto Rican boa is synchronized with the seasonal patterns of precipitation and temperature in Puerto Rico (Huff 1978, p. 96; Tolson and Henderson 1993, p. 45; Puente-Rolón 2012, p. 85).

The Puerto Rican boa was considered relatively rare by the 1900s (Stejneger 1904, p. 691) and is probably less abundant now than it was in Pre-Columbian times, when Puerto Rico had extensive forest cover (Reagan 1984, p. 119). However, the Puerto Rican boa is more abundant today than at the time of listing in 1970 (Service 2011, entire). This increase is probably in part due to the increase in forested areas in Puerto Rico (Lugo and Helmer 2004, p. 145; Kennaway and Helmer 2007, p. 356; Parés-Ramos et al. 2008, p. 1). In general, the species is more abundant in the karst region of northern Puerto Rico and less abundant in the dry southern region of the island (Rivero 1998, p. 433).

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The Puerto Rican Boa Recovery Plan (recovery plan), issued by the Service on March 27, 1986 (Service 1986, entire), did not contain measurable criteria. On September 27, 2019, the Service issued an amendment to the recovery plan (Service 2019, 9 pp.) that includes delisting criteria. The following discussion provides an assessment of the delisting criteria as they relate to evaluating the status of this species.

Delisting Criterion 1

Delisting Criterion 1 reads: ''At least three Puerto Rican boa populations (moist limestone (*i.e.,* moist karst), wet limestone (*i.e.,* wet karst), and montane forest regions) occupy at least 50 percent of the species' suitable habitat, and populations are distributed island-wide.'' The intent of this criterion is to maintain the species' viability (resiliency, representation, redundancy) in at least 50 percent of suitable habitat throughout its range. Although this criterion specifies having ''at least three Puerto Rican boa populations,'' we now consider there to be one contiguous, interbreeding, island-wide population and evaluate this criterion as such (see ''Current Resiliency,'' below). The current abundance estimate of between 37,903 and 189,515 boas and the density estimates of 1.2 boas per ha (2.5 ac) to 5.6 boas per ha (2.5 ac) (see ''Current Resiliency,'' below) were used to evaluate this criterion.

For the purposes of evaluating this criterion, we also considered both natural and developed habitat as described in the SSA report (Service 2021, p. 36), which combined three land use types with the predicted suitable habitat of the species (see ''Current Resiliency,'' below). Natural and developed areas include not only karst and forest habitat types, but also a broader island-wide diversity of habitats per the species' predicted habitat model (Gould et al. 2008, p. 50; Service 2021, pp. 36–37). Habitat classifications occur within a diversity of currently occupied areas ranging from urban and densely populated landscapes to sparsely populated and rural landscapes (Gould et al. 2008, p. 50).

The current resilience evaluation used the Puerto Rico Gap Analysis Project (PRGAP) predicted habitat model (379,029 ha or 936,601 ac), of which 57 percent falls within natural habitat as described (see ''Current Resiliency,'' below). Natural habitats that occur within public and private protected lands are the most important areas for maintaining the species' current and future viability. Examples of such areas include the El Yunque National Forest, Commonwealth Forests within the northern and southern karst areas, Mata de Plátano and El Tallonal Nature Reserves, and Puerto Rico Conservation Trust lands. Areas in the northern and southern karst regions are particularly important for the Puerto Rican boa and provide some of the best habitat currently occupied by the species. The Puerto Rican boa also currently occupies suitable habitat within certain developed landscapes that provide conservation benefits as well (*e.g.,* Fort Buchanan, Julio Enrique Monagas State Park, and Las Cabezas de San Juan).

Ultimately, the Puerto Rican boa is considered a habitat generalist and occurs within a variety of landscapes (Reynolds et al. 2016, p. 1883). Using the minimum population estimate of more than 37,000 boas island-wide, and confirmed occurrence records for the species, we consider the Puerto Rican boa to be well represented within suitable habitats across its range and conclude that the intent of this criterion has been met.

Delisting Criterion 2

Delisting Criterion 2 reads: ''Populations show a stable or increasing population trend, evidenced by natural recruitment and multiple age classes.''

Multiple age classes of Puerto Rican boas have been documented indicating natural recruitment within the population (Mulero-Oliveras 2022, pers. comm.). We do not have population trend data for the Puerto Rican boa, however, the best available information indicates that the species is relatively abundant and has a broad distribution across a variety of natural and developed habitats as explained in *Delisting Criterion 1.* The species is both more abundant and widely distributed today than at the time of listing. The apparent increase in population abundance is largely attributed to the increase in forested areas in Puerto Rico (Lugo and Helmer 2004, p. 145; Kennaway and Helmer 2007, p. 356; Parés-Ramos et al. 2008, p. 1), and the designation of protected areas within habitats that Puerto Rican boas occupy (Castro-Prieto et al. 2019, p. 54). Based on this information, we consider this criterion to be met.

Delisting Criterion 3

Delisting Criterion 3 reads: ''Threat reduction and management activities have been implemented to a degree that the species will remain viable for the foreseeable future.''

One of the main threats to Puerto Rican boas is habitat loss, degradation, and fragmentation. These threats can also exacerbate other threats, such as road kill and increased conflicts with humans and nonnative animals such as cats, as well as the need for management (*e.g.,* translocations). Thus, the occurrence of Puerto Rican boas within areas designated for conservation is the most important positive influence towards the species' persistence and viability.

Puerto Rican boas occur within several protected areas (Service 2019, pp. 5–6; Service 2021, pp. 23–24). In particular, the northern karst region, which is preferred habitat for the Puerto Rican boa, consists of numerous protected areas, private lands, and Federal lands where Puerto Rican boas are known to occur. A detailed description of protected lands within Puerto Rico is provided in ''Development and Habitat Protection,'' below.

The Puerto Rican boa is protected under Commonwealth laws, including Law No. 241–1999 (*Nueva Ley de Vida Silvestre de Puerto Rico* (New Wildlife Law of Puerto Rico)) and Regulation 6766 or *Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico* (Regulation 6766: To govern the management of threatened and endangered species in the Commonwealth of Puerto Rico). The purpose of Law No. 241–1999 is to protect, conserve, and enhance both native and migratory wildlife species; declare property of Puerto Rico all wildlife species within its jurisdiction; and regulate permits, hunting activities, and exotic species, among other

activities. Law No. 241–1999 also prohibits the modification of natural habitat without a mitigation plan approved by the Puerto Rico Department of Natural and Environmental Resources (DNR).

Various other laws have also been approved by the Commonwealth of Puerto Rico that will continue to provide protection to the Puerto Rican boa and its habitat. Law No. 292–1999, *Ley para la Protección y Conservación de la Fisiografía Cársica de Puerto Rico* (Puerto Rico Karst Physiographic Protection and Conservation Law), was approved in 1999 to protect karst areas as one of the most valuable natural resources of the island. This law indirectly protects the Puerto Rican boa and all other species that occur in the karst and provides for stricter land regulations to prohibit development within the Karst Restricted Zone (Castro-Prieto et al. 2019, p. 59). In addition, the Puerto Rico Conservation Trust has acquired lands for conservation within the northern and the southern karst regions of Puerto Rico, in areas where Puerto Rican boas have been confirmed (Service 2019, pp. 5–6).

The northern and the southern karst regions of Puerto Rico harbor the majority of cave formations on the island, which are essential habitat for this species. The cave populations of Puerto Rican boas are genetically diverse and represent excellent targets for conservation and for maintaining the species' genetic diversity (see ''Current Representation,'' below). Therefore, the conservation and protection efforts, and the corresponding reduction of the threats in lands where these formations are located, help to maintain sufficient resiliency of this species, promote its dispersion and recolonization of unoccupied habitats (representation), and improve its potential to adapt to natural and anthropogenic changes (redundancy).

As explained below in ''Translocations,'' the translocation of Puerto Rican boas has been implemented with varying degrees of success to avoid and minimize potential detrimental effects on the species from development and other human-boa conflicts. Because the species will continue to be protected by the DNR, pursuant to the laws and regulations discussed above, the Puerto Rican boa translocation strategies as a conservation management activity are expected to continue.

Based on our review of current local laws, regulations, and protected lands that have provided protection for the species, have helped to reduce the impact of threats, and will continue to provide benefits to the species into the foreseeable future, we conclude that the status of the Puerto Rican boa is improved throughout its range as a result of these protections, and that this criterion has been met.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species''. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in delisting a species (50 CFR 424.11(c) and (e)).

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial

data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for removal from the List (''delisted''). However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R4–ES–2021–0162 on *https://www.regulations.gov* and on the Caribbean Ecological Services Field Office website at *https://www.fws.gov/southeast/caribbean/.*

To assess the Puerto Rican boa's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (*e.g.,* wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (*e.g.,* droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (*e.g.,* climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the Puerto Rican boa and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Influences on Viability

Development and Habitat Protection

The Puerto Rican boa occurs on both private and public land. Puerto Rican boas that occur outside of protected habitat may be more vulnerable to deforestation and land impacts associated with commercial, industrial, highway, and urban development. In Puerto Rico, human activity has been described as ''intense, pervasive, and fragments natural habitat'' (Lugo and Helmer 2004, p. 156). Although forest areas have increased in Puerto Rico, unprotected forests are vulnerable to urban development, particularly those near or within urban centers (Kennaway and Helmer 2007, p. 376). Urban growth in Puerto Rico increased at a rate of 16 percent between 2000 to 2010 (Castro-Prieto et al. 2017, p. 476). In 2007, about 5.2 percent of the island was protected (Kennaway and Helmer 2007, p. 357); this increased to 8 percent by September 2015 (Castro-Prieto et al. 2017, p. 474). By December 2016, 159 terrestrial protected areas occurred in Puerto Rico, representing 16.1 percent of the island. However, this increase largely reflected a more inclusive definition of ''protected area,'' extending that to the Restricted Zone within the Karst Special Planning Zone (Castro-Prieto et al. 2019, p. 54). As of December 2018, approximately 16.4 percent of terrestrial protected areas were classified as areas for conservation (Castro-Pietro et al. 2019, pp. 57–59).

Consequences of human development on Puerto Rican boa habitat include habitat loss and fragmentation as land is deforested for development (*e.g.,* commercial, industrial, and highway development, and urbanization) and areas of suitable habitat are increasingly isolated from each other. Direct impacts on Puerto Rican boas may include harassment, harm, and mortality due to trampling with construction and vegetation clearing machinery, road kills, predation by domesticated and feral cats associated with human populations, competition with other nonnative species (*i.e., Boa constrictor*), and persecution by the public and poachers (Service 2011, pp. 12–16). As Puerto Rican boa habitat is modified and developed, it increases human-boa conflicts, thus exacerbating these direct impacts and also increasing the need to translocate Puerto Rican boas (Service 2021, pp. 26–28). These factors have the potential to impact population resiliency by affecting the species' breeding and reproductive success and by limiting connectivity among suitable habitats.

In 1999, the Commonwealth of Puerto Rico approved Law No. 241–1999 (title 12 of the Laws of Puerto Rico Annotated (L.P.R.A.), section 107), known as *Nueva Ley de Vida Silvestre de Puerto Rico* (New Wildlife Law of Puerto Rico); presently, the Puerto Rican boa is legally protected under this law. The purpose of this law is to protect, conserve, and enhance native and migratory wildlife species; declare as property of Puerto Rico all wildlife species within its jurisdiction; and regulate permits, hunting activities, and exotic species, among other activities. This law also has provisions to protect habitat for all wildlife species, including plants and animals. In 2004, the DNR approved Regulation 6766 or *Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico* (Regulation 6766: To govern the management of threatened and endangered species in the Commonwealth of Puerto Rico). Law No. 241–1999 prohibits the modification of natural habitat (including Puerto Rican boa habitat) without a mitigation plan approved by the DNR (Service 2011, p. 15).

The DNR has developed similar conservation measures as provided in section 7 of the Act to avoid and minimize potential effects of development projects on the Puerto Rican boa, conservation measures are implemented with varying degrees of success and oversight (Service 2021, pp. 26–28). Because the Puerto Rican boa is a cryptic species, not all boas are likely to be detected during survey efforts, thus making it challenging to avoid or detect take of the species.

The Puerto Rican boa occurs within several protected areas, including El Yunque National Forest, the largest reserve in Puerto Rico. The Puerto Rican boa is also presumed to occur in all Commonwealth forests managed by the DNR (Rivera 2019, pers. comm.), and has been reliably confirmed to occur within the Río Abajo, Guajataca, Camabalache, Vega, and Maricao forests (Service 2021, Appendix B). The species has also been confirmed in the Guánica Commonwealth Dry Forest; however, the species is extremely rare there (Canals 2019, pers. comm.), with a single record from 1974 (Wiley 2003, p.

190) and limited fossil evidence (Pregill 1981, p. 50). This rarity is consistent with the general description that the species is less abundant in the dry southern region of the island (Rivero 1998, p. 433).

Within the karst region of Puerto Rico, the Karst Restricted Zone (Zone) has strict land regulations (Ortíz-Maldonado et al. 2019, entire; Service 2021, Appendix B). This Zone represents 7.2 percent of the total area of Puerto Rico, includes both public and private lands, and was designated for conservation purposes by prohibiting land exploitation of any type (Castro-Prieto et al. 2019, p. 59). The Puerto Rico Conservation Trust, through its unit *Para La Naturaleza,* also manages numerous protected natural areas throughout Puerto Rico where the Puerto Rican boa has been confirmed as well: El Convento Caves, Cabezas de San Juan, Río Jacaboa, Río Encantado, Río Maricao, Hacienda La Esperanza, and Cordillera Sabana Alta (Ortíz-Maldonado et al. 2019, entire; Service 2021, Appendix B). Other protected areas that are important for the Puerto Rican boa are Julio Enrique Monagas State Park, Mata de Plátano Nature Reserve, and El Tallonal Private Reserve (managed by the nongovernmental organization, Citizens of the Karst) (Ortíz-Maldonado et al. 2019, entire; Service 2021, Appendix B). Fort Buchanan, managed by the Department of Defense, is important for the Puerto Rican boa and has an Integrated Management Resource Management Plan with an endangered species management plan to protect federally listed species in coordination with the Service and the DNR.

Since 2001, the Service's habitat restoration programs (*i.e.,* Partners for Fish and Wildlife, and coastal programs) have been actively restoring private lands previously impacted by agricultural activities to provide suitable habitat for the Puerto Rican boa and other species within these regions.

The occurrence of Puerto Rican boas within areas designated for conservation is the most important positive influence towards the species' persistence and viability. However, even within these protected areas, Puerto Rican boas are still vulnerable to certain risks like roadkill, intentional killings, and predation by cats, especially along the edges of forests close to human settlements. A number of studies have documented roadkill of Puerto Rican boas both within and outside El Yunque National Forest (Reagan 1984, p. 125; Wiley 2003, p. 189), with records as far back as the 1970s (Wiley 2003, pp. 191–192). Puerto Rican boa deaths associated with roads and development continue to occur today, with documentation through both social media and project consultation reports (Zegarra 2019, pers. comm.).

In summary, since its listing in 1970, there has been an island-wide increase in forested areas, directly benefiting the Puerto Rican boa by increasing available habitat. Beginning in the 1990s, numerous Federal and Commonwealth laws have been implemented that provide habitat protections in areas where Puerto Rican boas occur. Additionally, restoration of private and public lands that were historically impacted by deforestation, agricultural conversions, and other human development activities have also benefitted the species. These habitat protection and conservation measures have contributed to the current, relatively high, island-wide abundance of Puerto Rican boas.

Nonnative Species

Another risk to the Puerto Rican boa is the presence of nonnative mammalian predators, namely cats (*Felis catus*) and mongoose (*Herpestes auropunctatus*). Neonate and juvenile life stages are thought to be the most vulnerable to nonnative predators, and cats are thought to have the greatest effect since they hunt both by day and night. Puerto Rico has a pervasive and unmanaged feral cat population associated with human settlements, even occurring within protected areas like El Yunque National Forest (Engeman et al. 2006, p. 95) and Cambalache State Forest (Rodríguez-Velázquez et al. 2019, entire). Cats on islands affect native vertebrates, including reptiles such as the Jamaican boa (*Chilabothrus subflavus*; Medina et al. 2011, Appendix S1), Virgin Islands tree boa (*C. granti*), and Mona boa (*C. monensis*) (Tolson 1996, p. 409). However, there are no specific data to accurately assess the level of impact of feral cats on the Puerto Rican boa population.

The mongoose does not appear to have seriously impacted the Puerto Rican boa population (Rivero 1998, p. 432). Although a mongoose might occasionally eat a neonate or juvenile Puerto Rican boa, studies of mongoose food habits in Puerto Rico and throughout the Caribbean have not documented any such predation (Pimentel 1955, entire; Henderson 1992, entire). Remains of a dead Puerto Rican boa were found with tooth impressions consistent with mongoose, but scavenging rather than predation was suggested (Wiley 2003, p. 193).

There is now a well-known and reproductively established population of *Boa constrictor* in Puerto Rico that likely originated near Mayagüez around the 1990s from a genetic lineage common to zoo and breeding collections (Reynolds et al. 2013, entire). This relatively recent invasion of a large snake is an emerging concern for the Puerto Rican boa. As with cats, the *Boa constrictor* has been established on Puerto Rico for several decades, but there is insufficient information to rigorously assess or measure the risks that this nonnative snake is having on the Puerto Rican boa population. Although the specific risks of this species on the Puerto Rican boa is uncertain, potential risks from this nonnative snake may include competition for food resources, displacement, and vectors for pathogens or parasites (Reed and Rodda 2009, entire). Nonnative snake species also cause public confusion between which species are in need of conservation (native snakes) and which are not (nonnative snakes). There are also several recent sightings in Puerto Rico of the larger Reticulated python (*Malayopython reticulatus*), but this invasion is apparently more recent and more restricted than the *Boa constrictor.*

Overall, nonnative species, especially predators such as cats and mongoose, may have an impact on individual Puerto Rican boas (*e.g.,* killing or harming individuals), but the Puerto Rican boa is currently considered to have a wider distribution that when listed and there is no information currently available to suggest that nonnative species are having a significant effect on the overall population status of the Puerto Rican boa.

Translocations

For many years, the translocation of Puerto Rican boas out of developed areas has been used as a management strategy to minimize conflicts with the public and minimize potential effects of development projects that disturb and modify Puerto Rican boa habitat. Translocations move Puerto Rican boas from areas of human-boa conflict into areas where these conflicts are potentially reduced (*e.g.,* suitable protected Puerto Rican boa habitat away from humans). Although this strategy has been used for a long time, translocations have been poorly documented. Critical information on how many Puerto Rican boas were moved, their size classes, when and how they were moved, and where they were relocated is largely unavailable, and there is no information on the condition or the survival of these animals. In addition, Puerto Rican boas

are sometimes moved to a holding facility (Puente-Rolón et al. 2013, p. 8). This has raised concerns about the impact that these practices might have on wild Puerto Rican boa populations, both in numbers being removed and the potential spread of infectious diseases (see Disease section below).

Despite poorly documented Puerto Rican boa translocation practices, research has shown that translocations can work when conducted correctly (Puente-Rolón 2012, p. 116; Puente-Rolón et al. 2013, p. 7; Mulero-Oliveras 2019, p. 69). For example, Fort Buchanan personnel maintain a record of Puerto Rican boa sightings and translocations in their facility. They developed a protocol to capture and translocate Puerto Rican boas that are found inside or around structures (houses and buildings) and construction sites. Captured Puerto Rican boas are translocated to forested areas previously identified as boa habitat within Fort Buchanan. Although some Puerto Rican boas tend to travel back to their original capture site, most boas remain within the new transfer area. Thus, translocation strategies that consider the type and amount of habitat at release sites and the distance to the initial capture location are most successful (Puente-Rolón 2012, p. 116; Mulero-Oliveras 2019, p. 69). Fort Buchanan's management, research, and education efforts are examples of the positive influence of conservation on Puerto Rican boas. The U.S. Forest Service staff at El Yunque National Forest also successfully translocated live Puerto Rican boas within the forest (Ilse 2020, pers. comm.).

Translocations can be an effective management tool for minimizing conflict with the public and for protecting Puerto Rican boas from development and other activities.

Poaching and Intentional Killings

The hunting of Puerto Rican boas to extract their fat due to the alleged medicinal properties of the snake ''oil'' has been reported since the 1930s (Grant 1933, p. 225; Rivero 1998, p. 433) and was identified as a factor contributing to the species' decline (Pérez-Rivera and Vélez, Jr. 1978, p. 70). The practice of hunting Puerto Rican boas for their fat continued through the early 2000s (Reagan 1984, p. 119; Joglar 2005, pp. 162–163). In addition, one report of snake meat being used for human consumption occurred in the 1990s (Bird-Picó 1994, p. 35), and there are reports of Puerto Rican boas collected to be kept as pets (Joglar 2005, p. 146). Based on the best available information, the practice of hunting or capturing Puerto Rican boas may still occur, but probably on a limited basis as outreach and education efforts have increased.

Killing of Puerto Rican boas out of fear, religious prejudice, or ignorance may occur. However, most, if not all, of the available information on these killings is anecdotal, and there are no data to determine the level of impact this is having on the Puerto Rican boa population (Puente-Rolón and Bird-Picó 2004, p. 343; Mulero-Oliveras 2019, p. 6). In addition, development and habitat destruction may also exacerbate killing of Puerto Rican boas as it may increase human-boa interactions, especially in close proximity to prime Puerto Rican boa habitat. Even within protected habitat in El Yunque National Forest, one Puerto Rican boa was recently found on a trail with its head chopped off (Ilse 2020, pers. comm.). Although both Federal and local laws and regulations currently prohibit the killing of Puerto Rican boas and commercial use of Puerto Rican boas, most of these cases are thought to go unreported (Service 2021, p. 28).

Hurricanes and Post-hurricane Restoration Actions

While there is scarce information on the potential direct effects of hurricanes on the Puerto Rican boa, some inferences can be drawn from the effects of recent hurricanes. After Hurricane Georges in September 1998, some Puerto Rican boas at El Yunque National Forest increased their movements and changed their habitat use, suggesting Puerto Rican boas responded as expected to hurricane alterations in forest cover and prey distribution (Wunderle et al. 2004, p. 555). Additionally, hurricane damage (*i.e.,* loss of leaves, vines, and branches) may limit the arboreal use and movements of Puerto Rican boas (Wunderle et al. 2004, p. 569). Depending on the hurricane category and damages caused, we can expect that some Puerto Rican boas, including adult and juvenile individuals, may die due to injury from falling debris or other unknown sources. For example, the category 4 Hurricane María in September 2017 caused more than 40,000 landslides in at least 75 percent of Puerto Rico's 78 municipalities (Bessette–Kirton et al. 2019, p. 4). Such landslides may have caused the death of Puerto Rican boas in some areas.

Puerto Rican boa casualties have also been documented during post-hurricane restoration actions. Infrastructure restoration (*e.g.,* clearing or opening new rights-of-way) and debris collection and disposal after Hurricane Maria was anticipated to cause some impacts to the Puerto Rican boa in the form of death or injury. Projects with a Federal nexus were evaluated through an emergency consultation under section 7 of the Act. Although the emergency consultation process included Puerto Rican boa conservation measures, at least four Puerto Rican boas were killed at least nine captured and relocated during post-hurricane debris management activities. Because Puerto Rican boas are difficult to detect, we suspect that more Puerto Rican boas may have been killed during these activities. Moreover, since the emergency consultation only covered projects with a Federal nexus, it is likely that an unknown number of other hurricane-related restoration projects without Federal involvement could have negatively impacted the species.

Despite direct impacts from past and more recent hurricanes, and post-hurricane debris management on the species' habitat, the Puerto Rican boa continues to be reported throughout its range. Thus, individual Puerto Rican boas are likely impacted by hurricanes and post-hurricane restoration activities, but overall, based on the best information available, this threat does not appear to have population-level effects.

Disease

Initially observed in 2006, ophidiomycosis (formerly known as snake fungal disease and likely caused by the fungal pathogen *Ophidiomyces ophiodiicola*) was considered an emerging disease documented in both wild and captive snakes throughout most of the eastern United States by 2015 (Lorch et al. 2016, p. 2; Allender et al. 2019, p. 7). However, ophidiomycosis is now considered a widespread, previously unrecognized endemic disease (Allender et al. 2019, p. 6; Davy et al. 2021, entire). Ophidiomycosis can cause lethal infections, but multiple factors may determine impacts of ophidiomycosis on snake populations (Lorch et al. 2016, pp. 2, 6; Davy et al. 2021, p.2). Signs of ophidiomycosis include crusted, ulcerated, and discolored scales; nodules under the skin; and a swollen or disfigured face, leading to emaciation and death (Thompson et al. 2018, p. 1; McKenzie et al. 2019, p. 142). Secondary effects from the disease may include starvation, poor body condition, and bacterial infection, possibly leading to mortality (Lorch et al. 2016, pp. 4–5; McKenzie et al. 2019, p. 142). Behavioral changes in infected individuals may include abnormal or excessive molting, decrease in activity, frequency in ecdysis (shedding of skin),

and abnormal behaviors such as anorexia and basking in open and conspicuous areas which can increase the risk of mortality (Lorch et al. 2016, pp. 4–5; Thompson et al. 2018, p. 2).

In 2018, ophidiomycosis was first confirmed in Puerto Rican boas within Fort Buchanan (Allender et al. 2019, p. 20). Out of seven live Puerto Rican boas sampled, one showed clinical signs (dermal lesions) of ophidiomycosis and had a positive DNA test. Samples from three other Puerto Rican boas from Fort Buchanan showed clinical signs but had negative test results.

This disease may be underreported in populations where it affects snakes infrequently or in species that develop less severe symptoms (Thompson et al. 2018, p. 1), which may be the case for the Puerto Rican boa. Preliminary results from an ongoing study show additional positive results for at least 11 Puerto Rican boas, mostly sampled in caves (Mulero-Oliveras 2021, pers. comm.). There are also positive results for other native and nonnative snake species being sampled (*i.e., Chilabothrus granti, Borikenophis portoricensis, Boa constrictor, Malayopython reticulatus*).

Currently, there have been no reported fatalities of Puerto Rican boas associated with ophidiomycosis. We do not have sufficient information on the potential future spread of ophidiomycosis to reliably model this threat for forecasting future conditions for the Puerto Rican boa. However, based on the best available information, ophidiomycosis does not appear to have population-level effects on the Puerto Rican boa population, and given the lack of evidence for population level effects in other snake populations (Davy et al. 2021, p. 8), we do not consider this disease to be a primary threat to this species.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2014, p. 2). Projections for future precipitation trends are less certain than those for temperature, but suggest that overall annual precipitation will decrease, and that tropical storms will occur less frequently, but with more force (more category 4 and 5 hurricanes) than historical averages (Knutson et al. 2010, entire; Carter et al. 2014, entire). These predictions are consistent with the predicted scenario of a gradual trend towards a drier and hotter climate for Puerto Rico (Khalyani et al. 2016, entire; Bhardwaj et al. 2018, entire).

The Puerto Rican boa's reproductive cycle is synchronized with seasonal patterns of precipitation and temperature (Huff 1978, p. 96; Tolson and Henderson 1993, p. 45; Puente-Rolón 2012, p. 85), and climate variations may affect availability of prey such as rats (Puente-Rolón 2012, p. 89). Thus, climate change may alter certain critical aspects of the biology of the Puerto Rican boa, potentially shifting the reproductive activity of adults and reducing fitness. Puerto Rican boa habitat is also expected to change with the predicted shifts in life zones, as rain, wet, and moist zones gradually become drier (Khalyani et al. 2016, p. 265). This shift would potentially reduce the amount of available suitable habitat for the Puerto Rican boa. In general, all habitats are susceptible to one or more climate change stressors, such as sea level rise, increased severity of storms (*i.e.,* hurricanes), increased droughts, and higher temperatures (Puerto Rico Climate Change Council (PRCCC) Working Group 2 2013, pp. 157–168).

Species that are dependent on specialized habitat types, limited in distribution, or at the extreme periphery of their range are most susceptible to the impacts of climate change (Byers and Norris 2011, p. 22). However, none of these conditions applies to the Puerto Rican boa, which is a habitat generalist (Reynolds et al. 2016, p. 1883) and has an island-wide distribution. However, several potential mechanisms for climate change impacts have been suggested, including increased physiological stress on the Puerto Rican boa and exacerbation of the species' response to pathogenic infections (PRCCC Working Group 2 2013, p. 162). Climate change may also affect the species' dispersal behavior, increase its feeding frequency, reduce the availability of prey, and increase water loss, further affecting the survival of the Puerto Rican boa (PRCCC Working Group 2 2013, p. 162). Lastly, although sea level rise is not specifically mentioned as a potential threat to the Puerto Rican boa (PRCCC Working Group 2 2013, p. 164), we expect sea level rise to reduce available coastal habitat. Sea level rise projections for Puerto Rico are between 0.4 m (1.3 ft) and 1.0 m (3.2 ft) by the year 2100 (PRCCC Working Group 2 2013, p. 67) and could reduce or degrade habitat within coastal mangrove forests. However, because the Puerto Rican boa is a habitat generalist, we do not expect the potential loss of coastal habitat to sea level rise, to have population-level effects.

In summary, climate change may cause changes in some of the Puerto Rican boa's life-history strategies (*e.g.,* timing of reproduction), or it may impact habitats that Puerto Rican boas use (*e.g.,* coastal habitats), but overall, because the Puerto Rican boa is a habitat generalist, and based on the best information currently available, we do not anticipate that climate change will have population-level effects on the species in the foreseeable future.

Current Condition

A more recent study within the urban landscape of Fort Buchanan documented a total of 50 live and 9 dead Puerto Rican boas from 2013 to 2017 (Mulero-Oliveras 2019, p. 23). Thirty-eight of the live individuals were used for the per person-hour estimate of the Puerto Rican boa population in Fort Buchanan, resulting in a general population density of 1.2 boas per ha (2.5 ac), as well as 3.8 boas per ha (2.5 ac) within one karst forest fragment, considered a Puerto Rican boa hot spot within Fort Buchanan (Mulero-Oliveras 2019, p. 24).

Current Resiliency

Based on the available information, including input from species experts, we determined there is one island-wide Puerto Rican boa population (Service 2021, pp. 34–35). This population may function as several interbreeding groups, which are concentrated within certain habitat patches or landscapes that may or may not interact at different levels via natural or human-facilitated dispersal. The Puerto Rican boa is characterized as a homogenous population with relatively high genetic diversity (Puente-Rolón et al. 2013, entire; Service 2021, pp. 34–35). For the Puerto Rican boa to maintain its viability, its population must be able to withstand stochastic events (demographic, environmental, and anthropogenic). To maintain resiliency to stochastic events, this species needs an adequate number of individuals (abundance) from all life stages (breeding adults, juveniles, and hatchlings).

Prior to Puerto Rico's historical deforestation, the Puerto Rican boa probably occurred in almost all habitats below 500 m (1,640 ft) elevation (Puente-Rolón et al. 2013, p. 7). Based on current abundance estimates, it was recently suggested that the Puerto Rican boa ''is widely considered to have recovered from the near-complete deforestation of the island of Puerto Rico in the early 20th century'' (Reynolds and Henderson 2018, p. 13). This assessment suggests that the Puerto Rican boa population is able to withstand certain levels of natural and

anthropogenic disturbances through long periods of time. Puerto Rican boa populations can persist in urban fragmented landscapes in low densities, but not without certain costs (*e.g.,* smaller home range sizes, lower abundance, and greater exposure to threats) (Mulero-Oliveras 2019, pp. 58–59).

We assessed the population's resiliency by using the available density estimates of 1.2 boas per ha (2.5 ac) to 5.6 boas per ha (2.5 ac) in combination with the species' PRGAP predicted habitat model to calculate a rough estimate of the Puerto Rican boa's population size (Gould et al. 2008, pp. 49–50; Service 2021, pp. 14–15, Appendix A–2). The PRGAP predicted an estimated 414,379 ha (1,023,952 ac) of Puerto Rican boa habitat, that is, 46.3 percent of the island from sea level to 1,000 m (3,281 ft) (Gould et al. 2008, p. 50; Service 2021, pp. 14–15, Appendix A–2). We used this as our baseline model to assess the variability of the current quality of habitats available for the Puerto Rican boa across the island. Because there are no clear records of Puerto Rican boas above 700 m (2,297 ft), we refined the PRGAP model to consider only areas below 700 m (2,297 ft) as predicted suitable habitat, resulting in an estimated 379,029 ha (936,601 ac) of predicted Puerto Rican boa habitat.

Based on the analysis in the SSA, population abundance ranges from 37,903 to 189,515 boas (*i.e.,* 0.1 boas per ha (2.5 ac) and 0.5 boa per ha (2.5 ac), as multiplied by 379,029 ha (936,601 ac) of Puerto Rican boa suitable habitat for the entire island) (Service 2021, p.37). Because Puerto Rican boas occur in higher densities in some areas, 37,903 can be viewed as the lower bound of the current population estimate for Puerto Rican boas in Puerto Rico.

Using the lower bound population estimate combined with the species' known high adult survival rate (greater than 90 percent), we consider the Puerto Rican boa population to have a medium to high level of resiliency (Service 2021, pp. 37–38). That is, the Puerto Rican boa population has a medium to high ability to withstand stochastic events (demographic, environmental, and anthropogenic). We also assume that the most resilient interbreeding groups occur where suitable habitat and resources are least fragmented, occur the farthest from human settlements, and occur where nonnative predators are few or absent, which are reasonable assumptions given our understanding of the ecology of the species.

Current Redundancy

High redundancy reduces the species' extinction risk in the event a portion of the species' range is negatively affected by a natural or anthropogenic catastrophic disturbance. For the Puerto Rican boa to withstand catastrophic events such as hurricanes, it needs to maintain sufficient resiliency across its range. Thus, we used the geographic distribution from the PRGAP predicted potential habitat model to assess redundancy. The exact historical distribution of the Puerto Rican boa is unknown, but its present, seemingly fragmented, distribution suggests that it occupied more areas than its current range. The current range likely reflects localized extirpations due to habitat degradation and human persecution.

The Puerto Rican boa has a wide distribution across Puerto Rico, and the presence of suitable habitat throughout its range reduces the risk that any large portion of the species' range will be negatively affected by a single catastrophic or anthropogenic event at any one time, except for hurricanes, which can have island-wide effects. Given the amount of suitable habitat available for the Puerto Rican boa (Service 2021, p. 37), the species appears to be well-buffered against the effects of catastrophic events. Catastrophic events that could affect Puerto Rican boa habitat include, but are not limited to, hurricanes and the emergence of new threats, like snake fungal diseases (see *Influences on Viability,* above). During Hurricane Maria in 2017, the entire range of the Puerto Rican boa was subject to hurricane force winds (greater than 64 knots (74 miles per hour)) as the mostly Category 4 hurricane passed over the Puerto Rico mainland. Despite direct impacts from past and more recent hurricanes, and post-hurricane debris management of the species' habitat, the Puerto Rican boa continues to be reported throughout its range (Service 2021, Appendix C). Thus, we do not consider hurricanes to be a threat to the species.

In summary, the current redundancy for the Puerto Rican boa is characterized by one island-wide population with a medium to high level of resiliency across most of the species' historical range, although the current distribution is likely fragmented due to habitat degradation.

Current Representation

Representation describes the ability of a species to adapt to changing environmental conditions over time and is characterized by the genetic structure of the species and the environmental diversity within and among populations (Service 2016, p. 10). The more representation, or diversity, a species has, the more it is capable of adapting to changes (natural or anthropogenic) in its environment. Thus, to evaluate representation for the Puerto Rican boa, we used the available species-specific genetic information. In addition, we considered the ecological variability of habitats used by the Puerto Rican boa.

Genetic assessments of the Puerto Rican boa demonstrate a relatively high level of genetic diversity. Based on 86 samples from 15 municipalities in Puerto Rico, three clear haplogroups and no distinct phylogeographic structure across the island were identified, indicating a relatively high level of genetic diversity within the areas sampled and an overall high haplotype diversity (Puente-Rolón et al. 2013, p. 7). Although Puerto Rican boas inhabiting caves are not genetically different from Puerto Rican boas that occur in other habitats, they harbor multiple genetic lineages and represent a large proportion of the genetic diversity of Puerto Rican boas (Puente-Rolón et al. 2013, p. 5; Reynolds and Puente-Rolón 2014, p. 1). Additionally, genetic analyses from at least one location in the north (municipality of Dorado) are indicative of reduced gene flow and genetic drift, potentially due to habitat fragmentation or isolation that is affecting the species' ability to naturally disperse (Puente-Rolón et al. 2013, p. 6).

The available genetic studies have not indicated that critical genetic differences currently exist across the range of the Puerto Rican boa (Puente-Rolón et al. 2013, entire). In addition, there is no evidence that any genetic abnormalities have emerged or that overall fitness of the Puerto Rican boa population has decreased. The best available science indicates that the Puerto Rican boa population seems well represented with relatively high genetic diversity.

Current Condition Summary

The Puerto Rican boa population exhibits medium to high resiliency and has an estimated island-wide current population of approximately 37,903 to 189,515 boas, with density estimates that range from 1.2 boas per ha (2.5 ac) to 5.6 boas per ha (2.5 ac). Given the amount of predicted habitat and the medium to high resiliency across its range, the Puerto Rican boa population appears to have adequate redundancy and seems well buffered against catastrophic events. We determined the Puerto Rican boa is well represented, with an overall high level of genetic

diversity over relatively broad and diverse geographic areas.

Projected Future Status

To assess the future viability of the Puerto Rican boa, we used a demographic matrix model and projected the overall population response to four different habitat change scenarios 30 years into the future (2050). We predicted resilience at 30 years into the future (year 2050) considering input from species experts and the information available to reasonably predict development changes in threats, and the species' response to these changes. This timeframe reflects more than one generation of Puerto Rican boas, which may live more than 20 years (Rivero 1998, p. 433; Henderson and Powell 2009, p. 349).

These four scenarios provide a range of viability predictions for the species and are intended to represent Puerto Rican boa population response to the key threats of habitat loss, habitat fragmentation, and human interactions. These habitat and human-associated influences can be related to increased development, conversion of natural areas to urban areas for residential and commercial development, and road construction and expansion. Human-caused habitat loss can also be related to other threats such as increased human-boa conflicts, intentional killings, and predation by cats. We do not explicitly include in our scenarios the impacts of hurricanes, diseases, or climate change on Puerto Rican boas or their habitat. Information available for these threats is lacking or the response of Puerto Rican boas to these threats is unknown.

To project Puerto Rican boa population size into the future based on different amounts of development, we used a stage-based Lefkovitch matrix model (Caswell 2001, pp. 56–109; Tucker et al. 2020, p. 2; Service 2021, pp. 43–45). This model allows us to account for stage-specific differences in survival and reproductive output into the future. We considered four life stages based on size: young (less than 60 cm (2 ft)), juveniles (60–90 cm (2–3 ft)), subadults (90–110 cm (3–3.6 ft)), and adults (greater than 110 cm (3.6 ft)). We elicited the probabilities of annual survival, growth to the next size class, and fecundity (average number of offspring per individual) for each size class from the Puerto Rican boa expert team or drew values from the available literature (Tucker et al. 2020, p. 3; Service 2021, pp. 19, 43–45). Personal information, unpublished data, and inference from captive zoo populations was used by the expert team to determine productivity and survival rates. For more details on the model, please see Tucker et al. (2020, entire) and the SSA report (Service 2021, pp. 43–49).

We considered future scenarios that included changes in land cover such that developed areas would encroach upon natural areas, resulting in both an increased proximity of development to natural areas and loss of overall Puerto Rican boa habitat. With these scenarios, we also sought to indirectly capture key threats due to habitat loss and increased conflicts with humans and cats. Some Puerto Rican boa populations can coexist with development when suitable habitat and prey are available within a managed urbanized matrix like Fort Buchanan, but not in a purely developed landscape (Mulero-Oliveras 2019, p. 35).

The four future scenarios were based on an analysis of past rates of urbanization in proximity to protected natural areas in Puerto Rico, which found that urban growth increased at a rate of 16 percent over a decade (years 2000–2010) (Castro-Prieto et al. 2017, p. 476). One of the scenarios includes projected the status quo urbanization rate, while the other three scenarios include different changes in urbanization rate (described below). Urbanization rate was defined as the rate at which both overall suitable Puerto Rican boa habitat declined and the rate at which the percent of available habitat that fell within developed areas increased (Service 2021, pp. 49–50). By simulating simultaneous habitat loss and land cover change, these scenarios represent the most intense impacts of urbanization on Puerto Rican boa populations.

The four potential future scenarios are described as follows: no further urbanization (0 percent), reduced urbanization (8 percent), status quo urbanization (16 percent), and increased urbanization (24 percent) (see table 1, below; Tucker et al. 2020, entire). Under the ''best-case'' scenario of no future urban growth, the proportion of Puerto Rican boa habitat in natural and urban areas would remain the same as current condition (estimated at 43 percent), and the total amount of habitat would remain constant (see table 1, below). Under the ''reduced urbanization'' scenario, we assumed an 8 percent increase in urbanization per decade, with both the proportion of Puerto Rican boa habitat falling in an urban matrix increasing by 8 percent every 10 years and the total Puerto Rican boa habitat area decreasing by 8 percent every 10 years (see table 1, below). The third ''status quo'' scenario assumes the rate of urbanization continues at 16 percent per decade, and the total amount of available Puerto Rican boa habitat would likewise decrease by 16 percent every 10 years (see table 1, below). The fourth, ''worst-case'' scenario assumes that the rate of urbanization would increase to a rate of 24 percent per decade (see table 1, below), with all the associated impacts to Puerto Rican boa habitat realized. To implement all scenarios in the model, we calculated the expected rate of development per year and used this to calculate the predicted total Puerto Rican boa habitat availability and proportion in urban areas. This assumes that development occurs gradually each year and is based on analysis conducted by Castro-Prieto et al. (2017, entire).

TABLE 1—TOTAL PUERTO RICAN BOA HABITAT AREA AND PROPORTION OF HABITAT FALLING WITHIN AN URBAN AREA IN 30 YEARS UNDER FOUR POTENTIAL RATES OF URBAN GROWTH *

Scenario	Urban growth per decade (percent)	Total habitat area in 30 years in hectares (acres)	Developed habitat in 30 years (percent)	Total natural habitat in 30 years in hectares (acres)	Total developed habitat in 30 years in hectares (acres)	Total habitat area lost in hectares (acres)
1. No further urbanization	0	379,029 (936,601)	43	215,046 (531,390)	163,983 (405,210)	0
2. Reduced urbanization	8	300,269 (741,980)	54	138,124 (341,311)	162,145 (400,669)	78,760 (194,620)
3. Status quo	16	237,427 (586,694)	68	75,977 (187,743)	161,450 (398,951)	141,602 (349,906)

TABLE 1—TOTAL PUERTO RICAN BOA HABITAT AREA AND PROPORTION OF HABITAT FALLING WITHIN AN URBAN AREA IN 30 YEARS UNDER FOUR POTENTIAL RATES OF URBAN GROWTH *—Continued

Scenario	Urban growth per decade (percent)	Total habitat area in 30 years in hectares (acres)	Developed habitat in 30 years (percent)	Total natural habitat in 30 years in hectares (acres)	Total developed habitat in 30 years in hectares (acres)	Total habitat area lost in hectares (acres)
4. Increased urbanization	24	187,377 (463,018)	86	25,233 (62,352)	162,144 (400,666)	191,652 (473,582)

* The total habitat available in a given year (hab_t) is found by $hab_t = hab_{t-1} - r * hab_{t-1}$ and the percent developed habitat (dev_t) is given by $dev_t = dev_{t-1} + r * dev_{t-1}$, where r is the yearly rate of urbanization (Table data from Tucker et al. 2020, entire).

We used a stochastic simulation model to assess the future condition of Puerto Rican boas under different rates of urbanization (Tucker et al. 2020, pp. 5–6; Service 2021, pp. 51–52). We projected each population for 30 years, starting in the stable stage distribution (calculated from the average demographic matrix). For more details on the projected population model, please see Tucker et al. (2020, entire) and the SSA report (Service 2021, pp. 51–55, Appendix F).

Quasi-extinction risk was used as a measure for future resilience under the different scenarios. Many population viability analyses use a quasi-extinction threshold to assess extinction risk. The quasi-extinction threshold is the population size below which either the population cannot recover because it enters an ''extinction vortex'' (Gilpin and Soulé 1986, pp. 19–34), or the plausible management alternatives would drastically change (*e.g.,* switching from habitat management to captive breeding). Selecting an appropriate quasi-extinction threshold for a specific population is often challenging due to uncertainties about both how demographic feedbacks and management actions influence realized population dynamics. Therefore, we assessed quasi-extinction risk at four thresholds, chosen to demonstrate the sensitivity of the results to quasi-extinction threshold levels: total population size of 50, 500, 1,000, or 5,000 (Service 2021, p. 53, Appendix E). For each scenario, we calculated the probability of the population falling below these thresholds as the proportion of replicates in which this occurred.

Our projection model indicated that the Puerto Rican boa population is most likely to decline over a 30-year period under all scenarios except the zero percent urbanization scenario (see table 2, below). However, in all scenarios, the rates of decline are low; even under the worst-case scenario, the population growth rate was 0.98. Quasi-extinction probability within 30 years was 0 for all scenarios for thresholds less than 1,000. Under the worst-case scenario and a population threshold of 5,000, the quasi-extinction probability was only 0.015 (see table 2, below) (Tucker et al. 2020, pp. 6–9; Service 2021, pp. 55–56). These low probabilities of quasi-extinction indicate that the species is resilient to the future development even in the worst-case scenario.

TABLE 2—THE PROBABILITIES OF QUASI-EXTINCTION, POPULATION GROWTH, AND POPULATION DECLINE FOR EACH SCENARIO *

Scenario	Urban growth per decade (percent)	Quasi-extinction probability				Probability of population stability or growth	Probability of population decline	Average population growth rate (95 percent quantiles)
		50	500	1,000	5,000			
1. No further urbanization	0	0	0	0	0.005	0.502	0.499	1.0 (0.933, 1.06)
2. Reduced urbanization	8	0	0	0	0.006	0.435	0.565	0.994 (0.927, 1.06)
3. Status quo	16	0	0	0	0.011	0.357	0.643	0.987 (0.921, 1.05)
4. Increased urbanization	24	0	0	0	0.015	0.285	0.715	0.98 (0.916, 1.04)

* The probability of population growth and decline are the proportion of replicates in which the average population growth rate (λ) was greater than 1.0 or less than 1.0, respectively. Average population growth rate is presented as the median, and 95 percent quantiles are included in parentheses. (Table from Tucker et al. 2020, p. 8).

Summary of Future Condition Analysis

We characterized resiliency, redundancy, and representation in the future based on interpretation of the current condition versus the population projection results and predicted quasi-extinction probabilities. Based on the results under the status quo scenario, we expect resiliency to be slightly lower (medium) than the current condition (high to medium) in the foreseeable future (year 2050), especially if we consider all factors that may influence resilience (*e.g.,* development and protection). Possible changes to resiliency are expected to be related to parameters such as habitat quality and quantity, and both of those are expected to deteriorate with time, more so at the edges and outside of protected habitat. We do not expect changes to redundancy and representation since the single Puerto Rican boa population would likely continue to occur across its range.

Quasi-extinction probabilities were low for all scenarios. The large initial population size (roughly estimated at 37,903 to 189,515 individuals) likely buffers the Puerto Rican boa population from falling below the quasi-extinction thresholds, and if current population size is lower than our projected minimum of 37,903, quasi-extinction probability may be greater (Tucker et al. 2020, p. 7). However, as stated above under ''Current Resiliency,'' this minimum population size estimate is likely an underestimate given the assumptions used to derive it.

We conclude it is reasonable to assume that the status quo scenario (16 percent rate of urbanization per decade) will continue, regardless of growth or decline in the overall human population, as residential construction in natural areas is expected to continue (Castro-Prieto et al. 2017, p. 474). Although the status quo scenario was more likely to result in population declines (64.3 percent) than in population stability or growth (35.7 percent), the projections also demonstrate that the decline under this scenario would be slight, with a very low probability of abundance reaching 5,000 individuals or fewer (see table 2, above) (Service 2021, p. 55; Tucker et al. 2020, p.8). Because population size is not expected to decline substantially into the foreseeable future, neither is the viability of the species as a whole within a 30-year timeframe.

With a continued increase in the urban landscape representing status quo growth, we may expect the Puerto Rican boa's density and distribution to slowly decline. This may be exacerbated by other influences on viability, such as exposure to cats, intentional killings, and road kill. Habitat fragmentation may also increase, and this may reduce gene flow locally within highly urbanized areas. Furthermore, lands around protected areas in Puerto Rico are vulnerable to development (Castro-Prieto et al. 2017, p. 478). This is reflected in the higher probability of declines, even under the reduced urbanization scenario (8 percent per decade) (see table 2, above), although the magnitude of these declines is slight.

Collectively, these results emphasize the import role that habitat protection is playing in the current and future status of the Puerto Rican boa. Caves contain some of the most important habitats for the Puerto Rican boa (Puente-Rolón et al. 2013, entire) and are broadly covered under the Karst Conservation Zone (PRPB and DNER 2014, p. 1; Service 2021, p. 40), as described above under ''Development and Habitat Protection,'' and *Delisting Criterion 3.*

There are some unique urban and highly modified landscapes like Fort Buchanan where the Puerto Rican boa has been found at moderate densities (between 1.2 and 3.8 boas per ha) or more than 30 years (Pérez and Vélez, Jr. 1978, p. 71), which represents lower densities than in less modified landscapes (Mulero-Oliveras 2019, p. 24). The Fort Buchanan population is an example of how the species has responded to threats to its viability. Maintaining remnant forest fragments within the Fort Buchanan area has proved vital for the Puerto Rican boa's conservation, but it has also benefited from management efforts from the Fort Buchanan staff and cooperators.

Based on all of the above information, we anticipate the Puerto Rican boa population to largely maintain current numbers with small declines occurring as habitat degradation and fragmentation increase and development encroaches into suitable areas. The current condition of the Puerto Rican boa population is encouraging, particularly when compared to the available information when the species was listed.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of the Puerto Rican Boa's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. For a more detailed discussion on the factors considered when determining whether a species meets the definition of an endangered species or a threatened species and our analysis on how we determine the foreseeable future in making these decisions, please see Regulatory and Analytical Framework, above.

Status Throughout All of the Puerto Rican Boa's Range

In 1970, the Puerto Rican boa was listed as endangered under the Endangered Species Conservation Act of 1969, due to apparent declines in both population size and distribution associated with the widespread deforestation of Puerto Rico in the 1800s (35 FR 16047, October 13, 1970; Service 1986, p. 7). After evaluating threats to the species and assessing the cumulative effects of the threats under the Act's section 4(a)(1) factors, we find that, while the present or threatened destruction, modification, or curtailment of its habitat (Factor A) remains the primary stressor for the species, the species is not currently at risk of extinction now throughout all of its range. The species has demonstrated resiliency and the ability to recover from human and natural disturbances, including catastrophic events such as hurricanes. Additionally, the Puerto Rican boa has increased in abundance since the time of listing, and conservation efforts continue to benefit the species, particularly in protected areas where Puerto Rican boas occur. Therefore, we expect the species' relatively medium to high population resiliency to continue to ameliorate this threat in the foreseeable future.

The Puerto Rican boa has shown an ability to adapt to changing environmental conditions caused by both human (*e.g.,* development) and natural disturbances (*e.g.,* hurricanes). Past, current, and expanding urban development will continue to impact the Puerto Rican boa; however, the projected population declines will be slight and well above levels that would be at risk of extinction. When suitable habitat and resources are present, the Puerto Rican boa has demonstrated a medium to high level of resiliency (with a current estimated population abundance between 37,903 and 189,515 boas, and an island-wide density estimate of 1.2 boas per ha (2.5 ac) to 5.6 boas per ha (2.5 ac)) in its current ability to maintain viability in spite of these threats. The species' representation is ensured by its relatively high genetic diversity and its continued occurrence within varied habitat types, as well as its relatively high abundance and broad distribution throughout its island-wide range (redundancy). Ongoing efforts to preserve optimal habitats, notably caves in the northern karst region where the highest genetic diversity exists, are highly beneficial to Puerto Rican boa conservation.

At the time of listing, the Puerto Rican boa's population size was unknown, but

the species was considered to be rare. Now, we estimate that between 37,903 and 189,515 Puerto Rican boas may occur island-wide. Although this estimate is considered a rough population estimate, the best available information indicates that the Puerto Rican boa is likely more abundant today than at the time of listing. Given the demonstrated resilience of the Puerto Rican boa to historical habitat loss and fragmentation, the present threat of development (Factor A) and the newer threats of nonnative species and disease do not put the species at risk of extinction now. Hurricanes (Factor E) have the potential to negatively impact the Puerto Rican boa directly through mortality and habitat destruction, and indirectly through post-hurricane restoration activities. However, even after recent severe hurricanes (*e.g.,* Hurricane Maria in 2017), the species demonstrated the ability to recover from these natural disturbances. Therefore, we find that habitat loss, nonnative species, disease and hurricanes are not currently having population-level impacts on the species.

To more closely examine the future threat posed by habitat loss and habitat fragmentation, we projected four different development (or urbanization) scenarios 30 years into the future (2050). The model estimated a very low probability of significant decline within 30 years and a less than 2 percent probability of reaching quasi-extinction (5,000 individuals or fewer) under all four scenarios of future urbanization (Service 2021, p. 55). Because population size is projected to only decrease slightly in the foreseeable future, the species is not likely to become an endangered species within the next 30 years. Therefore, after assessing the best available data, we conclude that the Puerto Rican boa is not in danger of extinction now (*i.e.,* does not meet the Act's definition of an ''endangered species'') nor is it likely to become so within the foreseeable future (*i.e.,* does not meet the Act's definition of a ''threatened species'') throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and its implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the Puerto Rican boa is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and (2) the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address either the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the Puerto Rican boa, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened. We considered whether any of the threats acting on the Puerto Rican boa are geographically concentrated in any portion of the species' range at a biologically meaningful scale.

The primary threats to the species include development and habitat loss, nonnative predators, and public attitudes towards snakes. The Puerto Rican boa functions as a single, contiguous population and occurs island-wide. Puerto Rican boas occur on both privately and publicly owned land, and impacts from human development and habitat loss are prevalent throughout the species' range. Introduced predators, especially feral cats, occur rangewide. Similarly, the intentional killing of Puerto Rican boas can occur anywhere throughout the range when humans encounter boas. While Puerto Rican boas that live in proximity to developed areas are more susceptible to intentional killings, public fear towards snakes is a threat that can impact Puerto Rican boas throughout their range. Therefore, we conclude that none of these threats are concentrated in any particular portion of the species' range so as to affect the representation, redundancy, or resiliency of the species.

We found no concentration of threats in any portion of the Puerto Rican boa's range at a biologically meaningful scale. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future throughout a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available information indicates that the Puerto Rican boa does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we propose to remove this species from the Federal List of Endangered and Threatened Wildlife.

Effects of This Proposed Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to remove the Puerto Rican boa from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Puerto Rican boa. There is no critical habitat designated for this species.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We are proposing to delist the Puerto Rican boa based on our analysis in the SSA report, expert opinions, and as conservation and recovery actions taken. Since delisting would be, in part, due to conservation actions taken by partners, we have prepared a draft post-delisting monitoring (PDM) plan for the Puerto Rican boa. The draft PDM plan

discusses the current status of the taxon and describes the methods proposed for monitoring if we delist the taxon. The draft PDM plan: (1) Summarizes the status of the Puerto Rican boa at the time of proposed delisting; (2) describes frequency and duration of monitoring; (3) discusses monitoring methods and potential sampling regimes; (4) defines what potential triggers will be evaluated to address the need for additional monitoring; (5) outlines reporting requirements and procedures; (6) proposes a schedule for implementing the PDM plan; and (7) defines responsibilities. It is our intent to work with our partners towards maintaining the recovered status of the Puerto Rican boa. We appreciate any information on what should be included in post-delisting monitoring strategies for this species (see Information Requested, above).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal interests affected by this proposal.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11, in paragraph (h), by removing the entry for ''Boa, Puerto Rican'' under REPTILES in the List of Endangered and Threatened Wildlife.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–14961 Filed 7–12–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 133
Wednesday, July 13, 2022

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Annual Diversity, Equity, Inclusion, and Accessibility Survey for USAID's Workforce

AGENCY: United States Agency for International Development (USAID).

ACTION: Notice of emergency OMB approval.

SUMMARY: In accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (PRA), the United States Agency for International Development (USAID), is announcing that it is requesting emergency approval from the Office of Management and Budget (OMB) for a new information collection to survey its collective workforce to share their thoughts to help inform decision making and actions around diversity, equity, inclusion and accessibility to help strengthen, empower, and support our global workforce.

DATES: USAID plans to initially seek information in July 2022, then annually thereafter.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kiona Owens @ *kiowens@usaid.gov* or on (202) 712–7017.

SUPPLEMENTARY INFORMATION: Pursuant to 5 CFR 1320.13, the Agency submitted a request for emergency approval of new information collection from the agency's workforce on DEIA, including U.S. Direct Hires (permanent and temporary) U.S. Personal Services Contractors, Institutional Support Contractors, Cooperating Country Nationals, and other expanded demographic categories in 6 main areas on a 5-point Likert scale, including 11 profile questions, 7 equity questions, 14 accessibility questions, and 29 talent impact questions.

Description of Proposed Use of Information

The information will be collected via a digital survey and used by the workforce to capture the viewpoints and perceptions of USAID headquarters and overseas employees across all hiring mechanisms and at all grades and ranks; allow for data disaggregation by Bureau, Independent Office, and Mission; provide data for analysis to support evidence-based and data-driven approaches to determine whether and to what extent Agency policies programs, and practices present barriers to equal and equitable and opportunities and employment outcomes and what needs to be changed or developed to remove said barriers; and to support USAID efforts to monitor and report on DEIA and EEO program effectiveness, enabling continuous program improvement.

Time Burden

OMB's approval enables USAID to engage 11,000 respondents. Each respondent will be able to provide 20 minutes in participation time, totaling 3,666 estimated time burden of this proposed information collection.

Kiona Owens,

Global Diversity, Equity, Inclusion, and Accessibility (DEIA) Advisor, Office of the Administrator, Office of the Chief DEIA Officer.

[FR Doc. 2022–14876 Filed 7–12–22; 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; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 12, 2022 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Assessing SNAP Participants' Fitness for Work.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food and Nutrition Act of 2008 requires that Supplemental Nutritional Assistance Program (SNAP) participants between the ages 16 and 59 to meet certain work requirements, unless they are exempt or show good cause as to why they cannot work. Whether a participant is required to meet these work requirements is based upon a SNAP eligibility worker (caseworker) making a determination whether an individual is exempt from these work requirements, including a determination whether the individual is physically or mentally unfit for work. The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) offers general guidance and States develop their own policies and procedures with little input from FNS. States are given a great degree of latitude in making determinations regarding unfitness for work exemptions.

Need and Use of the Information: FNS has contracted with MEF Associates and its subcontractor, Mathematica, to conduct a study to better understand how States determine whether individuals are exempted from work requirements or have good cause for not meeting work requirements due to a physical or mental limitation. By surveying all 53 State SNAP Agencies, which include the States, the District of Columbia, the U.S. Virgin Islands, and Guam, and conducting in-depth case studies of four States, this study will provide FNS with valuable insights into how States develop and implement policies and procedures for making fitness for work determinations. This information can help FNS assess States' needs for technical assistance around fitness for work issues and identify lessons learned to share across all State SNAP Agencies.

Description of Respondents: State, Local, or Tribal government, Business or Other For Profit and Not for Profit, Individuals.

Number of Respondents: 408.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 412.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–14893 Filed 7–12–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[6/6/2022 through 6/28/2022]

Firm name	Firm address	Date accepted for investigation	Product(s)
Aloe Laboratories, Inc	5821 East Harrison Avenue, Harlingen, TX 78550.	6/22/2022	The firm produces aloe vera and manufactures aloe vera products.
Central Custom Molding, LLC	8810 Trucker Trail, Cheyenne, WY 82007.	6/24/2022	The firm manufactures miscellaneous plastic parts.
Buffalo Scale and Supply Co., Inc	280 Seneca Street, Buffalo, NY 14204	6/28/2022	The firm manufactures industrial scales.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2022–14866 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jason Wayne Jarvis, 6108 Shanda Drive, Apt. F, Raleigh, NC 27609–3394; Order Denying Export Privileges

On October 3, 2019, in the U.S. District Court for the Western District of Texas, Jason Wayne Jarvis (''Jarvis'') was convicted of violating 18 U.S.C. 554(a). Specifically, Jarvis was convicted of attempting to sell and facilitate the transportation of firearms, silencers, a short-barreled rifle, and a destructive device, prior to exportation, knowing them to be intended for exportation contrary to any law or regulation of the United States, all in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Jarvis to six months of home confinement, five years of probation, and a $100 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Jarvis's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Jarvis to make a written submission to

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Jarvis.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Jarvis's export privileges under the Regulations for a period of five years from the date of Jarvis's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Jarvis had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until October 3, 2024, Jason Wayne Jarvis, with a last known address of 6108 Shanda Drive, Apt. F, Raleigh, NC 27609–3394, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Jarvis by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Jarvis may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Jarvis and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 3, 2024.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–14960 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–DT–P

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Washington, D.C. 20230; In the Matter of: Usama Darwich Hamade, Beirut, Galerie Semaan, Behind Karout Mall, Kalaa Building 3rd Floor, Beirut, Lebanon; Order Denying Export Privileges

On July 20, 2020, in the U.S. District Court for the District of Minnesota, Usama Darwich Hamade (''Hamade''), was convicted of violating 18 U.S.C. 371. Specifically, Hamade was convicted of conspiring to export parts and technology from the United States to Lebanon, and specifically to Hizballah, for among other purposes, inclusion in unmanned aerial vehicles, without obtaining the required export licenses under the Export Administration Regulations or under the International Traffic in Arms Regulations. As a result of his conviction, the Court sentenced Hamade to 42 months in prison and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Hamade's conviction for violating 18 U.S.C. 371, and has provided notice and opportunity for Hamade to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has not received a written submission from Hamade.

Based upon my review of the record and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Hamade's export privileges under the Regulations for a period of 10 years from the date of Hamade's conviction. I have also decided to revoke any BIS-issued

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2021).

licenses in which Hamade had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until July 20, 2030, Usama Darwich Hamade, with a last known address of Beirut, Galerie Semaan, Behind Karout Mall, Kalaa Building 3rd Floor, Beirut, Lebanon, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Hamade by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Hamade may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Hamade and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until July 20, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–14957 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–DT–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 *Fed. Reg.* 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Hassan Ali Moshir-Fatemi, 290 Summit Road, Watsonville, CA 95076; Order Denying Export Privileges

On January 28, 2021, in the U.S. District Court for the Northern District of California, Hassan Ali Moshir-Fatemi (''Moshir-Fatemi''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C § 1701, *et seq.*) (''IEEPA''). Specifically, Moshir-Fatemi was convicted of knowingly and willfully conspiring and agreeing to export, reexport, and supply, and causing to be exported, reexported, and supplied, directly and indirectly, goods and services from the United States to Iran; and engaging in transactions for the purpose of avoiding and evading the Iranian Transaction Sanctions Regulations, including financing and facilitating transactions by foreign persons where such transactions are prohibited by United States law, without having first obtained from the Department of the Treasury, Office of Foreign Assets Control, the required license or written authorization. As noted in his plea agreement, Mr. Moshir- Fatemi agreed to the imposition of a ten-year Denial Order in exchange for an agreement by BIS to not pursue administrative action against him. As a result of his conviction, the Court sentenced Moshir-Fatemi to 12 months and one day imprisonment, three years of supervised release, a $100 assessment and a fine of $50,000.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Moshir-Fatemi's conviction for violating IEEPA, and has provided notice and opportunity for Moshir-Fatemi to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has not received a written submission from Moshir-Fatemi.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Moshir-Fatemi's export privileges under the Regulations for a period of 10 years from the date of Moshir-Fatemi's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2022).

Moshir-Fatemi had an interest at the time of his conviction.[3]

Accordingly, it is hereby *Ordered:*

First, from the date of this Order until January 28, 2031, Hassan Ali Moshir-Fatemi, with a last known address of, 290 Summit Road, Watsonville, CA 95076, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Moshir-Fatemi by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Moshir-Fatemi may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Moshir-Fatemi and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 28, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–14936 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–DT–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 *FR* 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Amilkar Murillo, Inmate Number: 45586–480, FCI Beaumont Low, Federal Correctional Institution, P.O. Box 26020, Beaumont, TX 77720; Order Denying Export Privileges

On August 7, 2020, in the U.S. District Court for the Western District of Texas, Amilkar Murillo (''Murillo'') was convicted of violating 18 U.S.C. 554(a). Specifically, Murillo was convicted of knowingly and unlawfully concealing, buying, or facilitating the transportation and concealment of any merchandise, article and object, prior to exportation, knowing the same to be intended for exportation from the United States, to-wit: a Taurus 9mm handgun with 2 magazines, a Taurus 40 caliber handgun with 2 magazines, a Ruger 9mm handgun with 2 magazines, a Smith & Wesson 9mm handgun with 2 magazines, a Glock 380 handgun with 2 magazines, a Smith & Wesson 40 caliber handgun with 2 magazines, and a box of .380 ammunition (20 rounds), all in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Murillo to 46 months in prison, two years of non-reporting supervised release as long as Murillo resides in Mexico, and a $200 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Murillo's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Murillo to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Murillo.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Murillo's export privileges under the Regulations for a period of 10 years from the date of Murillo's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Murillo had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until August 7, 2030, Amilkar Murillo, with

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to recent amendments to the Regulations (85 *Fed. Reg.* 73411, November 18, 2020).

a last known address of Inmate Number: 45586–480, FCI Beaumont Low, Federal Correctional Institution, P.O. Box 26020, Beaumont, TX 77720, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Murillo by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Murillo may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Murillo and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 7, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–14958 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–872, A–580–878, A–580–881, A–580–883, A–580–887, A–580–891]

Non-Oriented Electrical Steel From the Republic of Korea, Certain Corrosion-Resistant Steel Products From the Republic of Korea, Certain Cold-Rolled Steel Flat Products From the Republic of Korea, Certain Hot-Rolled Steel Flat Products From the Republic of Korea, Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea, and Carbon and Alloy Steel Wire Rod From the Republic of Korea: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request for a changed circumstances review (CCR), the U.S. Department of Commerce (Commerce) is initiating a CCR of the antidumping duty (AD) orders on non-oriented electrical steel, certain corrosion-resistant steel products, certain cold-rolled steel flat products, certain hot-rolled steel flat products, certain carbon and alloy steel cut-to-length plate, and carbon and alloy steel wire rod from the Republic of Korea (Korea). Additionally, Commerce preliminarily determines that POSCO, following a corporate organizational change in March 2022 (hereinafter, POSCO(II)), is the successor-in-interest to the pre-reorganization POSCO entity (hereinafter, POSCO(I)). As such, POSCO(II) is entitled to POSCO(I)'s AD cash deposit rates with respect to entries of subject merchandise in each of the above-referenced proceedings. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 13, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On May 23 and 24, 2022, POSCO(II) notified Commerce of a corporate reorganization and requested that, if necessary, Commerce initiate CCRs under the relevant AD proceedings to determine that it is the successor-in-interest to POSCO(I) for purposes of determining AD cash deposits.[1] In this request, POSCO(II) stated that, on December 10, 2021, the board of directors of POSCO(I) initially approved a corporate reorganization whereby POSCO(I) would be registered as POSCO Holdings, and POSCO(I)'s production and sales operations for its steel business would be organized under a new business unit, POSCO(II), which would be a subsidiary of POSCO

[1] *See* POSCO's Letters, ''Notification of Corporate Reorganization and Request for Changed Circumstances Review, If Deemed Necessary: Vertical Spinoff of POSCO,'' dated May 23, 2022; and ''Notification of Corporate Reorganization and Request for Changed Circumstances Review, If Deemed Necessary: Vertical Spinoff of POSCO,'' dated May 24, 2022 (collectively, POSCO CCR Request); *see also* POSCO's Letter, ''Clarification of Notification of Corporate Reorganization and Request for Changed Circumstances Review, If Deemed Necessary,'' dated May 25, 2022.

Holdings.[2] Subsequently, POSCO Holdings and POSCO(II) were registered on March 2, 2022.[3]

POSCO(II) states that, as a result of the reorganization, the operations, assets, and liabilities associated with POSCO(I)'s steel business are now organized under POSCO(II). Further, POSCO Holdings became the parent company to POSCO(II) and retains all of the other subsidiaries of POSCO(I) unrelated to the production and sale of steel products.[4] With the reorganization, on March 2, 2022, POSCO(II) became a private company wholly owned by POSCO Holdings, and POSCO Holdings is the publicly owned stock company (*i.e.,* the function that POSCO(I) had previously served).

Scope of the Orders

The merchandise covered by the orders is non-oriented electrical steel, certain corrosion-resistant steel products, certain cold-rolled steel flat products, certain hot-rolled steel flat products, certain carbon and alloy steel cut-to-length plate, and carbon and alloy steel wire rod from Korea. For a complete description of the scope of each of the respective orders, *see* the Preliminary Decision Memorandum.[5]

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), Commerce will conduct a CCR of an order upon receipt of information concerning, or a request from an interested party for a review of, an order which shows changed circumstances sufficient to warrant a review of the order. Commerce finds that the information submitted by POSCO(II) demonstrates changed circumstances sufficient to warrant such a review. Therefore, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(d), Commerce is initiating CCRs based on the information contained in POSCO(II)'s request that Commerce determine POSCO(II) is the successor-in-interest to POSCO(I) for purposes of the orders.[6]

Further, 19 CFR 351.221(c)(3)(ii) permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results of a CCR if Commerce concludes that expedited action is warranted. In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

Methodology

In determining whether one company is the successor to another, Commerce generally considers a company to be the successor-in-interest for AD cash deposit purposes if the operations of the successor are not materially dissimilar from those of its predecessor.[7] In making this determination, Commerce examines a number of factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) suppliers; and (4) customer base.[8] While no one or several of these factors will necessarily provide a dispositive indication of succession, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.[9]

Commerce's analysis of the information submitted by POSCO(II) is detailed in the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of the Changed Circumstances Reviews

In its CCR Request, POSCO(II) provided evidence demonstrating that its operations are not materially dissimilar from those of POSCO(I). Specifically, POSCO(II) is managed and operated by many of the same managers as POSCO(II), either directly as board members or members of POSCO(II)'s management team, or indirectly as members of POSCO Holdings' management team. Further, POSCO(II) has not added, or discontinued use of, steel production facilities as a result of the change in ownership and management structure. Finally, there have been no significant changes to the company's suppliers and customer base. Based on the foregoing, which is explained in greater detail in the Preliminary Decision Memorandum, we preliminarily determine that POSCO(II) is the successor-in-interest to POSCO(I) and, as such, that POSCO(II) is entitled to POSCO(I)'s AD cash deposit rate with respect to entries of subject merchandise.

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days

[2] *See* POSCO CCR Request at 3 and Attachment 1.

[3] *Id.* at 3 and Attachments 8 and 9.

[4] *Id.* at 4 and Attachments 10, 11, and 12.

[5] *See* Memorandum, ''Decision Memorandum for the Initiation and Preliminary Results of the Changed Circumstances Review of the Antidumping Duty Orders on Non-Oriented Electrical Steel from the Republic of Korea, Certain Corrosion-Resistant Steel Products from the Republic of Korea, Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, and Carbon and Alloy Steel Wire Rod from the Republic of Korea,'' dated July 7, 2022.

[6] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741 (December 3, 2014); *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016); *Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 58475 (August 25, 2016); *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016); *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017); *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey,* 83 FR 23417 (May 21, 2018).

[7] *See Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring from the People's Republic of China,* 79 FR 48117 (August 15, 2014), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review,* 79 FR 58740 (September 30, 2014).

[8] *Id.*

[9] *See, e.g., Certain Preserved Mushrooms from India: Initiation and Preliminary Results of Changed-Circumstances Review,* 67 FR 78416 (December 24, 2002), unchanged in *Certain Preserved Mushrooms from India: Final Results of Changed-Circumstances Review,* 68 FR 6884 (February 11, 2003); and *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than seven days after the due date for case briefs, in accordance with 19 CFR 351.309(d).[11] Parties who submit case briefs or rebuttal briefs in this CCR are requested to submit with each argument: (1) a statement of the issues; (2) a brief summary of the arguments; and (3) a table of authorities.[12]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice.[13] Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and the time of the hearing two days before the scheduled date.

All submissions must be filed electronically using ACCESS and must also be served on interested parties. An electronically-filed document must be received successfully in its entirely by ACCESS by 5:00 p.m. Eastern Time (ET) on the due date.[14] Note that Commerce has temporarily modified certain requirements for serving documents containing business proprietary information, until further notice.[15]

Final Results

Consistent with 19 CFR 351.216(e), we intend to issue the final results of these CCRs no later than 270 days after the date on which this review was initiated, or within 45 days of publication of these preliminary results, if all parties agree to the preliminary findings.

Notification to Interested Parties

We are issuing and publishing this initiation and preliminary results notice in accordance with section 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.216(b) and 351.221(c)(3).

Dated: July 7, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scopes of the Orders
IV. Current Cash Deposit Rates
V. Initiation and Preliminary Results of the Changed Circumstances Review
VI. Successor-in-Interest Determination
VII. Recommendation

[FR Doc. 2022–14962 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–876]

Fine Denier Polyester Staple Fiber From India: Final Results of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were being provided to Reliance Industries Limited (Reliance) that are above *de minimis* during the period of review (POR), January 1, 2020, through December 31, 2020.

DATES: Applicable July 13, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2022, Commerce published the *Preliminary Results* of this review.[1] A summary of the events that occurred since Commerce published the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order[3]

The merchandise covered by this *Order* is fine denier polyester staple fiber. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received and Changes Since the Preliminary Results

All issues raised in the case brief submitted by Auriga Polymers, Inc., Fiber Industries LLC, and Nan Ya Plastics Corporation, America are addressed in the Issues and Decision Memorandum. A list of the issues discussed in the Issues and Decision Memorandum is included as the appendix to this notice. Based on our analysis of the comments received and record information, we revised the countervailing duty (CVD) subsidy rates calculated for Reliance. These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a description of the methodology underlying Commerce's conclusions, *see* the Issues and Decision Memorandum.

Final Results of Review

In accordance with section 751(a)(1) of the Act and 19 CFR 351.221(b)(5), we find the net countervailable subsidy rate

[10] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020).

[12] *See* 19 CFR 351.309(c)(2).

[13] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

[14] *See* 19 CFR 351.303(b).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to Covid-19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[1] *See Fine Denier Polyester Staple Fiber from the Republic of India: Preliminary Results of Countervailing Duty Administrative Review; 2020,* 87 FR 12936 (March 8, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020 Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India,* 83 FR 11681 (March 16, 2018) (*Order*).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5)(A) of the Act regarding specificity.

for the POR January 1, 2020, through December 31, 2020 to be as follows:

Company	Subsidy rate (percent *ad valorem*)
Reliance Industries Limited	6.88

Disclosure

Commerce intends to disclose the calculations and analysis performed for these final results to interested parties within five days of the date of publication of this notice in the **Federal Register**.[5]

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, CVDs on all appropriate entries covered by this review. Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of this publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, we also intend to instruct CBP to collect cash deposits of estimated CVDs in the amount shown above. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated CVDs at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 315.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: July 6, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Use of Facts Otherwise Available and Application of Adverse Inferences
VI. Subsidies Valuation
VII. Analysis of Programs
VIII. Discussion of the Issues
Comment 1: Land Benchmark
Comment 2: Correction of Errors Regarding the Duty Drawback (DDB) Program
Comment 3: Correction of Errors Regarding the Special Economic Zone (SEZ) Program
Comment 4: Correct Subsidy Rate
IX. Recommendation

[FR Doc. 2022–14898 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC166]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits or permit amendments.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Hubard (Permit Nos. 20311–02 and 26260), Shasta McClenahan, Ph.D. (Permit No. 21045–01), Malcolm Mohead (Permit No. 24387), and Sara Young (Permit No. 26537); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
20311–02	0648–XF412	Pacific Islands Fisheries Science Center, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818 (Responsible Party: Charles Littnan, Ph.D.).	82 FR 39776; August 22, 2017.	June 28, 2022.
21045–01	0648–XA560	Matson Laboratory, LLC, 135 Wooden Shoe Lane, Manhattan, MT 59741 (Responsible Party: Carolyn Nistler).	85 FR 79169; December 9, 2020.	June 28, 2022.
24387	0648–XB463	Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543–1026 (Responsible Party: Jon Hare, Ph.D.).	86 FR 53947; September 29, 2021.	June 23, 2022.
26260	0648–XB861	Lesley Thorne, Ph.D., School of Marine and Atmospheric Sciences, Stony Brook University, Stony Brook, NY 11794.	87 FR 12434; March 4, 2022	June 8, 2022.

[5] *See* 19 CFR 351.224(b).

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS—Continued

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
26537	0648–XB998	BBC Studio's Natural History Unit, Broadcasting House, 31–33 Whiteladies Rd, Bristol, BS8 2LR, United Kingdom, (Responsible Party: Matt Allen).	87 FR 29116; May 12, 2022	June 27, 2022.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226), as applicable.

Dated: July 7, 2022.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–14868 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Program; Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold a public meeting to solicit comments on the performance evaluation of the Michigan Coastal Management Program.

DATES: NOAA will consider all written comments received by Friday, August 19, 2022. A virtual public meeting will be held on Monday, August 8, 2022, at 3 p.m. Eastern Time (ET).

ADDRESSES: Comments may be submitted by one of the following methods:

Email: Carrie Hall, Evaluator, NOAA Office for Coastal Management, at *Carrie.Hall@noaa.gov.*

Public Meeting: Provide oral comments during the virtual public meeting on Monday, August 8, 2022, at 3 p.m. ET by registering as a speaker at *https://forms.gle/21w99zzJGEFLu8ng6.* Please register by Sunday, August 7, 2022, at 6 p.m. ET. Upon registration, a confirmation email will be sent. The lineup of speakers will be based on the date and time of registration. One hour prior to the start of the meeting on August 8, 2022, an email will be sent out with a link to the public meeting and information about participating.

Written comments received are considered part of the public record. The entirety of the comment, including the email address, attachments, and other supporting materials, will become part of the public record. Sensitive personal information, such as account numbers, Social Security numbers, or names of individuals, should not be included with the comment. Comments that are not responsive or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, NOAA Office for Coastal Management, by email at *Carrie.Hall@noaa.gov* or by phone at (240) 410–3422. Copies of the previous evaluation findings and 2016–2020 Assessment and Strategy may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations/.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Carrie Hall.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved coastal management programs and national estuarine research reserves. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the State of Michigan has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Keelin S. Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administrator.

[FR Doc. 2022–14880 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC131]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the North Jetty Maintenance and Repairs Project in Coos Bay, Oregon

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

ACTION: Notice; proposed issuance of two Incidental Harassment Authorizations (IHAs); request for comments.

SUMMARY: NMFS received a request from the U.S. Army Corps of Engineers (USACE) for the reissuance of their two previously issued IHAs to take marine mammals incidental to in-water construction activities associated with the North Jetty Maintenance and Repairs Project in Coos Bay, Oregon. The IHAs were initially issued on January 3, 2020,

with the first IHA (Year 1) effective from September 1, 2020 through August 31, 2021 and the second IHA (Year 2) effective from July 1, 2022 through June 30, 2023. The project has been delayed and none of the work covered in the IHAs has been conducted. NMFS is proposing to reissue the IHAs with the Year 1 IHA effective from September 1, 2022 through August 31, 2023 and the Year 2 IHA effective from March 1, 2024 through February 28, 2025. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHAs. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to reissue the two IHAs to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal of each IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 12, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS FR notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of IHAs) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHAs request.

History of Request

On March 18, 2019, NMFS received a request from USACE for two IHAs to take 7 species of marine mammals, by Level B harassment only, incidental to vibratory pile driving and removal associated with the North Jetty Maintenance and Repairs Project in Coos Bay, Oregon over the course of two years with pile installation occurring during Year 1 and pile removal occurring during Year 2. The application was deemed adequate and complete on September 10, 2019. Neither USACE nor NMFS expects injury, serious injury or mortality to result from this activity and, therefore, IHAs are appropriate. On January 3, 2020, NMFS issued the two IHAs to the USACE (85 FR 1140; January 9, 2020). The Year 1 IHA was effective from September 1, 2020 through August 31, 2021 and the Year 2 IHA was effective July 1, 2022 through June 30, 2023.

On February 20, 2021, the USACE notified NMFS that the project had been delayed and none of the work identified in the year 1 IHA (*e.g.,* pile installation) had occurred. On May 4, 2021, NMFS reissued the Year 1 IHA, effective September 1, 2021 through August 31, 2022 (86 FR 24850; May 10, 2021).

On February 23, 2022, the USACE notified NMFS that the project had been further delayed and work had still not commenced. The USACE submitted an application for both IHAs to be reissued, with the Year 1 IHA effective from September 1, 2022 through August 31, 2023 and the Year 2 IHA effective from March 1, 2024 through February 28, 2025. NMFS has preliminarily determined that the USACE's proposed activities (including mitigation, monitoring, and reporting), estimated incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized in the

initial IHAs. However, since the initial IHAs were issued several years ago, NMFS is requesting comments or additional information that may further inform our proposal to reissue the two IHAs to the USACE.

Description of the Proposed Activity and Anticipated Impacts

The reissued IHAs would include the same in-water construction activities (*i.e.,* vibratory pile installation and removal) in the same locations that were described in the initial IHAs. The mitigation, monitoring, and reporting measures would remain the same as prescribed in the initial IHAs. NMFS refers the reader to the documents related to the initial IHAs issued on January 3, 2020 (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-army-corps-engineers-north-jetty-maintenance-and-repairs*) for more detailed descriptions of the project activities. Other relevant documents include the **Federal Register** notice of proposed IHAs and request for comments (84 FR 56781; October 23, 2019), notice of issued IHAs (85 FR 1140; January 9, 2020), and notice of reissued Year 1 IHA (86 FR 24850; May 10, 2021).

Detailed Description of the Action

A detailed description of the USACE's proposed construction activities is found in these previous documents. The location, time of year, and nature of the activities, including the types of piles and methods of installation and removal, are identical to those described in the previous documents.

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to these reissued IHAs as well. In addition, NMFS has review the draft 2021 Stock Assessment Reports (SARs; Carretta *et al.,* 2021; Muto *et al.,* 2021), information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHAs. The estimated abundances of the California Breeding stock of northern elephant seals (*Mirounga angustirostris*), the Northern California/Southern Oregon stock of harbor porpoises (*Phocoena phocoena*), the West Coast Transient stock of killer whales (*Orcinus orca*), and the Eastern U.S. stock of Steller sea lions (*Eumetopias jubatus*) in the 2021 draft SARs have all increased from the numbers presented in the **Federal Register** notices for the initial IHAs (84 FR 56781, October 23, 2019; 85 FR 1140, January 9, 2020).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat is found in the documents supporting the initial IHAs, which remains applicable to the proposed reissuance of the IHAs. There is no new information on potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activities are found in the notice of issuance of the initial IHAs (85 FR 1140; January 9, 2020). The methods of estimating take for the proposed reissued IHAs are identical to those used in the initial IHAs. The source levels, days of operation, and marine mammal density remain unchanged from the previously issued IHAs. Regarding proposed authorized take, the stocks taken, types of take, and methods of taking remain unchanged from the previously issued IHAs, as do the number of takes, which are indicated below.

TABLE 1—PROPOSED TAKE BY LEVEL B HARASSMENT AND AS A PERCENTAGE OF STOCK ABUNDANCE IN EACH YEAR

Marine mammal	Level B harassment AZ sheets (or H-piles)	Level B harassment 30-inch piles	Level B harassment AZ sheets (or H-piles)	Level B harassment 30-inch piles	Total take by Level B harassment (percent of stock)	Total take by Level B harassment (percent of stock)
	YR–1 installation	YR–1 installation	YR–2 removal	YR–2 removal	YR–1 installation	YR–2 removal
Harbor seal (*Phoca vitulina*)	1,169	1,169	1,169	1,169	2,238 (9.45 percent)	2,238 (9.45 percent).
Northern Elephant seal (*Mirounga angustirostris*).	7	7	7	7	14 (<0.01 percent)	14 (<0.01 percent).
Steller sea lion (*Eumetopias jubatus*)	14	14	14	14	28 (0.06 percent)	28 (0.06 percent).
California sea lion (*Zalophus californianus*)	21	21	21	21	42 (0.02 percent)	42 (0.02 percent).
Gray whale (*Eschrichtius robustus*)	1	1	1	1	2 (<0.01 percent)	2 (<0.01 percent).
Killer whale (*Orcinus orca*)	2		2		2 (0.57 percent)	2 (0.57 percent).
Harbor porpoise (*Phocoena phocoena*)	2	2	2	2	4 (0.02 percent)	4 (0.02 percent).

Description of Proposed Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures proposed here are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHAs (85 FR 1140; January 9, 2020) and the discussion of the least practicable adverse impact included in that document remains accurate. Unless otherwise stated, the following measures are proposed for inclusion in both IHAs:

Timing Restrictions

All work would be conducted during daylight hours. If poor environmental conditions restrict visibility full visibility of the shutdown zone, pile installation would be delayed.

Shutdown Zone for In-Water Heavy Machinery Work

For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m of such operations, operations would cease and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions.

Shutdown Zones

For all pile driving/removal activities, the USACE would establish shutdown zones for a marine mammal species that is greater than its corresponding Level A harassment zone. To be conservative, the USACE would implement one cetacean shutdown zone (55 meters (m)) and one pinniped shutdown zone (25 m) during any pile driving/removal activity (*i.e.,* during sheet piles, H-piles, and 30-in steel pile installation and removal) (Table 2) which exceeds the

maximum calculated PTS isopleths as described in Table 7 of the **Federal Register** notice announcing the issuance of the initial IHAs (85 FR 1140; January 9, 2020). The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

TABLE 2—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Activity	Shutdown zones (radial distance in m, area in square kilometers (km^2 *))				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
In-Water Construction Activities					
Heavy machinery work (other than pile driving)	10 (0.00015)	10 (0.00015)	10 (0.00015)	10 (0.00015)	10 (0.00015)
Vibratory Pile Driving/Removal					
12-in H pile steel installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)
24-in sheet pile installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)
30-in pile installation/removal	55 (0.00475)	55 (0.00475)	55 (0.00475)	25 (0.00098)	25 (0.00098)

* **Note:** km^2 were divided by two to account for land.

Non-Authorized Take Prohibited

If a species enters or approaches the Level B harassment zone and that species is either not authorized for take or its authorized takes are met, pile driving and removal activities would shut down immediately using delay and shutdown procedures. Activities would not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed for pinnipeds and small cetaceans and 30 minutes for large whales.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 min or longer occurs, protected species observers (PSOs) would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, pile driving activities would not begin until the animal has left the shutdown zone or has not been observed for 15 min. If the Level B Harassment Monitoring Zone has been observed for 30 min and no marine mammals (for which take has not been authorized) are present within the zone, work would continue even if visibility becomes impaired within the Monitoring Zone. If a marine mammal for which take has been permitted is present in the Monitoring zone, piling activities would begin and Level B harassment take will be recorded.

Monitoring Zones

The USACE would establish and observe monitoring zones for Level B harassment. The monitoring zones for this project are areas where SPLs are equal to or exceed 120 dB rms (for vibratory pile driving/removal). For vibratory installation and removal of 12-inch H piles, the Level B harassment zone and monitoring zone would be 1,000 m. For vibratory installation and removal of 24-inch steel sheet piles, the Level B harassment zone and monitoring zone would be 4,642 m. For vibratory installation and removal of 30-inch steel pipe piles, the Level B harassment zone and monitoring zone would be 8,577 m. These zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the Level B harassment zones enables observers to be aware of and communicate the presence of marine mammals in the project area, and thus prepare for potential shutdowns of activity. The USACE would also gather information to help better understand the impacts of their planned activities on species and their behavioral responses.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all pile driving/removal activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven/removed. Pile driving/removal activities include the time to install, remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

Monitoring would be conducted by PSOs from on land and boat. The number of PSOs would vary from one to three, depending on the type of pile driving, method of pile driving and size of pile, all of which determines the size of the harassment zones. Monitoring locations would be selected to provide an unobstructed view of all water within the shutdown zone and as much of the Level B harassment zone as possible for pile driving activities. During vibratory driving or removal of sheet or H-piles, two PSOs would be present. One PSO would be located on the shoreline adjacent to the Material Off-loading Facility (MOF) site or on the barge used for driving piles. The other PSO would be boat-based and detect animals in the water, along with monitoring the three haulout sites in the Level B harassment zone *(i.e.,* Pigeon Point, Clam Island/North Spit, and South Slough). During vibratory driving and removal of 30-inch steel pipe piles, three PSOs would be present. As indicated above, one PSO would be on the shoreline or barge adjacent to the MOF site. A second PSO would be stationed near the South Slough haul out site, and the third PSO would be boat-based and make observations while actively monitoring at and between the two remaining haulout sites (*i.e.,* Pigeon Point and Clam Island).

In addition, PSOs would work in shifts lasting no longer than 4 hours with at least a 1-hour break between shifts, and would not perform duties as

a PSO for more than 12 hours in a 24-hour period (to reduce PSO fatigue).

Monitoring of pile driving would be conducted by qualified, NMFS-approved PSOs, who would have no other assigned tasks during monitoring periods. The USACE would adhere to the following conditions when selecting PSOs:

- Independent PSOs must be used (*i.e.,* not construction personnel);
- At least one PSO must have prior experience working as a marine mammal observer during construction activities;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator would be designated. The lead observer must have prior experience working as a marine mammal observer during construction; and
- The USACE would submit PSO CVs for approval by NMFS for all observers prior to monitoring.

The USACE would ensure that the PSOs have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and
- Sufficient training, orientation, or experience with the construction operations to provide for personal safety during observations.

Reporting of Injured or Dead Marine Mammals

In the unanticipated event that the planned activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as serious injury, or mortality, the USACE would immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources and the West Coast Region Stranding Coordinator. The report would include the following information:

- Time and date of the incident;
- Description of the incident;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with USACE to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USACE would not resume their activities until notified by NMFS.

In the event the USACE discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), the USACE would immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS. The report would include the same information as the bullets described above. Activities would continue while NMFS reviews the circumstances of the incident. NMFS would work with the USACE to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that the USACE discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USACE would report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

Final Report

The USACE would submit a draft report to NMFS no later than 90 days following the end of construction activities or 60 days prior to the issuance of any subsequent IHA for the project. PSO datasheets/raw sightings data would be required to be submitted with the reports. The USACE would provide a final report within 30 days following resolution of NMFS' comments on the draft report. Reports would contain, at minimum, the following:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);
- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Weather parameters in each monitoring period (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions in each monitoring period (*e.g.,* sea state, tide state);
- For each marine mammal sighting: species, numbers, and, if possible, sex and age class of marine mammals; number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zones, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate); description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity; type of construction activity that was taking place at the time of sighting; location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point; and if shutdown was implemented, behavioral reactions noted and if they occurred before or after shutdown.
- Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);
- Other human activity in the area within each monitoring period; and
- A summary of the following: total number of individuals of each species detected within the Level B Harassment Zone, and estimated as taken if correction factor appropriate (Level B harassment takes must be extrapolated based upon the number of observed takes and the percentage of the Level B Harassment Zone that was not visible);

total number of individuals of each species detected within the Level A Harassment Zone and the average amount of time that they remained in that zone; and daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B Harassment Zone, and estimated as taken, if appropriate.

Preliminary Determinations

The USACE's proposed in-water construction activities as well as the proposed mitigation, monitoring, and reporting requirements are unchanged from those in the initial Year 1 and Year 2 IHAs. The anticipated effects of the activities on the affected species and stocks and the estimated take of each species and stock also remain unchanged. When issuing the initial IHAs, NMFS found that each year of the Coos Bay North Jetty Maintenance and Repairs Project would have a negligible impact to species or stocks' rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stock (less than 10 percent). In conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following for each IHA: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the USACE's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No take of ESA-listed marine mammals are authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two IHAs to the USACE for conducting the North Jetty Maintenance and Repairs Project in Coos Bay, Oregon over the course of two non-consecutive years, beginning September 2022 through February 2025, with the previously mentioned mitigation, monitoring, and reporting requirements incorporated. A draft of the proposed IHAs can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the initial IHAs), the proposed authorizations, and any other aspect of this Notice of Proposed IHAs for the proposed North Jetty Maintenance and Repairs Project. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of Proposed Activities and Anticipated Impacts section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 8, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–14955 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB984]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of modification to expiration date of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been modified to LLOG Exploration Offshore, L.L.C. (LLOG) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: This Letter of Authorization is effective through December 31, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-*

and-gas-industry-geophysical-survey-activity-gulf-mexico. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

NMFS issued an LOA to LLOG on January 10, 2022, for the take of marine mammals incidental to one of the following vertical seismic profile (VSP) survey types: Zero Offset, Offset, Walk Away, Salt Proximity and/or Check Shots after reaching total depth of any of the proposed wells operated by LLOG within the Keathley Canyon Area. Please see the **Federal Register** notice of issuance (87 FR 3084; January 20, 2022) for additional detail regarding the LOA and the survey activity.

LLOG initially anticipated that the activity would occur at some point between March 1 and December 31, 2022. LLOG subsequently conveyed to NMFS that a shift in their rig schedule is likely to cause the associated VSP survey to occur later than previously expected. LLOG has requested modification to the effectiveness end date of the LOA (from December 31, 2022 to December 31, 2023) to account for any potential delays. There are no other changes to LLOG's planned activity. Since issuance of the LOA, no survey work has occurred.

Authorization

NMFS has changed the effectiveness end date of the LOA from December 31, 2022 to December 31, 2023. There are no other changes to the LOA as described in the January 10, 2022, **Federal Register** notice of issuance (87 FR 3084): the specified activity; estimated take by incidental harassment; and small numbers analysis and determination remain unchanged and are herein incorporated by reference.

Dated: July 7, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–14904 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB139]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Echo Offshore LLC (Echo) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from the date of issuance through November 30, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of

marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Echo plans to conduct four identical high resolution seismic surveys using a single 20-cubic inch airgun along with three additional high-resolution sources: a sidescan sonar, a sub-bottom profiler, and a multibeam echosounder. Each survey will occur in one of the following locations: (1) East Cameron Area Lease Block 187; (2) Ship Shoal Area, South Addition Lease Block 239; (3) West Delta Area North Survey Lease Area 101; and (4) West Delta Area South Survey Lease Block 101. See Echo's application for more details.

Consistent with the preamble to the final rule, the survey effort proposed by Echo in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

As sources will be used simultaneously, exposure modeling results were generated using the single airgun proxy, as it produces the greater value for each species (as opposed to the high-resolution geophysical proxy, involving use of the same package of three additional instruments planned for use by Echo). Because the proxy assumes use of a 90 in^3 airgun, the take numbers authorized through this LOA are considered conservative (*i.e.,* they likely overestimate take due to differences in the sound source planned for use by Echo, as compared to those modeled for the rule). The survey is planned to occur for 1 day at each survey location for a total of 4 days of surveying. All surveying effort will occur in Zone 2 during Summer.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey, and authorized through the LOA, is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322; January 19, 2021, 86 FR 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	0	51	n/a
Sperm whale	0	2,207	n/a
Kogia spp.	0	4,373	n/a
Beaked whales	0	3,768	n/a
Rough-toothed dolphin	[3] 14	4,853	0.3
Bottlenose dolphin	109	176,108	0.1
Clymene dolphin	0	11,895	n/a
Atlantic spotted dolphin	[4] 26	74,785	0.0
Pantropical spotted dolphin	0	102,361	n/a
Spinner dolphin	0	25,114	n/a
Striped dolphin	0	5,229	n/a
Fraser's dolphin	[5] 0	1,665	n/a
Risso's dolphin	0	3,764	n/a
Melon-headed whale	0	7,003	n/a
Pygmy killer whale	0	2,126	n/a
False killer whale	[5] 0	3,204	n/a
Killer whale	0	267	n/a
Short-finned pilot whale	0	1,981	n/a

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.
[3] Modeled take of 2 increased to account for potential encounter with group of average size (Maze-Foley and Mullin, 2006).
[4] Modeled take of 24 increased to account for potential encounter with group of average size (Maze-Foley and Mullin, 2006).
[5] Modeled take of less than 0.5 was rounded down to zero.

Based on the analysis contained herein of Echo's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Echo authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: July 7, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–14905 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Program; Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold a public meeting to solicit comments on the performance evaluation of the Virginia Coastal Management Program.

DATES: NOAA will consider all written comments received by Friday, August 12, 2022. A virtual public meeting will be held on Monday, August 1, 2022, at 5 p.m. Eastern Time (ET).

ADDRESSES: Comments may be submitted by one of the following methods:

Email: Carrie Hall, Evaluator, NOAA Office for Coastal Management, at *Carrie.Hall@noaa.gov.*

Public Meeting: Provide oral comments during the virtual public meeting on Monday, August 1, 2022, at 5 p.m. ET by registering as a speaker at *https://tinyurl.com/VirginiaCZM.* Please register by Monday, August 1, 2022, at 4 p.m. ET. Participation is online or by phone. Upon registration, a confirmation email with a meeting link will be sent. The lineup of speakers will be based on the date and time of registration.

Written comments received are considered part of the public record and the entirety of the comment, including the email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personal information, such as account numbers, Social Security numbers, or names of individuals, should not be included with the comment. Comments that are not responsive or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, NOAA Office for Coastal Management, by email at *Carrie.Hall@noaa.gov* or by phone at (240) 410–3422. Copies of the previous evaluation findings and 2016–2020 Assessment and Strategy may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations/.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Carrie Hall.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally

approved coastal management programs and national estuarine research reserves. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the Commonwealth of Virginia has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Keelin S. Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–14878 Filed 7–12–22; 8:45 am]

BILLING CODE 3510–JE–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities; Notice of Intent To Renew Collection 3038–0099, Process for a Swap Execution Facility or Designated Contract Market To Make a Swap Available To Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed renewal 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 extension of a collection of information and to allow 60 days for public comment. This notice solicits comments on the information collections associated with the process for a designated contract market (''DCM'') or a swap execution facility (''SEF'') to make a swap available to trade and therefore subject to the trade execution requirement pursuant to the Commodity Exchange Act (''CEA''). This process imposes rule filing requirements on a DCM or a SEF that wishes to submit a swap as available to trade.

DATES: Comments must be submitted on or before September 12, 2022.

ADDRESSES: You may submit comments, identified by ''Renewal of Collection Pertaining to Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade,'' ''OMB Control No. 3038–0099'' by any of the following methods:

- The Agency's website, *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *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.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Rebecca Mersand, Paralegal Specialist, Division of Market Oversight, Commodity Futures Trading Commission, 290 Broadway, 6th Floor, New York, NY 10007; (202) 941–8910; *rmersand@cftc.gov.* Andrew Stein, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–6054; *astein@cftc.gov.* Refer to OMB Control No. 3038–0099.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed extension of the collection of information listed herein. 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.

Title: Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade (OMB Control No. 3038–0099). This is a request for extension of a currently approved information collection.

Abstract: The collection of information is needed to help determine which swaps should be subject to the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act pursuant to Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. A SEF or DCM that submits a determination that a swap is available to trade must address at least one of several factors to demonstrate that the swap is suitable for trading pursuant to the trade execution requirement. The Commission uses this collection of information to facilitate the application of the trade execution requirement and the requirements associated with methods of execution under parts 37 and 38 of the Commission's regulations.

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.

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.* 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.

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: Sections 37.10 and 38.12 of the Commission's regulations include information collection requirements within the meaning of the PRA. These regulations permit a SEF or DCM to submit a determination that a swap is available to trade to the Commission via filing procedures set forth in part 40 of the Commission's regulations. The Commission estimates the burden of complying with these information collection requirements to be 16 hours per response.

Respondents/Affected Entities: SEFs, DCMs.

Estimated Number of Respondents: 5.

Estimated Average Burden Hours per Respondent: 16.

Estimated Total Annual Burden Hours: 80 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: July 8, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–14974 Filed 7–12–22; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0045]

Agency Information Collection Activities: Comment Request

Correction

In notice document 2022–14474 appearing on pages 40513–40514 in the issue of Thursday, July 7, 2022, make the following correction:

On page 40514, in the first column, under the **DATES** heading, in the third line, ''October 5, 2022'' should read ''August 8, 2022''.

[FR Doc. C1–2022–14474 Filed 7–12–22; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF EDUCATION

[Docket ID ED–2021–OESE–0152]

Final Priorities, Requirements, Definitions, and Selection Criteria—Full-Service Community Schools

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Department of Education (Department) announces priorities, requirements, definitions, and selection criteria under the Full-Service Community Schools (FSCS) program, Assistance Listing Number 84.215J. The Department may use these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2022 and in later years.

DATES: These priorities, requirements, definitions, and selection criteria are effective August 12, 2022

FOR FURTHER INFORMATION CONTACT: Jane Hodgdon. U.S. Department of Education, 400 Maryland Avenue SW, Room 3E346, Washington, DC 20202. Telephone: (202) 453–6620. Email: *FSCS@ed.gov.*

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

SUPPLEMENTARY INFORMATION: The Department intends these priorities, requirements, definitions, and selection criteria to support competitions under the FSCS program for the purpose of awarding grants to projects in different stages of development, from capacity building to scaling full-service community schools approaches where the community and education leadership are ready to scale. These stages represent points of entry at the local, district, regional, and State levels to strategically scale the community school approach based on the readiness of the consortium applying for the grant.

Purpose of Program: The FSCS program, established under sections 4621–4625 of the Elementary and Secondary Education Act, as amended (ESEA), provides support for the planning, implementation, and operation of full-service community schools that improve the coordination, integration, accessibility, and effectiveness of services for children and families, particularly for children attending schools with concentrated poverty, including rural schools.

Program Authority: Sections 4621–4625 of the ESEA, 20 U.S.C. 1771–7273, 7275.

We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the **Federal Register** on January 12, 2022 (87 FR 1709) (the NPP). That document contained background information and our reasons for proposing the priorities, requirements, definitions, and selection criteria.

Public Comment: In response to our invitation in the NPP, 43 parties submitted comments pertinent to the proposed priorities, requirements, definitions, and selection criteria. We discuss substantive issues under each priority, requirement, definition, or selection criteria to which they pertain. Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make. In addition, we do not address comments that are outside the scope of the proposed priorities, requirements, definitions, and selection criteria.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the NPP follows.

Proposed Priority 1—Capacity Building and Development Grants.

Comments: Among the 15 comments related to Proposed Priority 1, all expressed overall support for the importance of and need for the priority.

Six commenters recommended revisions to Proposed Priority 1, including striking the word ''sustain'' to better reflect that this priority is focused on building grantee capacity and the initial development of full-service community schools. Six commenters suggested that the Department clarify that the needs assessment could be done during, rather than before, the grant period. Two commenters recommended that we designate Priority 1 as an absolute priority, and three suggested that we set the grant period at 3 years. One commenter recommended that the Department reduce the funding available for Priority 1 grantees, which in FY 2019 was established at $500,000 per year for 5 years, at total of up to $2.5 million for the full grant period. One commenter requested that we clarify that a grantee can scale beyond the two schools required in Priority 1. One commenter suggested that Priority 1 should emphasize civic learning and development of civic knowledge and skills. Another commenter suggested that the Department require asset mapping as part of the needs assessment, as well as a clear plan for how the grantee will engage and collaborate with families. Another commenter suggested the Department encourage projects that approach

capacity building and development of programs holistically, including through collaboration and integration with early childhood education providers such as Head Start.

Discussion: The Department appreciates the support for the proposed priority and concurs that the purpose of Priority 1 is to encourage grantees to begin the work to develop full-service community schools. As such, the Department clarifies that the needs assessment can be completed during the grant period and will eliminate the word ''sustain'' from the description.

The Department acknowledges the importance of a comprehensive, collaborative, equitable, accessible, culturally competent, and inclusive approach to completing a holistic and individualized needs assessment that considers community assets and engages a wide and representative range of participants, including families and early childhood educators such as Head Start providers. We are revising the language of the priority to include extensive community engagement as part of the development and coordination activities in Priority 1. The Department declines to require applicants to conduct asset mapping because the term is not used in section 4625(a)(4) of the ESEA and we want to maintain maximum flexibility for applicants. Additionally, nothing in the priority prevents an applicant from conducting asset mapping. Pillar 3 of the FSCS requirements includes active family and community engagement, and we are revising the definition of a broadly representative consortium to include student, family, and community voices. The Department thinks that the activities outlined in Pillar 3, which specifies that the school provides centralized supports for families and communities, which may include citizenship preparation, allows for a wide variety of activities. We appreciate the specific ideas about the organizations, individuals, and activities an applicant or grantee might engage in their plans to develop a full-service community school; maintaining the broad language in the priority, however, will allow for additional ideas.

The Department appreciates the interest in distinguishing Priority 1 as an absolute priority that is focused on development and capacity building, including the recommendation to rename the priority to reflect that focus, reduce the grant period to 3 years, and reduce the level of funding for awards. Regarding the duration of FSCS grants, section 4623(b) of the ESEA establishes that ''a grant awarded under this subpart shall be for a period of not more than 5 years, and may be extended for an additional 2 years.'' Applicants may propose shorter project periods, but the Department thinks it is important to allow applicants, including applicants that are building capacity and developing a full-service community school, with sufficient time to plan, develop and implement their project. A longer period of performance will also reduce the administrative burden on applicants by reducing the frequency of applications. As such, we decline the suggestion to shorten the length of the grant. The designation as an absolute, competitive preference, or invitational priority is established through the notice inviting applications (NIA).

Section 4625(e) of the ESEA requires that FSCS grantees use their awards to coordinate three or more existing pipeline services and provide a minimum of two additional services at two or more public elementary or secondary schools. Given the statutory requirement that grantees coordinate existing services and provide additional services during their grant period, all FSCS grantees are required to implement a minimal number of full-service community schools' activities. The Department intends to reflect this requirement in the NIA and by maintaining the current title of the priority, Capacity Building and Development Grants. The priority allows for applications that propose to serve more than two schools, but we think the language that a grantee implement a full-service community school in ''two or more schools'' is sufficiently clear.

Changes: We have revised Priority 1 by eliminating the word ''sustain'' and clarifying that the needs assessment can be completed during the grant period. We have added that initial development and coordination activities include extensive community engagement. We discuss below our changes to definitions, including the change to the definition of the Pillars of Full-Service Community Schools to ensure that student, family, and community voice are included.

Priority 2—Multi-Local Educational Agency Grants.

Comments: Many commenters strongly supported a priority that expands implementation of full-service community schools beyond two school sites and into local educational agencies (LEAs). Seven commenters recommended that the Department retitle the priority to use the term ''Implementation Grants'' and include the expectation that grants awarded under this priority would be sustained beyond Federal funding. Further, one commenter requested that the Department clarify that funding under Priority 2 expand and sustain community schools within an LEA. An additional commenter proposed that the Department clarify that a grantee can expand to additional schools beyond the two required by section 4625(a)(3) of the ESEA.

Four commenters recommended that Priority 2 require no more than one LEA, while three other commenters offered support for the inclusion of two or more LEAs, noting that the requirement that two or more LEAs work together benefits small and rural LEAs. Eight commenters requested that the Department revise the requirement that the LEAs be located in the same State, noting that in many places, including rural, remote and Tribal places, community identity is not limited by the legal boundaries of a State.

One commenter requested that the Department clarify that the eligible applicants under this priority include those outlined in section 4622(1)(B) of the ESEA—which is a consortium of one or more LEAs or the Bureau of Indian Education (BIE) and one or more community-based organizations, nonprofit organizations, or other public entities—and that funds be reserved or designated for primary applicants that are not LEAs. One commenter suggested that the Department provide a comprehensive list of expanded learning professionals for all LEAs and allow for local flexibility for each school to choose those that best meet the needs of their community. One commenter did not support Priority 2 because unitary systems, such as Hawaii and Puerto Rico, would be ineligible under this priority.

Discussion: The Department appreciates the support for Priority 2 and the design to scale development of full-service community schools into further implementation across two or more LEAs. Because Priority 1 also requires that grantees develop and begin implementation of the full-service community school model, including an allowance for use of funds for planning in year one, we decline the suggestion to retitle Priority 2; however, although no revisions to the priority are required, we agree that grantees should plan how they will sustain their work in additional schools and LEAs. In response to the concern that applicants and grantees can expand support to additional schools beyond the statutorily required two schools, the Department is adding language requiring eligible entities to ''coordinate and provide services at two or more full-

service community schools.'' The Department agrees that it is important to clarify that, under Priority 2, two or more community schools would be implemented in each LEA.

We appreciate the considerations of several commenters that implementing a community school approach across a single system, such as a single LEA, is sufficiently complex. However, we think that the distinction of working in no fewer than two LEAs is an important indicator of scaling the model. We also appreciate the considerations of small and rural LEAs who expressed that working in partnership with one or more additional LEAs supports their implementation of the model. The Department acknowledges that community identity often transcends official State boundaries and that, in some places, including rural and Tribal areas, it may be appropriate for the two or more LEAs to be located in different States, and thus, we are eliminating that requirement from Priority 2.

Regarding the request that the Department consider reserving funds under Priority 2 for nonprofit-led consortia, we think individual communities and applicants are best positioned to determine the makeup of their consortium. As such, we decline to require Priority 2 applications to be led by nonprofits or that a portion of funding be reserved for nonprofit-led consortia; however, we are adding language to clarify that eligible applicants are consortia that include LEAs or the BIE and nonprofit organizations. The Department appreciates the suggestion that each LEA be provided with a list of expanded learning professionals, but we know that individual communities are best positioned to assess the resources and potential partners that can address the needs and supplement the assets identified in the development of their full-service community schools. As such, we will not provide a list of expanded learning professionals to LEAs. While unitary systems where the State Educational Agency (SEA) is also the LEA would not be eligible to apply under Priority 2, those entities would be able to apply under Priorities 1 and 3. Further, the NPP included a citation within Proposed Priority 3, which stated that the District of Columbia, Hawaii, and Puerto Rico may apply for Statewide grants, as does the text of Final Priority 3 included in this NFP. This clarification is also included in the NIA.

Changes: The Department has revised Priority 2 to require that an applicant implement and sustain the model in two or more schools and in two or more LEAs. The language of the priority clarifies that eligible applicants are consortia that include, and may be led by, community-based organizations, nonprofit organizations, or public or private entities. The Department has eliminated the language in the priority that the two or more LEAs are located in the same State. Upon our internal review, we also added an exception for LEAs that oversee a single school—to the requirement to coordinate and provide services at two or more full-service community schools in each LEA—in recognition that some small, rural or charter school LEAs may only serve a single school.

Priority 3—State Scaling Grants.

Comments: The Department received numerous comments that support Priority 3's focus on scaling the full-service community school at the statewide level. Three commenters requested that the Department clarify that eligible applicants under Priority 3 are those outlined in section 4622(1)(B) of the ESEA. Four commenters proposed that the Department require that the SEA apply as part of the required consortium, or that the consortium include documentation from the SEA, in the form of a letter of support, outlining the SEA's commitment to and partnership with the consortium.

Two commenters proposed that the Department require, as a condition of eligibility, that States identify or establish a State steering committee that represents community schools stakeholders, including educators and other school staff, community school initiative leaders, education union or association designees, family leaders participating in community school programs, community partners, and community school coordinators from schools already implementing community schools in that State and that, in addition to serving as an advisory committee, also has the authority to make decisions about the design, implementation, and evaluation of State efforts for the grant. One commenter suggested that the Department require each grantee under Priority 3 to provide clear and consistent guidance for identifying LEAs, including the establishment of a minimum set of criteria so that the LEAs most in need are considered.

Five commenters requested that the Department remove the requirement that six or more LEAs participate in a grant under Priority 3; two commenters suggested that the Department require a percentage of the State's LEAs to participate, making the requirement more consistent across States with large and small numbers of LEAs. Several commenters recommended that funding available be commensurate with the number of LEAs included in a grant.

Two commenters requested that the Department clarify that an applicant's receipt of a grant in partnership with an SEA does not preclude other applicants in the State from receiving an award under a separate priority. Two commenters shared that they do not support Priority 3, including one commenter who declined to support the priority because, in their reading, unitary systems such as Hawaii and Puerto Rico would be ineligible.

Discussion: The Department appreciates the support for scaling full-service community schools to the State level, as well as the suggestions commenters provided. In response to the request that the Department reaffirm the eligible applicants under the FSCS program, we recognize that the eligible applicants are established in section 4622(1)(B) of the ESEA; therefore, the Department cannot make changes that would allow or require the SEA to be a lead applicant. The Department further agrees that the State scaling envisioned in Priority 3 makes SEA involvement and commitment critical to successful implementation and scaling; SEA commitment must be demonstrated through the FSCS-required memorandum of understanding (MOU). The Department appreciates the insights of commenters regarding the need for and benefit of a statewide steering committee that can support implementation and scaling, including selection of participating LEAs. However, the Department thinks that applicants and grantees, working with their partners, including Tribal partners, the broadly representative consortium (as defined in this notice) and the statewide steering committee are best positioned to determine the process for selecting LEAs under Priority 3. Regarding the concern that selected LEAs have demonstrated need, section 4625(b) of the ESEA prioritizes schools eligible for a schoolwide program under section 114(b) of ESEA.

The Department acknowledges the concerns that Priority 3 not set a minimum of participating LEAs and recognizes that there is wide variation in the number of LEAs and the number of schools within LEAs, across States. We agree that requiring a percentage of LEAs in the State would be a more equitable approach to scaling the model. However, the Department is interested in funding applications that propose to work with their partners to develop, implement, evaluate, and sustain full-service community schools at a level, and in a percentage of LEAs and

schools, across the State that will effectively scale the model statewide and are addressing this through revisions to the selection criteria. The Department will take into consideration the request that funding be made commensurate with the number of LEAs, and number of schools within those LEAs, that will be served, but funding levels are established in the NIA.

The Department also recognizes the concern that a grant awarded under Priority 3 might inhibit submission of additional applications in that State under other priorities, and we will clarify through pre-application technical assistance that multiple awards can be made in a State provided that funded activities do not overlap. The Department also understands the concern of unitary systems where the SEA is also the LEA; however, the NPP included a citation under Proposed Priority 3 with the clarification that ''DC, HI, and PR may apply for Statewide grants.'' The final priority includes the same clarification.

Changes: The Department has revised Priority 3 to require that the SEA document its commitment to the consortia and implementation of the grant, if awarded, through the required MOU. Additionally, the Department is requiring, under Priority 3, that the applicant commit to establishing a State steering committee. Finally, the Department has revised the requirement from six or more LEAs to a requirement that the applicant, in partnership with the SEA, determine the percentage of LEAs in the State that will develop, support, and expand full-service community schools over the 5-year grant performance period. We have included a selection criterion that will be used to assess the applicant's proposal to scale the FSCS model at the statewide level, including recommendations for considering the percentage of LEAs proposed when awarding points. Upon our internal review, we also added language recognizing that some small, rural, tribal, or charter school LEAs may only serve a single school.

Proposed Priority 4—Participation in a National Evaluation.

Comments: Of the 19 comments received related to Priority 4, most expressed concern about use of a randomized controlled trial evaluation design for the program. Two commenters supported the model.

Six commenters objected to the national evaluation's randomized controlled study design. Five commenters encouraged the Department to use a different study design (such as various quasi-experimental designs) rather than a randomized controlled trial. One commenter expressed doubt that the national evaluation could control what was happening in the group of schools that would not receive funding.

Six commenters objected to the Department not funding every interested and eligible school under the randomized controlled trial study design.

There were six comments related to the data collected by the national evaluation. Four commenters recommended that the national evaluation require collection of specific quantitative and qualitative data aligned with the Full-Service Community Schools theory of action and its intended outcomes. One commenter asked how the Department will ensure that the outcomes measured go beyond test scores and include outcomes such as student physical and mental health and a range of key non-cognitive competencies, such as social and emotional learning and increased sense of safety and well-being. One commenter encouraged the Department to consider the baseline attributes and inputs of the community and include the experiences and perspectives of students, families, teachers, community partners, and stakeholders.

Six commenters encouraged the Department to establish a technical advisory group to advise on the best approach to the national evaluation. One commenter suggested specific candidates to participate in such a group. There were four comments related to implementation of full-service community schools looking different across schools because the strategy is specific to the needs and assets of individual communities and schools.

Two commenters indicated concern about how the lack of consistent services and activities could be captured in a randomized controlled trial. One commenter believed that it would be difficult to ascertain common practices across grantees that are most helpful for practitioners and policymakers to understand and advance. One commenter asked how the national evaluation will account for schools placing varying levels of emphasis on specific outcomes based on the characteristics of the student populations and communities they serve.

Two commenters encouraged the Department to make participation in the national evaluation mandatory through the use of an absolute priority, stating that it would ensure that the sample size is sufficiently large and representative of grantees. One commenter pointed out that if only some of the grantees participate in the evaluation process, findings are limited and may not be representative or inclusive, and the opportunity to learn about the impacts of the program in different communities may be missed.

Two commenters objected to the proposed requirement that applicants nominate four schools to receive program funding. In particular, this requirement could exclude smaller districts, which would limit the generalizability of the findings. It could also exclude larger districts that do not have at least four schools that are not fully implementing the four pillars of the community schools model.

One commenter asked for clarification on how the data collected under the national evaluation would be used. One commenter asked what the national evaluation will assess and how the results will be shared. One commenter encouraged the Department to adopt an equity-based approach to the national evaluation, in partnership with community members.

Seven commenters recommended that the Department require each grantee to conduct a third-party local evaluation. Those commenters encouraged the Department to require both quantitative and qualitative data that may include, but not be limited to, student chronic absenteeism rates; student discipline rates, including suspensions and expulsions; school climate information, which may come from student, parent, or teacher surveys; provision of integrated student supports and stakeholder services; expanded and enriched learning time and opportunities; family and community engagement efforts and impact; information on the number, qualifications, and retention of school staff, including the number and percentage of fully certified teachers, disaggregated by race and ethnicity, and rates of teacher turnover; graduation rates; changes in school spending information; collaborative leadership and practice strategies, which may include building the capacity of educators, principals, other school leaders, and other staff to lead collaborative school improvement structures, such as professional learning communities; regularly convening or engaging all initiative-level partners, such as LEA representatives, city or county officials, children and youth cabinets, nonprofit service providers, public housing agencies, and advocates; regularly assessing program quality and progress through individual student data, participant feedback, and aggregate

outcomes to develop strategies for improvement; and organizing school personnel and community partners into working teams focused on specific issues identified in the needs and assets assessment.

Discussion: The Department appreciates the comments, concerns, and support shared by the field regarding a national evaluation of the FSCS program and we are committed to working with grantees and other stakeholders to design and implement the national evaluation required under section 4625(f) of the ESEA. To allow more time to conduct outreach with the field, the Department is not going to begin the national evaluation with the FY 2022 grant competition.

The Department recognizes the potential benefit of requiring each grantee to partner with a local independent evaluator to study each grant award separately and support ongoing program improvements during the grant period. Such a local evaluation would not be in place of a national evaluation. As noted above, the authorizing legislation for the FSCS program requires a separate national evaluation that examines the effects of the grant program as a whole.

The Department has not included the Participation in the National Evaluation priority in these final priorities but will continue to consider the national evaluation priority and the related comments. We will also conduct additional outreach to the field to gather and discuss recommendations for developing a robust national evaluation of the program and its grantees and to address some of the concerns raised. If we decide to finalize the national evaluation priority, the Department will summarize and respond to the comments in a separate NFP for that priority.

Additionally, the Department will build upon the ESEA requirement that grantees conduct annual evaluations, use those evaluations to refine and improve activities carried out, and make results of such evaluations publicly available, by adding a requirement that grantees contract for a third-party independent evaluation to meet the FSCS local evaluation requirements.

Changes: The Department has not included the Participation in the National Evaluation priority in these final priorities but will continue to consider the national evaluation priority and the related comments. Additionally, the Department will build upon the ESEA requirement that grantees conduct annual evaluations, use those evaluations to refine and improve activities carried out, and make results of such evaluations publicly available, by including a requirement that grantees contract for a third-party, external independent evaluation to meet the FSCS local evaluation requirements.

Proposed Priority 5—Evidence-Based Integrated Student Supports.

Comments: Four commenters expressed that they do not support Proposed Priority 5 and requested that it be eliminated. Commenters expressed concern that the priority is duplicative of the requirement that applicants address integrated student supports under the pillars of community schools. Many of those same commenters also noted that the proposed selection criteria evaluate applications on the ''extent to which the design of the proposed project reflects relevant and evidence-based findings from existing literature and includes a high-quality plan for project implementation integrating the pillars of full-service community schools.'' Two commenters supported the inclusion of the priority because they agree with the importance of strong evidence to ensure effective programs; one of those commenters noted the importance of clarifying that the term ''evidence-based'' has the meaning provided in the ESEA. Two commenters recommended that the Department clarify what is meant by integrated student supports. Three commenters expressed support for this priority, including one commenter who recommended it be used as a competitive preference priority.

Discussion: The Department appreciates the comments and suggestions provided, which make evident that the intention behind the priority, to encourage applicants and grantees to incorporate evidence-based models of integrated supports that identify and address the comprehensive needs of individual students into their community school initiatives, was not clearly communicated. We recognize that the use of the term ''integrated student supports'' in Proposed Priority 5, as well as the proposed requirement and definition of the four pillars of community schools, may be confusing for applicants. In response to comments supporting the use of evidence-based activities and requests for confirmation that the definition is consistent with ESEA, the Department acknowledges that Section 4625(b)(2) of the ESEA prioritizes evidence-based activities in the FSCS program and cites the definition included in the ESEA.

In order to encourage applicants and grantees to incorporate evidence-based models of integrated supports that identify and address the comprehensive needs of individual students into their community school initiatives, the Department will consider inclusion of applicable priorities from the Secretary's Supplemental Priorities published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Changes: In recognition of the potential for confusion in using the term ''integrated student supports'' in Proposed Priority 5 and Requirement 1, and that the information may appear to be duplicative, the Department has not included Proposed Priority 5—Evidence-Based Integrated Student Supports in these final priorities.

Additional Priorities

Comments: A number of commenters suggested additional priorities for the FY 2022 FSCS program. Of those commenters, four requested that the Department include a competitive preference priority for applicants serving rural communities or schools. One of these commenters requested a priority for Tribal partners or applicants from rural or remote areas.

A number of commenters expressed concern that grant resources and activities may not be focused on schools, students, and communities of greatest need. Of the 12 comments related to directing services and grants to those of greatest need, 10 recommended that the Department add selection criteria related to need and one proposed that the Department add a priority for providing services to low-income families.

Six commenters encouraged the Department to more explicitly connect community school supports to classroom instruction and learning. Two commenters referenced the science of learning and development and recommended the FSCS program emphasize a whole child or whole learner approach. One commenter suggested that the FSCS program include a focus on schoolwide culture, including use of trauma-informed practices and adoption of disciplinary procedures and practices that are holistic and nondiscriminatory.

One commenter recommended that the Department develop a competitive priority for applicants who have made structural changes to support community schools, applicants who have plans to develop and utilize shared data systems, and previous or current Promise Neighborhoods grantees.

Two commenters suggested that, because the success of a full-service community school relies on strong cross-agency collaboration, the Department consider using as a competitive preference priority the Secretary's Supplemental Priority 6—

Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change.

Discussion: The purpose of the FSCS program is to provide support for the planning, implementation, and operation of full-service community schools, particularly for children attending schools, including rural and tribal schools, with high rates of poverty. Additionally, the authorizing legislation requires that not less than 15 percent of grant funds be awarded to eligible entities that propose to carry out activities in rural areas.

The legislation that authorizes FSCS requires the Department to prioritize both high-poverty and rural schools. Section 4625(b) of the ESEA requires the Department to give priority to eligible entities that (A) will serve a minimum of two or more full-service community schools eligible for a schoolwide program under section 1114(b), as part of a community- or district-wide strategy; or (B) include an LEA that satisfies the requirements of section 5211(b)(1)(A), (B), or (C); or section 5221(b)(1)(A) and (B). The Department will ensure that all statutory requirements for the program are met.

The Department recognizes that delivery of integrated, accessible, and effective supports in full-service community schools are intended to improve student outcomes, including academic achievement. We agree that full-service community schools should support the whole child and their classroom experience, including support and professional development for educators to ensure the classroom is an environment that allows students to thrive. FSCS schools should also support school leadership, and adoption of practices and frameworks that meet the needs of all learners. The Department has taken these suggestions into consideration as it develops the NIA, which may include related priorities from the Supplemental Priorities. We think the Supplemental Priorities include a number of topics proposed by the commenters, and therefore do not think it necessary to rule-make on program-specific priorities when the Supplemental Priorities are available.

The Department agrees with the comment that organizations that have successfully implemented Promise Neighborhoods grants have revised their school and community structures to improve interagency and cross-sector implementation of shared goals and activities. These organizations use a shared data system to track and measure individual and program progress and are well positioned to successfully implement a FSCS grant. We decline, however, to include these as additional priorities because FSCS is designed to support schools and communities across a continuum of capacity to develop and implement full-service community schools.

The Department concurs that cross-agency coordination at the local level is critical to successful full-service community schools. Further, the Biden-Harris Administration is committed to providing support for comprehensive evidence-based community violence initiatives that bring a cross-agency approach to community violence prevention and intervention. The Department will take these suggestions into consideration as it develops the NIA, which may include related priorities from the Supplemental Priorities.

Changes: None.

Requirements

Requirement 1—Pillars of Full-Service Community Schools

Comments: Among the comments received related to the proposed requirement that projects must describe the pillars of full-service community schools that they have in place or how they will establish these pillars, six expressed overall support for the pillars. Four commenters recommended that the Department provide applicants with examples of the pillars. Another commenter noted that any examples of the pillars should be evidence-based. One commenter suggested the Department provide applicants with workshops on the pillars. One commenter noted that the Department should add that the pillars of community schools must be underpinned by a strong instructional program that incorporates the science of learning and development.

One commenter recommended that the Department clarify that an applicant that is implementing an evidence-based integrated student supports model is meeting the requirement as long as it is working in a school that is addressing all four pillars of a community school.

One commenter recommended that the Department require that schools and districts make an adequate effort to reach students who will most benefit from the supports and require applicants to describe the strategies they will use to ensure the most vulnerable students and families are being reached. A similar comment recommended that the Department explicitly require that applicants collaborate with families.

One commenter recommended that, instead of requiring applicants to describe their work using the framework of the four pillars, they should be required to describe their approach to strategic growth and address how community schools' strategies involve teaching and curriculum in order to reach the ultimate goal of impacting student learning.

Discussion: The Department appreciates that applicants benefit from technical assistance and support throughout the application period and during program implementation. The Department has provided applicants information about the FY 2022 competition in the NIA, published elsewhere in this issue of the **Federal Register**, and will provide support through pre-application webinars and frequently asked questions.

While the Department is not revising the pillars to include a requirement that schools and districts describe how they will focus on the most vulnerable students and families, the NIA for the FY 2022 competition uses a Supplemental Priority in Competitive Preference Priority 2, to encourage applicants to consider using multi-tiered systems of support that can identify and serve students and families of greatest need.

The Department acknowledges that, while there are a variety of ways to address and frame community schools' practices, we are interested in maintaining a common structure that the pillars provide. The background section of the NPP cites evidence that implementation of the four pillars is associated with a range of positive outcomes for students. Additionally, the background section of the NIA for the FY 2022 competition recognizes that the four pillars are supported by evidence from the science of learning and development and can be used to address the needs of the whole child, including those that the school and community partners determine to be most vulnerable. Use of this common structure allows applicants to develop programs with more fidelity to what has been shown to be effective and prepares the FSCS program and its grantees for a future national evaluation. Applicants are invited to share additional information that can supplement their response to the requirement and discussion of the four pillars, including the applicant's work with families, which is required in the third pillar (Active family and community engagement), use of evidence-based integrated student supports, how those supports address adverse childhood experiences (ACEs), and the applicant's approach to strategic growth. The Department declines to make any changes to the requirement that

applicants describe the pillars of full-service community schools.

Changes: None.

Other Requirements

Comments: Several commenters suggested FSCS program requirements in addition to the proposed requirements.

As discussed in connection with Proposed Priority 4, numerous commenters recommended that the Department establish a requirement that grantees work with an external evaluator and adopt a set of recommended measures of success, including student chronic absenteeism rates; student discipline rates, including suspensions and expulsions; school climate information; provision of integrated student supports and stakeholder services; expanded and enriched learning time and opportunities; family and community engagement efforts and impact; information on the number, qualifications, and retention of school staff, including the number and percentage of fully certified teachers, disaggregated by race and ethnicity, and rates of teacher turnover; graduation rates; changes in school spending information; collaborative leadership and practice strategies, including building the capacity of educators, principals, other school leaders, and other staff to lead collaborative school improvement structures, such as professional learning communities; regularly convening or engaging all initiative-level partners, such as LEA representatives, city or county officials, children's cabinets, nonprofit service providers, public housing agencies, and advocates; regularly assessing program quality and progress through individual student data, participant feedback, and aggregate outcomes to develop strategies for improvement; and organizing school personnel and community partners into working teams focused on specific issues identified in the needs and assets assessment.

The Department received five comments requesting that we clarify the roles and responsibilities of consortium partners. Several comments were directed toward proposed selection criteria (d) and evaluation of roles and responsibilities of the broadly representative consortium.

One commenter requested that the Department not consider applications from for-profit charter schools or charter schools within a 25-mile radius of a traditional public school, and that any school receiving funds be subject to the same operational and transparency rules as schools within the district in which it is located.

Discussion: The Department concurs with recommendations to require an independent evaluation of the evaluation activities outlined in section 4625(g) of the ESEA. The Department is also adding a set of indicators recommended through comments that the independent evaluation must use to assess program success. These indicators are aligned with the annual measurable performance objectives included in section 4625(a)(4)(C) of the ESEA.

The Department agrees that it is important to clarify the roles and responsibilities of the eligible entity, defined in section 4622(1)(B) as a consortium of one or more LEAs or the BIE and one or more community-based organization, nonprofit organization, or other public or private entities, as well as the broadly representative consortium, which includes, but is not limited to, the eligible entity submitting the application. Under section 4625(a)(2), an application must include an MOU among all partner entities in the eligible entity that will assist the eligible entity to coordinate and provide pipeline services and that describes the roles the partner entities will assume. Recognizing that the FY 2022 FSCS competition includes priorities for building capacity and developing, implementing, and scaling full-service community schools, and recognizing that section 4625(c) allows grantees to use up to 10 percent of their total award for planning purposes in the first year, the Department thinks it is most appropriate for the application to include a preliminary MOU that establishes the roles and responsibilities of the eligible entity, additional partners, and the broadly representative consortium. At the end of the first year of the grant, FSCS grantees will be required to submit a final MOU.

The Department does not have the authority to revise or refine the eligible applicants specified in section 4622(1)(B) of the ESEA, which means we cannot limit applications from certain charter schools, provided the charter school is an eligible applicant or in partnership with an eligible applicant. All applicants and grantees, including any charter schools, will be required to meet the Federal regulations cited in the NIA.

Changes: The Department has added Requirement 2, which requires applicants to include an independent evaluation to address the evaluation requirements in section 4625(g)) of the ESEA. Within Requirement 2, the Department also established a set of indicators that the independent evaluation must use to assess program success and that are aligned with the required performance measures in section 4625(a)(4)(C).

The Department has added Requirement 3, which requires applicants to submit a preliminary MOU as part of their application. Within Requirement 3, the Department established the content that the preliminary MOU must include, which is aligned with the requirements in section 4625(a)(2). At the end of the first year of the grant, grantees are required to submit a final MOU, which must also align with the requirements in section 4625(a)(2).

Definition—Pillars of Full-Service Community Schools

Comments: The Department received sixteen comments in support of the definition of the Pillars of Full-Service Community Schools.

Within the definition, one commenter recommended the Department provide more clarity regarding research-based elements of effective practices for implementing integrated student supports in pillar (A), Integrated student supports.

Three commenters suggested that we revise pillar (C), Active family and community engagement, to include additional activities for ensuring community and family engagement. One commenter recommended that, in the definition, we address citizenship preparation to reflect the civic mission of schools and leverage their unique role in engaging families and communities.

Ten commenters recommended that the Department revise pillar (D), Collaborative leadership, to expressly include student, family, and community voice. Another commenter recommended that we specify that ''expanded and enriched learning time and opportunities'' must be culturally rooted and sustaining.

One commenter suggested that we specify in the pillars that providers, teachers, and community school personnel should be representative of the students and communities they serve and that representation should be a focus throughout the program because this enhances staff and leadership understanding of local community context.

One commenter suggested that we include in the definition references to whole learner and trauma-informed approaches.

Discussion: We think the activities outlined in the first pillar, (A) Integrated student supports, are sufficiently broad to allow for applicants and grantees to address the issues of greatest relevance to their community and that there is no need to establish a separate definition of

''integrated student supports.'' The Department agrees that use of evidence-based practices is critical across all pillars, which is reflected in the language of the second pillar, (B) Expanded and enriched learning time and opportunities, through evidence-based strategies. This notice also includes selection criteria that will assess extent to which the design of the proposed project reflects relevant and evidence-based findings.

We decline to include specific examples of citizenship preparation because we think that, as written, the priority would allow such a focus, and we think it is better to give applicants and schools flexibility to address community-specific needs. However, we agree that the definition of the third pillar, Active family and community engagement, should be expanded to include employment opportunities and other supportive services for adults.

Activities implemented under the second pillar, Expanded and enriched learning time and opportunities, may be culturally rooted and sustaining. The Department thinks that, as written, the priority would allow such a culturally competent focus, and we think it is better to allow applicants and schools flexibility to address community-specific needs.

Regarding recommendations related to the third pillar, (C) Active family and community engagement, the Department agrees that students and families benefit from working with leaders and service providers who have shared backgrounds and experiences. The Department also appreciates the need to have community members participate in the development of the program at all levels, including through participation in the broadly representative consortium to enhance cultural competency. While this is an important goal, it may not be practical for a grantee to ensure all staff and service providers are from or representative of the community. Rather, the FSCS program places emphasis on family and community inclusion in decision-making processes, including decisions related to selection of evidence-based, expanded, and enriched learning time and opportunities. The Department agrees that schools, and community schools in particular, can serve as resources for parents and communities to advance personal and communal goals, which may include civic engagement.

The Department agrees with the suggestions for including student, family, and community voice in the fourth pillar, (D) Collaborative leadership.

The Department recognizes the benefit of bringing a whole learner- and trauma-informed approach to working with students and families in a holistic way in order to prevent, intervene, and mitigate ACEs. We have incorporated those terms in the definitions of pillars of community schools; applicants may consider inclusion of those approaches in their development and implementation of full-service community schools, including through responding to any Secretary's Supplemental Priority included in the NIA.

Changes: The Department has revised the language of the definition of Pillars of Full-Service Community Schools to include trauma-informed services to prevent, intervene and mitigate ACEs as part of integrated student supports. The Department has included adult employment opportunities and other supportive services in the third pillar, (C) Active family and community engagement; and student, family, and community voice is included in the fourth pillar (D) Collaborative leadership practices.

Definition—Broadly Representative Consortium

Comments: One commenter recommended that the Department revise selection criteria (d) to include family leadership in the broadly representative consortium.

Discussion: The Department thinks including organizations that can represent family leadership is a critical addition to the broadly representative consortium; however, we think the change is more appropriate for the definition of the term rather than the selection criteria.

Changes: The Department has revised the definition of ''broadly representative consortium'' to include organizations that represent families and family leadership.

Other Definitions

Comments: A few commenters suggested other terms for the Department to define. One commenter noted that there are many definitions of ''community'' and recommended that the Department include a definition for a ''full-service community school.''

Two commenters recommended that the Department define ''full-service community school coordinator,'' a term used in the proposed selection criteria.

One commenter requested that the Department include a definition for ''student success coaches,'' an evidence-based model for working with and providing comprehensive supports for students.

Discussion: The Department acknowledges that there are many definitions of ''community.'' For the purposes of the FSCS program, section 4622(2) of the ESEA defines a ''full-service community school'' as a public elementary or secondary school that (A) participates in a community-based effort to coordinate and integrate educational, developmental, family, health, and other comprehensive services through community-based organizations and public and private partnerships; and (B) provides access to such services in school to students, families, and the community, such as access during the school year (including before- and after-school hours and weekends), as well as during the summer. The Department will include this definition of a full-service community school in the NIA.

Although proposed selection criteria (d) indirectly described the role of the full-service community school coordinator, the Department agrees that it would be helpful to expressly define ''full-service community school coordinator,'' and we are adding a definition that describes this role in a manner consistent with selection criteria (d).

While the Department appreciates the positive outcomes that have been documented with the use of student success coaches, we do not include definitions for specific activities or approaches that a grantee might choose to include in their application because we want grantees to have the flexibility to choose the best evidence-based approaches to meet student and community needs.

Changes: The Department has defined ''full-service community school coordinator.''

Selection Criteria—(c) Ensure Diversity of Perspectives

Comments: Commenters offered broad support for this selection criterion. Two commenters requested that the Department include children and youth in the list of constituencies referenced. An additional commenter suggested the Department revise the selection criterion to include the perspectives of racially diverse families and traditionally marginalized families.

Discussion: The Department appreciates the support of those who offered comments. The Department considers children, students, and youth as beneficiaries of services, but we recognize that other intended beneficiaries are included in the list of constituencies and are adding students and youth. The Department further agrees that it is important for an applicant to include, or have a plan to include, the perspectives of racially diverse families, those that have been marginalized, and other underserved

individuals in the community; however, we think that the broad nature of the selection criterion allows applicants to include racially and otherwise diverse families in their design and operation of the proposed project. Additionally, the Department thinks that grantees may use the allowable planning time during year one of the grant to engage with families and other groups who have not been consistently represented in assessments of needs and assets as well as leadership.

Changes: We have renumbered selection criterion (b) as selection criterion (c) and revised to include students and youth as constituents whose perspectives should be brought to bear in the design and operation of the projects.

Selection Criteria—(d) Plans for Full-service Coordinator

Comments: Commenters supported inclusion of a selection criterion to assess grantee plans for a full-service community schools coordinator. Because a full-service community school coordinator is not responsible for the delivery of the pipeline of services offered, four commenters recommended that we clarify the language of the criterion by removing ''deliver pipeline services'' and replacing it with ''facilitate programs and partnerships.'' Several commenters also recommended including that the full-service community school coordinator ''lead a comprehensive needs and asset assessment that includes students, school staff, families, community members and partners.''

Four commenters noted that the requirement for a full-time full-service community school coordinator does not reflect the diverse communities that may apply or receive a grant, including some rural communities where a full-time coordinator is not needed.

Discussion: The Department appreciates the comments and recommendations. We agree with the clarification offered and are revising selection criterion (d) to better reflect a full-service community school coordinator's responsibilities to facilitate programs and partnerships. While the full-service community school coordinator may, in some cases, lead the needs assessment, the Department recognizes that not all communities will expect the coordinator to lead that work. As such, we decline to include that edit.

The Department appreciates that each community and its needs are unique; however, section 4625(a)(4)(E) of the ESEA requires that each full-service community school site has a full-time coordinator.

Changes: The Department has renumbered proposed selection criteria (c) to final selection criteria (d) and revised selection criteria (d) to replace ''deliver pipeline services'' with ''facilitate programs and partnerships.''

Selection Criteria—(e) Consortium Broadly Representative of Community

Comments: While commenters support the inclusion of proposed selection criterion (e), two commenters noted that some applicants may not yet have a consortium in place and should not be penalized. Those commenters recommended that the Department revise the language to say, ''the extent to which the grantee has, or demonstrates a strong plan to have, a consortium broadly representative of community stakeholders and needs.''

One commenter proposed that the broadly representative consortium representative of community stakeholders and needs should also have a role in the oversight and management of the program, including the selection of schools. The commenter suggested the selection criteria be revised to say, ''the extent to which the grantee has a consortium broadly representative of community stakeholders and needs that informs the school selection process, operations and continued oversight of the project.''

One commenter recommended that applications be assessed on the extent to which they have planned for open, consistent, and actionable communication among their consortia.

Discussion: The Department will make FSCS awards to some applicants who will engage in capacity building and development of full-service community schools. As such, we concur that not all applicants will have an established broadly representative consortium and are editing the selection criterion.

The Department concurs that applications and grant programs are strengthened through defined roles and responsibilities of leadership groups, such as the broadly representative consortium. Section 4625(a)(2) of the ESEA requires an MOU among all partner entities in the eligible entity that will assist the eligible entity to coordinate and provide pipeline services and that describes the roles the partner entities will assume, which includes the broadly representative consortium and, for applications submitted under Priority 3, the statewide steering committee. The Department thinks that inclusion of a preliminary MOU with the application can further delineate communication and decision-making processes, such as school selection. The Department declines to include school selection as a role of the broadly representative consortium in the final selection criteria because we want to maintain maximum flexibility for applicants. Additionally, nothing in the NFP prevents an applicant from including school selection as a responsibility of the broadly based consortium.

Changes: The Department has renumbered proposed selection criterion (d) to final selection criteria (e) and revised selection criterion (e) to allow for an applicant to demonstrate a plan to develop and put into place a broadly representative consortium and included language that the roles and responsibilities of the consortium are outlined in the required preliminary MOU. For applications submitted under Priority 3, the Department revised selection criterion (e) to allow for an applicant to demonstrate a plan to develop and put into place a broadly representative consortium and a statewide steering committee, and included language that the roles and responsibilities of the consortium and statewide steering committee are outlined in the preliminary MOU.

Selection Criteria—(f) Demonstrates History of Effectiveness

Comments: One commenter suggested the selection criteria be expanded to include a description of the applicant's history of working with a wide range of stakeholders—including students and families—in inclusive and equitable ways.

One commenter recommended that we expand this selection criterion to consider the applicant's history of effectiveness in serving both current and past students in addition to the wider community.

Discussion: The Department agrees that it is important that an applicant's history of effectiveness (as defined in this notice) includes effectively working with a wide and diverse range of stakeholders, including students and families.

Changes: The Department has renumbered proposed selection criterion (e) as final selection criterion (f) and revised selection criterion (f) to include working with diverse stakeholders, including students and families.

Other Selection Criteria

Comments: The Department received a significant number of comments related to ensuring that grants and services are focused on schools, communities, students, and families of greatest need. Ten commenters recommended that the Department include selection criteria related to need.

Three commenters recommended that the FSCS program use selection criteria from the FY 2021 Promise Neighborhoods NIA. One commenter requested that the Department reinstate previous FSCS selection criteria for evaluation.

One commenter requested that the Department include selection criteria that allows an applicant to propose using up to 6 months for planning and capacity building activities.

Discussion: The FSCS program is intended to focus on children and youth attending schools with concentrated poverty, including rural and tribal schools. In addition to inclusion of a priority related to schoolwide poverty levels, the Department is adding selection criterion (a) to assess the extent to which the proposed project will provide support, resources, and services, close gaps in educational opportunity, or otherwise address the needs of the targeted population, including addressing the needs of underserved populations most impacted by the issue, challenge, or opportunity to be addressed by the proposed project.

The Department appreciates the suggestions related to aligning the FSCS need criteria with that of the FY 2021 Promise Neighborhood program. However, the FSCS program is designed to allow grantees to use the first year of their grant to conduct a robust assessment of needs and assets, while the Promise Neighborhood program requires the applicant to include an analysis of needs and corresponding activities to address those needs. Therefore, the Department declines to use the FY 2021 Promise Neighborhood selection criteria.

Related to selection criteria for the required evaluation, for the FY 2022 competition, the Department is using criteria from 34 CFR 75.210 to assess the applicant's proposal to evaluate their FSCS project. For the FY 2022 competition, two of the three criteria are from previous FSCS competitions. The evaluation criteria are included in the NIA, published elsewhere in this issue of the **Federal Register**.

The Department agrees that building a successful full-service community school requires significant planning and capacity building, including time to strengthen partnerships. Section 4625(c) of the ESEA allows a grantee to use up to 10 percent of the total grant award for planning purposes during the first year of the award. This applies to all applicants and grantees, and, as such, the Department will not make any changes to the time that grantees can allocate to planning.

In accordance with 34 CFR 75.209, the Department included in the NIA selection criteria from 34 CFR 75.210 that assesses the quality of an applicant's proposed local evaluation for the FY 2022 competition.

As discussed in Priority 3, the Department agrees that requiring a percentage of LEAs in the State would be a more equitable approach to scaling the model. However, the Department is interested in funding applications that propose to work with their partners to develop, implement, evaluate, and sustain full-service community schools at a level, and in a percentage of LEAs and schools, across the State that will effectively scale the model statewide and are addressing this through revisions to the selection criteria.

Changes: The Department added selection criterion (a) to assess the extent to which a proposed project will provide support, resources, and services; close gaps in educational opportunity; or otherwise address the needs of the targeted population, including addressing the needs of underserved populations most impacted by the issue, challenge, or opportunity to be addressed by the project. The Department also added selection criteria (g) to assess the extent to which the applicant demonstrates its commitment and strategy to scale full-service community schools at the statewide level. In determining the applicant's capacity to scale the proposed project, the Secretary considers the number and percentage of LEAs, and the number and percentage of schools within each LEA, the applicant, the SEA, and other partners propose to serve; the applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to further develop, implement, bring to scale and sustain additional full-service community schools in multiple LEAs; and the applicant's capacity to work with others, including the broadly representative consortium and the statewide steering committee, to ensure that the proposed process, products, strategies, or practices can be further developed and brought to scale, based on the regular findings of the proposed project and its independent evaluation.

Final Priorities:

This document contains four final priorities.

Priority 1—Capacity Building and Development Grants.

Projects that propose to (a) conduct initial development and coordination activities, including extensive community engagement, that leverage the findings of their needs assessment—which may be completed during or before the grant period—to develop the infrastructure, activities, and partnerships to implement full-service community schools in two or more schools, and (b) gather data on performance indicators.

Priority 2—Multi-Local Educational Agency Grants.

Projects that propose to implement and sustain full-service community schools in two or more LEAs. As outlined in section 4622(1)(B) of the ESEA, an eligible entity for any FSCS grant is a consortium of one or more LEAs or the BIE and one or more community-based organizations, nonprofit organizations, or other public or private entities. The project must, with the exception of LEAs that oversee a single school, coordinate and provide services at two or more full-service community schools in each LEA.

Priority 3—FSCS State Scaling Grants[1].

Applications submitted under Priority 3 must include a written commitment of the SEA to participate in the partnership and to sustain the program beyond 2 years after the term of the grant, which can be submitted in the required preliminary memorandum of understanding (MOU) that includes the roles and responsibilities of the SEA and other partners identified at the time of the application. The applicant, in partnership with the SEA, determines the number and percentage of State LEAs, and the number and percentage of schools across those LEAs, that will develop, support, and expand full-service community schools over the 5-year grant performance period.

Applications under Priority 3 must also identify or establish a State steering committee (which may be a previously existing body) that represents relevant community schools' stakeholders, including educators and other school staff, community school initiative leaders, education union or association designees, family leaders participating in community school programs, community partners such as service providers, early childhood education providers such as Head Start, and community school coordinators from schools already implementing full-service community schools in the State. In addition to serving as an advisory committee, the steering committee also has the authority to make decisions about the design, implementation, and evaluation for the grant, which may include identification or selection of LEAs that will partner in the

[1] Unitary systems, such as the District of Columbia, Hawaii, and Puerto Rico, may apply for Absolute Priority 4 FSCS State Scaling Grants.

development and implementation of two or more community schools in each LEA, with the exception of LEAs that oversee a single school. The roles and responsibilities of the steering committee must be included in the required preliminary MOU.

As outlined in section 4622(1)(B) of the ESEA, an eligible entity for any FSCS grant is a consortium of one or more LEAs or the BIE and one or more community-based organizations, nonprofit organizations, or other public or private entities.

Types of Priorities:

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

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

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

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

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

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

Final Requirements:

This document contains three final requirements.

Requirement 1—Pillars of Full-Service Community Schools.

An applicant must, in addition to providing the information and assurances required by section 4625(a) of the ESEA, provide the following:

In addressing the application requirements set out in Section 4625(a) of the ESEA, applicants must address the essential pillars of full-service community schools (as defined in this notice).

Projects must describe the pillars of full-service community schools that they have in place or how they will establish these pillars, or how they will implement these pillars with partners, including community-based organizations and collaborating with school leadership and staff.

Requirement 2—Independent Evaluation.

An applicant must, in addition to providing the information and assurances required by section 4625(g) of the ESEA, commit to an independent evaluation that includes a design and implementation evaluation that will, at a minimum, (1) include annual evaluations of progress achieved with the grant; (2) be used to refine and improve activities carried out through the grant; (3) collect and report data that includes, but is not limited to, the following indicators: student chronic absenteeism rates; student discipline rates, including suspensions and expulsions; school climate information, which may come from student, parent, or teacher surveys; provision of integrated student supports and stakeholder services; expanded and enriched learning time and opportunities; family and community engagement efforts and impact; information on the number, qualifications, and retention of school staff, including the number and percentage of fully certified teachers, disaggregated by race and ethnicity, rates of teacher turnover, and teacher experience; graduation rates; changes in school spending information; collaborative leadership and practice strategies, which may include building the capacity of educators, principals, other school leaders, and other staff to lead collaborative school improvement structures, such as professional learning communities; regularly convening or engaging all initiative-level partners, such as LEA representatives, city or county officials, children's and youth's cabinets, nonprofit service providers, public housing agencies, and advocates; regularly assessing program quality and progress through individual student data, participant feedback, and aggregate outcomes to develop strategies for improvement; and organizing school personnel and community partners into working teams focused on specific issues identified in the needs and assets assessment; and (4) make results of the evaluation publicly available.

Requirement 3—Preliminary and Final Memoranda of Understanding.

An applicant must, in addition to providing the information and assurances required in Section 4625(a)(2) of the ESEA, provide the following:

In addressing the application requirements set out in Section 4625(a)(2) of the ESEA, applicants must include a preliminary MOU among all partner entities of the eligible entity, identified at the time of the application, that will assist the eligible entity to plan, develop, coordinate, provide, and evaluate pipeline services and that describes the roles and responsibilities that the partners, including the broadly representative consortium, will assume. Applications submitted under Priority 3 FSCS State Scaling Grants must also include in the preliminary MOU a description of the State steering committee and the SEA's commitment to and partnership in the consortium, including the roles, responsibilities, and commitment of the SEA to the partnership and the scaling of full-service community schools to a percentage of State LEAs implementing schoolwide Title IA programs and where there is a commitment to sustain the program beyond two years after the term of the grant.

Grantees must submit a final MOU at the end of their first year of the grant.

Final Definitions:

This document includes four final definitions. We may apply these definitions in any year in which this program is in effect. We also intend to use definitions from sections 4622 and 8101 of the ESEA.

Broadly representative consortium means stakeholders representing broad groups of people working together for the best interest of children; such stakeholders may include, but are not limited to, families and family leadership, schools, nonprofits, government, philanthropy, and the business community.

Full-service community school coordinator means an individual in a full-time position at each community school who serves to plan, integrate, coordinate, and facilitate the delivery of pipeline services at each school. The coordinator may also lead the school and community assessment of needs and assets and identify ways to sustain the services and partnerships beyond the duration of the grant.

History of effectiveness means an eligible entity demonstrating the ability to successfully implement programs and policies. Such programs and policies must include, but shall not be limited to, successfully implementing with other organizations grants, policies, and programs for students from high need schools (as defined in ESEA section 2221).

Pillars of Full-Service Community Schools means all of the following:

(A) *Integrated student supports* at a community school that provide in- and out-of-school support for students, address well-being, and address out-of-school barriers to learning through partnerships with social and health service agencies, including mental and behavioral health agencies and providers, and coordinated by a community school coordinator, which may include—

(i) Medical, dental, vision care, and mental and behavioral health services, including mental health literacy for students and staff, and trauma-informed services to prevent, intervene, and mitigate adverse childhood experiences (ACEs); and

(ii) Individuals to assist with housing, transportation, nutrition, citizenship preparation, or criminal justice issues and other services.

(B) *Expanded and enriched learning time and opportunities,* through evidence-based strategies, including before-school, after-school, during-school, weekend, and summer programs that provide additional academic instruction individualized academic support (such as evidence-based tutoring, post-secondary transition support, student success coaches and mentoring programs), enrichment activities, or learning opportunities, for students at a community school that—

(i) May emphasize real-world project-based learning where students can apply their learning to contexts that are relevant and engaging; and

(ii) May include art, music, drama, creative writing, hands-on experience with engineering or science (including computer science), career and technical education, tutoring that is aligned with classroom success and homework help, and recreational programs that enhance and are consistent with the school's curriculum.

(C) *Active family and community engagement* that—

(i) Brings parents and families of students at the community school and community members and leaders into the school as partners in students' education, including meaningfully involving parents and families in the community school's decision-making processes;

(ii) Makes the community school a hub for services, activities, and programs, for students, families, and members of the neighborhood that the community school serves;

(iii) Provides adults with desired educational and employment opportunities and other supportive services; and

(iv) Provides centralized supports for families and communities in community schools, which may include English as a second language classes, citizenship preparation, computer skills, art, housing assistance, child abuse and neglect prevention supports, health and mental health literacy programs, digital literacy training, or other programs that bring community members into a school building for meetings, events, or programming.

(D) *Collaborative leadership and practices* that build a culture of professional learning, collective trust, and shared responsibility for each community school using strategies that—

(i) At a minimum, include a school-based leadership team with representation of student, parent, and family leaders and a community voice; a community school coordinator; and a community-wide leadership team; and

(ii) May include other leadership or governance teams, community school steering committees, or other community coalitions, educator learning communities, and other staff to manage the multiple, complex joint work of school and community organizations.

Final Selection Criteria

The Department may apply one or more of the following final selection criteria in any year in which the program is in effect. We will announce the maximum possible points assigned to each criterion in the NIA. The Department may include additional selection criteria from 34 CFR 75.210.

(a) The extent to which the proposed project will provide support, resources, and services; close gaps in educational opportunity; or otherwise address the needs of the targeted population, including addressing the needs of underserved populations most impacted by the issue, challenge, or opportunity to be addressed by the proposed project.

(b) The extent to which the design of the proposed project reflects relevant and evidence-based findings from existing literature and includes a high-quality plan for project implementation integrating the four pillars of full-service community schools and the use of appropriate evaluation methods to ensure successful achievement of project objectives.

(c) The extent to which the applicant will ensure that a diversity of perspectives is brought to bear in the design and operation of the proposed project, including those of students, youth, families, educators and staff, beneficiaries of services, school leadership, and community leadership.

(d) The extent to which the grantee has plans for a full-time coordinator at each school, including a plan to sustain the position beyond the grant period, and a description of how this position will serve to plan, integrate, coordinate, and facilitate programs and services at each school.

(e) The extent to which the grantee has, or demonstrates a strong plan to have, a broadly representative consortium that reflects the needs of the community and its stakeholders, and a description of the roles and responsibilities of the broadly representative consortium outlined in the required preliminary MOU.

(f) The extent to which the applicant demonstrates a history of effectiveness in working with a diverse range of stakeholders, including students and families.

(g) The extent to which the applicant demonstrates its commitment and strategy to scale full-service community schools at the statewide level. In determining the applicant's capacity to scale the proposed project, the Secretary considers the number and percentage of LEAs, and the number and percentage of schools within each LEA, the applicant, the SEA, and other partners propose to serve; the applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to further develop, implement, bring to scale and sustain additional full-service community schools in multiple LEAs; and the applicant's capacity to work with others, including the broadly representative consortium and the State steering committee, to ensure that the proposed process, products, strategies, or practices can be further developed and brought to scale, based on the regular findings of the proposed project and its independent evaluation.

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.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) 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 not a ''major rule,'' as defined by 5 U.S.C. 804(2).

We have also reviewed this final regulatory action 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 upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

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

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

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

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

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' 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 priorities, requirements, definitions, and selection criteria only on a reasoned determination that the benefits justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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

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

Summary of Costs and Benefits: The Department believes that these final priorities, requirements, definitions, and selection criteria will not impose significant costs on the entities eligible to apply for FSCS. We also believe that the benefits of implementing the final priorities, requirements, definitions, and selection criteria justify any associated costs.

The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Priority 1 gives the Department the opportunity to offer applicants time and resources to build the capacity required to develop two or more successful full-service community schools.

Priority 2 gives the Department the opportunity to offer applicants funding to implement and sustain full-service community schools in two or more LEAs, with a minimum of two full-service community schools in each LEA.

Priority 3 gives the Department the opportunity to offer applicants funding to scale the implementation of full-service community schools at the State level, in a percentage of LEAs in the State as determined by the applicant, the SEA, and other partners, with a minimum of two full-service-community schools in each LEA. Implementation of community schools at this scale offers the opportunity for States to enact legislation and develop funding streams to support the expansion and sustainability of full-service community schools in their State.

Priority 4 gives the Department the opportunity to ensure that funds are targeted to reach the schools and communities of greatest need.

Because these final priorities, requirements, definitions, and selection criteria would neither expand nor restrict the universe of eligible entities for any Department grant program, and since application submission and participation in our discretionary grant programs is voluntary, there are no costs associated with these priorities, requirements, definitions, and selection criteria.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this regulatory action will affect are public or private nonprofit agencies and organizations, including institutions of higher education, that may apply. We believe that the costs imposed on an applicant by the final priorities, requirements, definitions, and selection criteria will be limited to paperwork burden related to preparing an application and that the benefits of implementing these final priorities, requirements, definitions, and selection criteria will outweigh any costs incurred by the applicant. Therefore, we do not believe that the final priorities, requirements, definitions, and selection criteria will significantly impact small entities beyond the potential for receiving additional support should the small entity receive a competitive grant from the Department.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested

data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The final priorities, requirements, definitions, and selection criteria contain information collection requirements that are approved by OMB under OMB control number 1894–0006.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the 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, 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.

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs Office of Elementary and Secondary Education.

[FR Doc. 2022–15090 Filed 7–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Full-Service Community Schools Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2022 for the Full-Service Community Schools (FSCS) program, Assistance Listing Number 84.215J. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: July 13, 2022.

Deadline for Notice of Intent to Apply: August 12, 2022.

Date of Pre-Application Meetings: The Department will hold pre-application meetings via webinars for prospective applicants. Detailed information regarding these webinars will be provided on the FSCS website at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/school-choice-improvement-programs/full-service-community-schools-program-fscs/.*

Deadline for Transmittal of Applications: September 12, 2022.

Deadline for Intergovernmental Review: November 10, 2022.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Jane Hodgdon, U.S. Department of Education, 400 Maryland Avenue SW, Room 4E246, Washington, DC 20202. Telephone: (202) 453–6620. Email: *FSCS@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The FSCS program is authorized by sections 4621–4623 and 4625 of the Elementary and Secondary Education Act of 1965, as amended (ESEA). This program provides support for the planning, implementation, and operation of full-service community schools that improve the coordination, integration, accessibility, and effectiveness of services for children and families, particularly for children attending high-poverty schools, including high-poverty rural schools.

Background: A full-service community school is a public elementary or secondary school that uses established partnerships between schools and community organizations to provide well-rounded educational opportunities and meet the social, emotional, physical and mental health, and academic needs of students. Section 4622 of the ESEA defines a full-service community school as a public elementary or secondary school that:

(a) Participates in a community-based effort to coordinate and integrate educational, developmental, family, health, and other comprehensive services through community-based partnerships; and

(b) Provides access to such services in schools to students, families, and the community, such as access during the school year (including before- and after-school hours and weekend), as well as during the summer.

The growing interest at the State and local levels in community schools,[1] also known as full-service community schools, coupled with this competition, presents an opportunity for nationwide school improvement during a period when children and teachers are trying to return to the classroom and the nation is grappling with violence in and around schools. The ESEA offers flexibilities at the State and local levels to implement strategies supported by community schools, such as coordination of school and community resources (ESEA sections 1114(b)(5) and 1115(b)(2)) and after-school programming and support for a community school coordinator (ESEA section 4108(5)(H)). If a State educational agency (SEA) (as defined in this notice) or local educational agency (LEA) (as defined in this notice) lacks

[1] Maier, A., Daniel, J., Oakes, J., & Lam, L. (December 2017). Community Schools as an Effective School Improvement Strategy: A Review of the Evidence. Learning Policy Institute.

the resources to implement community schools at scale, it can productively begin in neighborhoods where community schools are most needed and, therefore, students are most likely to benefit.[2] In addition to a community school approach being an allowable use of funding under Title I of ESEA as an evidence-based approach to school improvement, full-service community schools have been well-positioned to respond to the COVID–19 pandemic, including by working closely with partner organizations to address community needs, and are an allowable use of American Rescue Plan Act (ARP) funds. Strategies to address those needs may include summer programming, food and nutrition programs, tutoring, mentoring, mental and physical health services, COVID–19 vaccine access, family engagement strategies, and opportunities to accelerate learning both inside and outside the classroom. Through the FSCS program, the Department provides catalytic support for the planning and capacity building, development, implementation, operation, and coordination of effective services for children and families, particularly in urban and rural areas with high rates of poverty.

Research [3] shows that there are certain design features that are common across full-service community schools that are associated with improvements in teaching, learning and student outcomes. The evidence-based features, or pillars (as defined in this notice), include providing (1) integrated supports (*e.g.,* social and emotional learning, access to health and nutrition services); (2) expanded and enriched learning time (*e.g.,* after-school enrichment and summer school); (3) active family and community engagement; and (4) collaborative leadership and practices to support high-quality teaching. Evidence-based full-service community schools create and implement at least these strategies as part of a comprehensive set of strategies that are designed to reflect and be tailored to local contexts. These four pillars are supported by the Science of Learning and Development Alliance [4] and can be used to address the needs of the whole child, including those children and youth that schools and community partners determine to be most vulnerable. Incorporation of the four pillars in this year's FSCS competition allows applicants to develop projects with greater fidelity to what has been shown to be associated with improvements in teaching, learning, and student outcomes and prepares the FSCS program and its grantees for future national evaluation efforts.

Over the last decade, the field has observed a wide range of practices coordinated and implemented in full-service community schools. In a January 2020 study of New York City community schools, assuming strong social capital, stable leadership, and a strong instructional program, community schools have been associated with improved attendance, on-time grade progression, student achievement in math, and fewer disciplinary incidents.[5]

Building upon the work and progress of the field, as well as the lessons learned from reviews and evaluations of community school strategies and implementation, the Department published a notice of final priorities, requirements, definitions, and selection criteria for the FSCS program elsewhere in this issue of the **Federal Register**. These final priorities, requirements, definitions, and selection criteria are included in this notice.

In this year's FSCS competition, the Department also seeks to expand the evidence base for community schools through the development of a set of indicators and a requirement that grantees have an independent evaluation which includes a design and implementation that assesses progress on an annual basis, uses data and findings to refine and improve activities, and collects and reports on a set of common indicators. In addition, through one of our competitive preference priorities, we seek applications that consider how community school supports and strategies are included in classroom practices and school designs that are focused on the whole learner. Recognizing the impact of school and community safety on learning, the Department is also interested in applications that are coordinating across multiple agencies and organizations to address community violence prevention and intervention.

Priorities: This notice contains five absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 1 is from section 4625(b)(1)(A) of the ESEA, and Absolute Priority 2 is from section 4625(b)(1)(A) and (B) of the ESEA. Absolute Priorities 3, 4, and 5 are from the notice of final priorities, requirements, definitions, and selection criteria for this program published elsewhere in this issue of the **Federal Register** (FSCS NFP). Competitive Preference Priorities 1 and 2 are from the Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1 or Absolute Priority 2 and one additional absolute priority (Absolute Priority 3, Absolute Priority 4, or Absolute Priority 5).

Absolute Priorities 3, 4, and 5 constitute their own funding categories under Absolute Priority 1 and under Absolute Priority 2. Consequently, there will be separate funding slates for each of the following categories of applications:

- Absolute Priorities 1 and 3;
- Absolute Priorities 1 and 4;
- Absolute Priorities 1 and 5;
- Absolute Priorities 2 and 3;
- Absolute Priorities 2 and 4; and
- Absolute Priorities 2 and 5.

The Secretary intends to award grants under each of these funding categories, provided that applications of sufficient quality are submitted. To ensure that applicants are considered for the correct type of grant, applicants must clearly identify the specific absolute priorities that the proposed project addresses in the one-page abstract. If an entity is interested in proposing separate projects (*e.g.,* one that addresses Absolute Priorities 1 and 3 and another that addresses Absolute Priorities 1 and 4), separate applications must be submitted.

These priorities are:

Absolute Priority 1—Title IA Schoolwide Program Eligibility.

To meet this priority, applicants must propose to serve a minimum of two or more full-service community schools eligible for a schoolwide program (as

[2] Horn, M.B., Freeland, J., Butler, S.M., & Brookings Institution. (2015). Schools as Community Hubs: Integrating Support Services to Drive Educational Outcomes. A Series of Discussion Papers on Building Healthy Neighborhoods. No. 3. In Brookings Institution. Brookings Institution.

[3] Maier, A., Daniel, J., Oakes, J., & Lam, I. (2017). Community Schools as an Effective School Improvement Strategy: A Review of the Evidence. Palo Alto, CA: Learning Policy Institute.

[4] Science of Learning and Development Alliance. (2020). Science of Learning and Development: Initial Findings. *https://soldalliance.org/wp-content/uploads/2021/12/SoLD-Science-Translation_May-2020_FNL.pdf.*

[5] Johnston, W., Engberg, J., Opper, I., Sontag-Padilla, L., and Xenakis, L. (2020). Illustrating the Promise of Community Schools: An Assessment of the Impact of the New York City Community Schools Initiative. City of New York, *www.rand.org/pubs/research_reports/RR3245.html.*

defined in this notice) under section 1114(b) of the ESEA, as part of a community- or district-wide strategy.

Absolute Priority 2—Title IA Schoolwide Program Eligibility and Rural Districts—Small and Rural or Rural and Low-Income.

To meet this priority, applicants must propose to serve: (1) a minimum of two or more full-service community schools eligible for a schoolwide program under section 1114(b) of the ESEA, as part of a community- or district-wide strategy; and (2) include an LEA that satisfies the requirements of the Small Rural School Achievement (SRSA) program (ESEA section 5211(b)(1)(A), (B), or (C)) or the Rural and Low-Income School (RLIS) program (ESEA section 5221(b)(1)(A), (B), or (C)).

Note: Applicants may determine whether a particular LEA is eligible for these programs by referring to information on the following Department website: *https://oese.ed.gov/offices/office-of-formula-grants/rural-insular-native-achievement-programs/rural-education-achievement-program/.*

Note: An LEA includes a public charter school that operates as an LEA.

Absolute Priority 3—Capacity Building and Development Grants.

To meet this priority, applicants must propose projects to (a) conduct initial development and coordination activities, including extensive community engagement, that leverage the findings of their needs assessment—which may be completed during or before the grant period—to develop the infrastructure, activities, and partnerships to implement full-service community schools in two or more schools, and (b) gather data on performance indicators.

Absolute Priority 4—Multi-Local Educational Agency Grants.

To meet this priority, applicants must propose projects to implement and sustain full-service community schools in two or more LEAs. As outlined in Section 4622(1)(B) of the ESEA, an eligible entity for any FSCS grant is a consortium of one or more LEAs or the Bureau of Indian Education (BIE) and one or more community-based organizations, nonprofit organizations, or other public or private entities. The project must, with the exception of LEAs that oversee a single school, coordinate and provide services at two or more full-service community schools in each LEA.

Absolute Priority 5—FSCS State Scaling Grants.[6]

Applications submitted under Priority 5 must include a written commitment of the SEA to participate in the partnership and to sustain the program beyond 2 years after the term of the grant, which can be submitted in the required preliminary memorandum of understanding (MOU) that includes the roles and responsibilities of the SEA and other partners identified at the time of the application. The applicant, in partnership with the SEA, determines the number and percentage of State LEAs, and the number and percentage of schools across those LEAs, that will develop, support, and expand full-service community schools over the 5-year grant performance period.

Applications under Priority 5 must also identify or establish a State steering committee (which may be a previously existing body) that represents relevant community schools' stakeholders, including educators and other school staff, community school initiative leaders, education union or association designees, family leaders participating in community school programs, community partners such as service providers, early childhood education providers such as Head Start, and community school coordinators from schools already implementing full-service community schools in the State. In addition to serving as an advisory committee, the State steering committee also has the authority to make decisions about the design, implementation, and evaluation for the grant, which may include identification or selection of LEAs that will partner in the development and implementation of two or more community schools in each LEA, with the exception of LEAs that oversee a single school. The roles and responsibilities of the State steering committee must be included in the required preliminary MOU.

As outlined in section 4622(1)(B) of the ESEA, an eligible entity for any FSCS grant is a consortium of one or more LEAs or the BIE and one or more community-based organizations, nonprofit organizations, or other public or private entities.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application, depending on how well the application meets one or both of these priorities; the total possible points for each competitive preference priority are noted in parentheses. Applicants may apply under one, both, or none of the competitive preference priorities. Applicants must identify in the one-page abstract the competitive preference priorities they are addressing in order to receive those points.

These priorities are:

Competitive Preference Priority 1—Meeting Student Social, Emotional, and Academic Needs. (up to 5 points)

Projects that are designed to improve students' social emotional, academic, and career development, with a focus on underserved students, through one or more of the following priority areas:

(1) Creating education or work-based settings that are supportive, positive, identity-safe, and inclusive with regard to race, ethnicity, culture, language, and disability status, through developing trusting relationships between students (including underserved students), educators, families, and community partners.

(2) Providing multi-tiered systems of supports that address learning barriers both in and out of the classroom, that enable healthy development and respond to students' needs and which may include evidence-based trauma-informed practices and professional development for educators on avoiding deficit-based approaches.

(3) Creating and implementing comprehensive schoolwide frameworks (such as small schools or learning communities, advisory systems, or looping educators) that support strong and consistent student and educator relationships.

Competitive Preference Priority 2—Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change. (up to 5 points)

The Secretary gives priority to projects that are designed to take a systemic evidence-based approach to improving outcomes for underserved students in coordinating efforts with Federal, State, or local agencies, or community-based organizations, that support students, to address community violence prevention and intervention.

Application Requirements: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following requirements apply. Applications for FSCS grant funds must address the following application requirements. Applicants should respond to the requirements that correspond to the absolute priority that they are addressing. The application requirements are from section 4625(a) of the ESEA and the FSCS NFP. The

[6] Unitary systems, such as the District of Columbia, Hawaii, and Puerto Rico, may apply under Absolute Priority 5 FSCS State Scaling Grants.

source of each requirement is provided in the parentheses following each requirement. An applicant may choose to respond to each requirement separately or in the context of the applicant's response to the selection criteria in Section V.1. of this notice.

Absolute Priority 3—Capacity Building and Development Grants.

In order to receive funding, applicants for grants under Absolute Priority 3 Capacity Building and Development Grants must address the following application requirements.

(1) A description of the eligible entity. (4625(a)(1))

(2) A preliminary MOU among all partner entities of the eligible entity, identified at the time of application, that will assist the eligible entity to plan, develop, coordinate, provide, and evaluate pipeline services and that describes the roles and responsibilities that the partners, including the broadly representative consortium (as defined in this notice), will assume. (4625(a)(2) and FSCS NFP)

(3) A description of the capacity of the eligible entity to coordinate and provide pipeline services at two or more full-service community schools. (4625(a)(3))

(4) A comprehensive plan that includes descriptions of the following:

(A) The student, family, and school community to be served, including demographic information; (4625(a)(4)(A))

(B) A plan for conducting the needs assessment that identifies the academic, physical, nonacademic, health, mental health, and other needs of students, families, and community residents; (4625(a)(4)(B)) and NFP)

(C) A plan for developing annual measurable performance objectives and outcomes, including an increase in the number and percentage of families and students targeted for services each year of the program, in order to ensure that children are—

(i) Prepared for kindergarten;

(ii) Achieving academically; and

(iii) Safe, healthy, and supported by engaged parents. (4625(a)(4)(C) and FSCS NFP)

(D) A plan for identifying and developing pipeline services, including existing and additional pipeline services, to be coordinated and provided by the eligible entity and its partner entities, including an explanation of:

(i) Why such services have been selected;

(ii) How such services will improve student academic achievement; and

(iii) How such services will address the annual measurable performance objectives and outcomes established under paragraph (4)(C) of this requirement. (4625(a)(4)(D) and FSCS NFP)

(E) A description of the pillars of full-service community schools (as defined in this notice) that they have in place or how they will establish these pillars, or how they will implement these pillars with partners, including community-based organizations and collaborating with school leadership and staff. (FSCS NFP)

(F) Plans to ensure that each full-service community school site has a full-time coordinator of pipeline services at such school, including a description of the applicable funding sources, plans for professional development for the personnel managing, coordinating, or delivering pipeline services, and plans for joint utilization and management of school facilities. (4625(a)(4)(E))

(G) Plans for an annual evaluation based upon attainment of the performance objectives and outcomes described in paragraph (4)(C) of this requirement.

An applicant must, in addition to providing the information and assurances required by section 4625(a)(4)(F) of the ESEA, commit to an independent evaluation that includes a design and implementation evaluation that will, at a minimum, (1) include annual evaluations of progress achieved with the grant; (2) be used to refine and improve activities carried out through the grant; (3) collect and report data that includes, but is not limited to, the following indicators: student chronic absenteeism rates; student discipline rates, including suspensions and expulsions; school climate information, which may come from student, parent, or teacher surveys; provision of integrated student supports and stakeholder services; expanded and enriched learning time and opportunities; family and community engagement efforts and impact; information on the number, qualifications, and retention of school staff, including the number and percentage of fully certified teachers, disaggregated by race and ethnicity, rates of teacher turnover, and teacher experience; graduation rates; changes in school spending information; collaborative leadership and practice strategies, which may include building the capacity of educators, principals, other school leaders, and other staff to lead collaborative school improvement structures, such as professional learning communities; regularly convening or engaging all initiative-level partners, such as LEA representatives, city or county officials, children's and youth's cabinets, nonprofit service providers, public housing agencies, and advocates; regularly assessing program quality and progress through individual student data, participant feedback, and aggregate outcomes to develop strategies for improvement; and organizing school personnel and community partners into working teams focused on specific issues identified in the needs and assets assessment; and (4) make results of the evaluation publicly available. (FSCS NFP)

(H) Plans for sustaining the programs and services described in section 4625(a) of the ESEA after the grant period. (4625(a)(4)(G))

(5) An assurance that the eligible entity and its partner entities will focus services on schools eligible for a schoolwide program under section 1114(b) of the ESEA. (4625(a)(5))

Absolute Priority 4—Multi-Local Educational Agency Grants.

In order to receive funding, applicants for grants under Absolute Priority 4 Multi-Local Educational Agency Grants must address the following application requirements.

(1) A description of the eligible entity. (4625(a)(1))

(2) A preliminary MOU among all partner entities of the eligible entity, identified at the time of the application, that will assist the eligible entity to plan, develop, coordinate, provide, and evaluate pipeline services and that describes the roles and responsibilities that the partners, including the broadly representative consortium, will assume. (4625(a)(2) and FSCS NFP)

(3) A description of the capacity of the eligible entity to coordinate and provide pipeline services at two or more full-service community schools in each LEA. ((4625(a)(3) and FSCS NFP)

(4) A comprehensive plan that includes descriptions of the following:

(A) The student, family, and school community to be served, including demographic information. (4625(a)(4)(A))

(B) A needs assessment that identifies the academic, physical, nonacademic, health, mental health, and other needs of students, families, and community residents. (4625(a)(4)(B))

(C) Annual measurable performance objectives and outcomes, including an increase in the number and percentage of families and students targeted for services each year of the program, in order to ensure that children are—

(i) Prepared for kindergarten; (4625(a)(4)(C)(i))

(ii) Achieving academically; (4625(a)(4)(C)(ii)) and

(iii) Safe, healthy, and supported by engaged parents. (4625(a)(4)(C)(iii))

(D) Pipeline services, including existing and additional pipeline services, to be coordinated and provided by the eligible entity and its partner entities, including an explanation of:

(i) Why such services have been selected;

(ii) How such services will improve student academic achievement; and

(iii) How such services will address the annual measurable performance objectives and outcomes established under paragraph (4)(C) of this requirement. (4625(a)(4)(D))

(E) A description of the pillars of full-service community schools that they have in place or how they will establish these pillars, or how they will implement these pillars with partners, including community-based organizations and collaborating with school leadership and staff. (FSCS NFP)

(F) Plans to ensure that each full-service community school site has a full-time coordinator of pipeline services at such school, including a description of the applicable funding sources, plans for professional development for the personnel managing, coordinating, or delivering pipeline services, and plans for joint utilization and management of facilities. (4625(a)(4)(E))

(G) Plans for an annual evaluation based upon attainment of the performance objectives and outcomes described in paragraph (4)(C) of this requirement.

An applicant must, in addition to providing the information and assurances required by section 4625(a)(4)(F) of the ESEA, commit to an independent evaluation that includes a design and implementation evaluation that will, at a minimum, (1) include annual evaluations of progress achieved with the grant; (2) be used to refine and improve activities carried out through the grant; (3) collect and report data that includes, but is not limited to, the following indicators: student chronic absenteeism rates; student discipline rates, including suspensions and expulsions; school climate information, which may come from student, parent, or teacher surveys; provision of integrated student supports and stakeholder services; expanded and enriched learning time and opportunities; family and community engagement efforts and impact; information on the number, qualifications, and retention of school staff, including the number and percentage of fully certified teachers, disaggregated by race and ethnicity, rates of teacher turnover, and teacher experience; graduation rates; changes in school spending information; collaborative leadership and practice strategies, which may include building the capacity of educators, principals, other school leaders, and other staff to lead collaborative school improvement structures, such as professional learning communities; regularly convening or engaging all initiative-level partners, such as LEA representatives, city or county officials, children's and youth's cabinets, nonprofit service providers, public housing agencies, and advocates; regularly assessing program quality and progress through individual student data, participant feedback, and aggregate outcomes to develop strategies for improvement; and organizing school personnel and community partners into working teams focused on specific issues identified in the needs and assets assessment; and (4) make results of the evaluation publicly available. (FSCS NFP)

(H) Plans for sustaining the programs and services described in section 4624(a) of the ESEA after the grant period. (4625(a)(4)(G))

(5) An assurance that the eligible entity and its partner entities will focus services on schools eligible for a schoolwide program under section 1114(b). (4625(a)(5))

Absolute Priority 5—State Scaling Grants.

In order to receive funding, applicants for grants under Absolute Priority 5 State Scaling Grants must address the following application requirements.

(1) A description of the eligible entity. (4625(a)(1))

(2) A preliminary MOU among all partner entities of the eligible entity, identified at the time of the application, that will assist the eligible entity to plan, develop, coordinate, provide, and evaluate pipeline services and that describes the roles and responsibilities that the partners, including the broadly representative consortium, will assume. (4625(a)(2) and FSCS NFP)

Applications submitted under Priority 5 FSCS State Scaling Grants must also include in the preliminary MOU a description of the State steering committee and the SEA's commitment to and partnership in the consortium, including the roles, responsibilities, and commitment of the SEA to the partnership and the scaling of full-service community schools to a percentage of State LEAs implementing schoolwide Title IA programs and where there is a commitment to sustain the program beyond 2 years after the term of the grant. (4625(a)(2) and FSCS NFP)

(3) A description of the capacity of the eligible entity to coordinate and provide pipeline services at two or more full-service community schools in each of the LEAs included in the application. (4625(a)(3) and FSCS NFP)

(4) A comprehensive plan that includes descriptions of the following:

(A) The student, family, and school community to be served, including demographic information. (4625(a)(4)(A))

(B) A needs assessment that identifies the academic, physical, nonacademic, health, mental health, and other needs of students, families, and community residents. (4625(a)(4)(B))

(C) Annual measurable performance objectives and outcomes, including an increase in the number and percentage of families and students targeted for services each year of the program, in order to ensure that children are—

(i) Prepared for kindergarten; (4625(a)(4)(C)(i))

(ii) Achieving academically; (4625(a)(4)(C)(ii)) and

(iii) Safe, healthy, and supported by engaged parents. (4625(a)(4)(C)(iii))

(D) Pipeline services, including existing and additional pipeline services to be coordinated and provided by the eligible entity and its partner entities, including an explanation of:

(i) Why such services have been selected; (4625(a)(4)(D)(ii))

(ii) How such services will improve student academic achievement; (4625(a)(4)(D)(ii)) and

(iii) How such services will address the annual measurable performance objectives and outcomes established under paragraph (4)(C) of this requirement. (4625(a)(4)(C)(iii))

(E) A description of the pillars of full-service community schools that they have in place or how they will establish these pillars, or how they will implement these pillars with partners, including community-based organizations, and collaborating with school leadership and staff. (FSCS NFP)

(F) Plans to ensure that each full-service community school site has a full-time coordinator of pipeline services at such school, including a description of the applicable funding sources, plans for professional development for the personnel managing, coordinating, or delivering pipeline services, and plans for joint utilization and management of facilities. (4625(a)(4)(E))

(G) Plans for an annual evaluation based upon attainment of the performance objectives and outcomes described in paragraph (4)(C) of this requirement.

An applicant must, in addition to providing the information and assurances required by section 4625(a)(4)(F) of the ESEA, commit to an

independent evaluation that includes a design and implementation evaluation that will, at a minimum, (1) include annual evaluations of progress achieved with the grant; (2) be used to refine and improve activities carried out through the grant; (3) collect and report data that includes, but is not limited to, the following indicators: student chronic absenteeism rates; student discipline rates, including suspensions and expulsions; school climate information, which may come from student, parent, or teacher surveys; provision of integrated student supports and stakeholder services; expanded and enriched learning time and opportunities; family and community engagement efforts and impact; information on the number, qualifications, and retention of school staff, including the number and percentage of fully certified teachers, disaggregated by race and ethnicity, rates of teacher turnover, and teacher experience; graduation rates; changes in school spending information; collaborative leadership and practice strategies, which may include building the capacity of educators, principals, other school leaders, and other staff to lead collaborative school improvement structures, such as professional learning communities; regularly convening or engaging all initiative-level partners, such as LEA representatives, city or county officials, children's and youth's cabinets, nonprofit service providers, public housing agencies, and advocates; regularly assessing program quality and progress through individual student data, participant feedback, and aggregate outcomes to develop strategies for improvement; and organizing school personnel and community partners into working teams focused on specific issues identified in the needs and assets assessment; and (4) make results of the evaluation publicly available. (FSCS NFP)

(G) Plans for sustaining the programs and services described in this subsection after the grant period. (4625(a)(4)(G))

(5) An assurance that the eligible entity and its partner entities will focus services on schools eligible for a schoolwide program under section 1114(b). (4625(a)(5))

Program Requirements: FSCS grantee funds must meet the following program requirements. These requirements are from sections 4623 and 4625 of the ESEA and the FSCS NFP. The source of each requirement is provided in the parentheses following each requirement. For FY 2022, and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following requirements apply.

(1) *Matching funds.* Each grantee shall provide matching funds from non-Federal sources, which may be provided in part with in-kind contributions. The BIE may meet the matching requirement using funds from other Federal sources. (4623(d)(2))

(2) *Use of Funds.* Each grantee shall use the grant funds for the following grant activities:

(A) Each grantee may use not more than 10 percent of the total amount of grant funds for planning purposes during the first year of the grant. (4625(c))

(B) Each grantee shall use the grant funds for the following grant activities:

(i) Coordinate not less than three existing pipeline services, as of the date of the grant award, and provide not less than two additional pipeline services at two or more public elementary schools or secondary schools; (4625(e)(1))

(ii) To the extent practicable, integrate multiple pipeline services, at two or more public elementary schools or secondary schools. Under Absolute Priorities 3 and 4, to the extent practicable, integrate multiple pipeline services at two or more public elementary schools or secondary schools in each LEA; (4625(e)(2) and FSCS NFP) and

(iii) If applicable, coordinate and integrate services provided by community-based organizations and government agencies with services provided by specialized instructional support personnel. (4625(e)(3))

(3) *Evaluation.* Each grantee shall include an independent evaluation to do the following:

(A) Conduct an annual evaluation of the progress achieved with the grant toward the purpose described in section 4621(2) of the ESEA; (4625(g)(1) and FSCS NFP)

(B) Use the evaluation to refine and improve activities carried out through the grant and annual measurable performance objectives and outcomes under section 4625(a)(4)(C); (4625(g)(2) and FSCS NFP) and

(C) Make the results of the evaluation publicly available, including by providing public notice of such availability. (4625(g)(3) and FSCS NFP)

(4) *Final MOU.* At the end of the first year of the grant, each grantee must submit a final MOU among all partner entities in the eligible entity that will assist the eligible entity to plan, develop, coordinate, provide, and evaluate pipeline services and that describes the roles and responsibilities that the partners, including the broadly representative consortium, will assume. (4625(a)(2) and FSCS NFP)

Definitions: The definitions of ''Community-based organization,'' ''Eligible entity,'' ''Evidence-based,'' ''Full-service community school,'' ''Local educational agency,'' ''Pipeline services,'' and ''State educational agency'' are from sections 4622 and 8101 of the ESEA. The definitions of ''Baseline,'' ''Demonstrates a rationale,'' ''Experimental study,'' ''Logic model,'' ''Nonprofit,'' ''Performance measure,'' ''Performance target,'' ''Project,'' ''Project component,'' ''Promising evidence,'' ''Quasi-experimental design study,'' ''Relevant outcome,'' and ''What Works Clearinghouse Handbook'' are from 34 CFR 77.1. The definition of ''School eligible for a schoolwide program'' is from 34 CFR 200.25(b). The definitions of ''Broadly representative consortium,'' Full-service community school coordinator,'' ''History of effectiveness,'' and ''Pillars of full-service community schools'' are from the FSCS NFP. The definitions of ''Children or students with disabilities,'' ''Disconnected youth,'' ''Early learning,'' ''Educator,'' ''English learner,'' ''Military- or veteran-connected student,'' and ''Underserved student,'' are from the Supplemental Priorities.

Baseline means the starting point from which performance is measured and targets are set.

Broadly representative consortium means stakeholders representing broad groups of people working together for the best interest of children; such stakeholders may include, but are not limited to, families and family leadership, schools, nonprofits, government, philanthropy, and the business community.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(20)(B)).

Community-based organization means a public or private nonprofit (as defined in this notice) organization of demonstrated effectiveness that—

(a) Is representative of a community or significant segments of a community; and

(b) Provides educational or related services to individuals in the community.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early learning means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; (d) non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

Educator means an individual who is an early learning educator, teacher, principal, or other school leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

Eligible entity means a consortium of one or more LEAs, or the Bureau of Indian Education, and one or more community-based organizations, nonprofit organizations, or other public or private entities.

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based means an activity, strategy, or intervention that—

(i) Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(I) Strong evidence from at least one well-designed and well-implemented experimental study;

(II) Moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or

(III) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(ii)(I) Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(II) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks (as defined in this notice):

(a) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(b) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(c) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Full-service community school means a public elementary school or secondary school that—

(a) Participates in a community-based effort to coordinate and integrate educational, developmental, family, health, and other comprehensive services through community-based organizations and public and private partnerships; and

(b) Provides access to such services in school to students, families, and the community, such as access during the school year (including before- and after-school hours and weekends), as well as during the summer.

Full-service community school coordinator means an individual in a full-time position at each community school who serves to plan, integrate, coordinate, and facilitate the delivery of pipeline services at each school. The coordinator may also lead the school and community assessment of needs and assets and identify ways to sustain the services and partnerships beyond the duration of the grant.

History of effectiveness means an eligible entity demonstrating the ability to successfully implement programs and policies. Such programs and policies must include, but shall not be limited to, successfully implementing with other organizations grants, policies, and programs for students from high-need schools (as defined in Section 2221 of the ESEA).

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the State educational

agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Pillars of Full-Service Community Schools means all of the following:

(A) *Integrated student supports* at a community school that provide in- and out-of-school support for students, address well-being, and address out-of-school barriers to learning through partnerships with social and health service agencies, including mental and behavioral health agencies and providers, and coordinated by a community school coordinator, which may include—

(i) Medical, dental, vision care, and mental and behavioral health services, including mental health literacy for students and staff, and trauma-informed services to prevent, intervene, and mitigate adverse childhood experiences (ACEs); and

(ii) Individuals to assist with housing, transportation, nutrition, citizenship preparation, or criminal justice issues and other services.

(B) *Expanded and enriched learning time and opportunities,* through evidence-based strategies (as defined in this notice), including before-school, after-school, during-school, weekend, and summer programs that provide additional academic instruction, individualized academic support, enrichment activities, or learning opportunities, for students at a community school that—

(i) May emphasize real-world project-based learning where students can apply their learning to contexts that are relevant and engaging; and

(ii) May include art, music, drama, creative writing, hands-on experience with engineering or science (including computer science), career and technical education, tutoring that is aligned with classroom success and homework help, and recreational programs that enhance and are consistent with the school's curriculum.

(C) *Active family and community engagement* that—

(i) Brings parents and families of students at the community school and community members and leaders into the school as partners in students' education, including meaningfully involving parents and families in the community school's decision-making processes;

(ii) Makes the community school a hub for services, activities, and programs, for students, families, and members of the neighborhood that the community school serves;

(iii) Provides adults with desired educational and employment opportunities and other supportive services; and

(iv) Provides centralized supports for families and communities in community schools, which may include English as a second language classes, citizenship preparation, computer skills, art, housing assistance, child abuse and neglect prevention supports, health and mental health, literacy programs, digital literacy training, or other programs that bring community members into a school building for meetings, events, or programming.

(D) *Collaborative leadership and practices* that build a culture of professional learning, collective trust, and shared responsibility for each community school using strategies that—

(i) At a minimum, include a school-based leadership team with representation of student, parent and family leaders and a community voice; a community school coordinator; and a community-wide leadership team; and

(ii) May include other leadership or governance teams, community school steering committees, or other community coalitions, educator learning communities, and other staff to manage the multiple, complex joint work of school and community organizations.

Pipeline services means a continuum of coordinated supports, services, and opportunities for children from birth through entry into and success in postsecondary education and career attainment. Such services shall include, at a minimum, strategies to address through services or programs (including integrated student supports) the following:

(a) High-quality early childhood education programs.

(b) High-quality school and out-of-school-time programs and strategies.

(c) Support for a child's transition to elementary school, from elementary school to middle school, from middle school to high school, and from high school into and through postsecondary education and into the workforce, including any comprehensive readiness assessment determined necessary.

(d) Family and community engagement and supports, which may include engaging or supporting families at school or at home.

(e) Activities that support postsecondary and workforce readiness, which may include job training, internship opportunities, and career counseling.

(f) Community-based support for students who have attended the schools in the area served by the pipeline, or students who are members of the community, facilitating their continued connection to the community and success in postsecondary education and the workforce.

(g) Social, health, nutrition, and mental health services and supports.

(h) Juvenile crime prevention and rehabilitation programs.

Project means the activity described in an application.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination

of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(a) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single study assessed by the Department, as appropriate, that—

(i) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(ii) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

School eligible for a schoolwide program means any school eligible under 34 CFR 200.25(b) to operate a schoolwide program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, students in postsecondary education or career and technical education, and adult learners, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student impacted by the justice system, including a formerly incarcerated student.

(o) A student who is the first in their family to attend postsecondary education.

(r) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(s) A student performing significantly below grade level.

(t) A military- or veteran-connected student.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Program Authority: Sections 4621–4625 of the ESEA, 20 U.S.C. 7271–7273, 7275.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) 34 CFR 200.25. (e) The FSCS NFP. (f) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $68,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2022 or in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: Under Absolute Priority 3, $275,000 to $500,000 for each 12-month budget period; $1,375,000 to $2,500,000 for the entire project period. Under Absolute Priority 4, $1,000,000 to $3,000,000 for each 12-month budget period; $5,000,000 to $15,000,000 for the entire project period. Under Absolute Priority 5, $5,000,000 to $10,000,000 for each 12-month budget period; $25,000,000 to $50,000,000 for the entire project period.

Estimated Average Size of Awards: Under Absolute Priority 3, $450,000 for each 12-month period. Under Absolute Priority 4, $2 million for each 12-month period. Under Absolute Priority 5, $7.5 million for each 12-month period.

Maximum Award: Under Absolute Priority 3, we will not make an award exceeding $2.5 million for the entire project period. Under Absolute Priority 4, we will not make an award exceeding $15 million for the entire project period. Under Absolute Priority 5, we will not make an award exceeding $50 million for the entire project period.

Minimum Award: The Secretary is prohibited by section 4625(d) of the ESEA from making a grant under the FSCS program in an amount that is less than $75,000 for each year of the grant. Therefore, we will reject any application that proposes an amount that is less than $75,000 for any budget period.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* A consortium of—

(a)(i) One or more LEAs; or

(ii) The BIE; and

(b) One or more community-based organizations, nonprofit organizations, or other public or private entities.

A consortium must comply with the provisions governing group applications in 34 CFR 75.127 through 75.129.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2.a. *Cost Sharing or Matching:* To be eligible for an award, an applicant shall provide matching funds through non-Federal contributions, either in cash or in-kind donations. The applicant must propose the amount of cash or in-kind resources to be contributed for each year of the grant.

The BIE may meet the matching requirement using funds from other Federal sources.

b. *Supplement not Supplant:* This program is subject to supplement-not-supplant funding requirements. Grantees must use FSCS grant funds to supplement, and not supplant, any other Federal, State, and local funds that would otherwise have been available to carry out activities authorized under section 4625 of the ESEA.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

Note: Nothing in section 4625 of the ESEA shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or LEA employees under Federal, State, or local laws (including applicable regulations or court orders) under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264), and available at *www.federalregister.gov/d/2021-27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the FSCS program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 150 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the required preliminary MOU; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of the applicant's intent to submit an application for funding by sending a short email message indicating the applicant's intent to submit an application for funding. The email need not include information regarding the content of the proposed

application, only the applicant's intent to submit it. This email notification should be sent to *FSCS@ed.gov* with ''INTENT TO APPLY'' in the subject line by August 12, 2022. Applicants that do not notify us of their intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for applicants submitting applications under Absolute Priority 3—Capacity Building and Development Grants, and Absolute Priority 4—Multi-Local Educational Agency Grants, are listed in paragraph (a) of this section. The selection criteria for applicants submitting applications under Absolute Priority 5—State Scaling Grants, are listed under paragraph (b) of this section. The selection criteria for this competition are from 34 CFR 75.210 and the FSCS NFP. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice. The maximum score that an application may receive under the competitive preference priorities and the selection criteria is 110 points.

In evaluating a FSCS application, the Secretary considers the following criteria:

(a) *Selection Criteria for Absolute Priority 3—Capacity Building and Development Grants and Absolute Priority 4—Multi-Local Educational Agency Grants.*

(1) *Need for project* (up to 10 points).

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which the proposed project will provide support, resources, and services; close gaps in educational opportunity; or otherwise address the needs of the targeted population, including addressing the needs of underserved populations most impacted by the issue, challenge, or opportunity to be addressed by the proposed project. (FSCS NFP)

(2) *Quality of the Project Design* (up to 25 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the design of the proposed project reflects relevant and evidence-based findings from existing literature and includes a high-quality plan for project implementation integrating the four pillars of full-service community schools and the use of appropriate evaluation methods to ensure successful achievement of project objectives. (FSCS NFP)

(3) *Quality of the Project Services* (up to 15 points).

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of project services, the Secretary considers the extent to which the applicant will ensure that a diversity of perspectives is brought to bear in the design and operation of the proposed project, including those of students, youth, families, educators and staff, beneficiaries of services, school leadership, and community leadership. (FSCS NFP)

(4) *Adequacy of Resources* (up to 10 points).

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the grantee has plans for a full-time coordinator at each school, including a plan to sustain the position beyond the grant period and a description of how this position will serve to plan, integrate, coordinate, and facilitate programs and services at each school. (FSCS NFP)

(5) *Quality of the Management Plan* (up to 25 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The extent to which the grantee has, or demonstrates a strong plan to have, a broadly representative consortium that reflects the needs of the community and its stakeholders, and a description of the roles and responsibilities of the broadly representative consortium outlined in the required preliminary MOU. (FSCS NFP)

(B) The extent to which the applicant demonstrates a history of effectiveness in working with a diverse range of stakeholders, including students and families. (FSCS NFP)

(C) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210)

(6) *Quality of the Project Evaluation* (up to 15 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors—

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (34 CFR 75.210)

(B) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (34 CFR 75.210)

(C) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes. (34 CFR 75.210)

(b) *Selection Criteria for Absolute Priority 5—State Scaling Grants.*

(1) *Need for project* (up to 5 points).

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which the proposed project will provide support, resources, and services; close gaps in educational opportunity; or otherwise address the needs of the targeted population, including addressing the needs of underserved populations most impacted by the issue, challenge, or opportunity to be addressed by the proposed project. (FSCS NFP)

(2) *Quality of the Project Design* (up to 25 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the design of the proposed project reflects relevant and evidence-based findings from existing literature and includes a high-quality plan for project implementation integrating the four pillars of full-service community schools and the use of appropriate evaluation methods to ensure successful achievement of project objectives. (FSCS NFP)

(3) *Quality of the Project Services* (up to 15 points).

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of project services, the Secretary considers the extent to which the applicant will ensure that a diversity of perspectives is brought to bear in the design and operation of the proposed project, including those of students, youth, families, educators and staff,

beneficiaries of services, school leadership, and community leadership. (FSCS NFP)

(4) *Adequacy of Resources* (up to 10 points).

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the grantee has plans for a full-time coordinator at each school, including a plan to sustain the position beyond the grant period and a description of how this position will serve to plan, integrate, coordinate, and facilitate programs and services at each school. (FSCS NFP)

(5) *Quality of the Management Plan* (up to 20 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The extent to which the grantee has, or demonstrates a strong plan to have, a broadly representative consortium that reflects the needs of the community and its stakeholders, and a description of the roles and responsibilities of the broadly representative consortium outlined in the required preliminary MOU. (FSCS NFP)

(B) The extent to which the applicant demonstrates a history of effectiveness in working with a diverse range of stakeholders, including students and families. (FSCS NFP)

(C) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210)

(6) *Quality of the Project Evaluation* (up to 15 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors—

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (34 CFR 75.210)

(B) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (34 CFR 75.210)

(C) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes. (34 CFR 75.210)

(7) *Strategy to Scale* (up to 10 points).

The Secretary considers the applicant's strategy to scale the proposed project. In determining the applicant's capacity to scale the proposed project, the Secretary considers the extent to which the applicant demonstrates its commitment and strategy to scale full-service community schools at the statewide level. In determining the applicant's capacity to scale the proposed project, the Secretary considers the number and percentage of LEAs, and the number and percentage of schools within each LEA, the applicant, the SEA, and other partners propose to serve, the applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to further develop, implement, bring to scale, and sustain additional full-service community schools in multiple LEAs, and the applicant's capacity to work with others, including the broadly representative consortium and the State steering committee, to ensure that the proposed process, products, strategies, or practices can be further developed and brought to scale, based on the regular findings of the proposed project and its independent evaluation. (FSCS NFP)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. In General: In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Section 4625(a)(4)(C) of the ESEA provides the basis for one performance measure for the FSCS program: the percentage and number of individuals targeted for services and who receive services during each year of the project period. The FSCS NFP established an additional set of indicators: student chronic absenteeism rates; student discipline rates, including suspensions and expulsions; school climate information, which may come from student, parent, or teacher surveys; provision of integrated student supports and stakeholder services; expanded and enriched learning time and opportunities; family and community engagement efforts and impact; information on the number, qualifications, and retention of school staff, including the number and percentage of fully certified teachers, disaggregated by race and ethnicity, and rates of teacher turnover; graduation rates; changes in school spending information; collaborative leadership and practice strategies, which may include building the capacity of educators, principals, other school leaders, and other staff to lead collaborative school improvement structures, such as professional learning communities; regularly convening or engaging all initiative-level partners, such as LEA representatives, city or county officials, children's cabinets, nonprofit service providers, public housing agencies, and advocates; regularly assessing program quality and progress through individual student data, participant feedback, and aggregate outcomes to develop strategies for improvement; and organizing school personnel and community partners into working teams focused on specific issues identified in the needs and assets assessment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the 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, 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.

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2022–15091 Filed 7–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0061]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Campus Equity in Athletics Disclosure Act (EADA) Survey

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before August 12, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sophia McArdle, (202) 453–6318.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Campus Equity in Athletics Disclosure Act (EADA) Survey.

OMB Control Number: 1840–0827.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 2,073.

Total Estimated Number of Annual Burden Hours: 11,401.

Abstract: The collection of information is necessary under section 485 of the Higher Education Act of 1965, as amended, with the goal of increasing transparency surrounding college athletics for students, prospective students, parents, employees and the general public. The survey is a collection tool to compile the annual data on college athletics. The data is collected from the individual institutions by ED and is made available to the public through the Equity in Athletics Data Analysis Cutting Tool as well as the College Navigator.

Dated: July 7, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–14864 Filed 7–12–22; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting; Withdrawal

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Sunshine Act Notice; Notice of Public Roundtable Agenda, Withdrawal.

SUMMARY: This action withdraws the Sunshine Act Notice published in the **Federal Register** on July 11, 2022, U.S. Election Assistance Commission Roundtable Discussion: Disability and the Digital Divide in The Voting Process.

DATES: As of July 8, 2022, the Sunshine Act Notice published in the **Federal Register** on July 11, 2022 (87 FR 41117) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

Amanda Joiner,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2022–15067 Filed 7–11–22; 4:15 pm]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4451–024]

Green Mountain Power Corporation, City of Somersworth, New Hampshire; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the relicense application for the Lower Great Falls Hydroelectric Project No. 4451, located on the Salmon Falls River in Strafford County, New Hampshire and York County, Maine, and has prepared an Environmental Assessment (EA) for the project. No federal land would be occupied by the project.

The EA contains staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The number of pages in the EA exceeds the page limits set forth in the Council on Environmental Quality's July 16, 2020 final rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (85 FR 43304). Noting the scope and complexity of the proposed action and action alternatives, the Director of the Office of Energy Projects, as our senior agency official, has authorized this page limit exceedance for the EA.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments

using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filings, 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 docket number P–4451–024.

For further information, contact Arash Barsari at (202) 502–6207, or by email at *Arash.JalaliBarsari@ferc.gov.*

Dated: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14928 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10615–059]

Tower Kleber Limited Partnership; Notice of Petition for Declaratory Order

Take notice that on April 28, 2022, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, Tower Kleber Limited Partnership (Tower Kleber) filed a petition for declaratory order requesting the Commission declare that the Michigan Department of Environment, Great Lakes, and Energy has waived its authority to issue a certification for the Tower Kleber Project No. 10615 under Section 401 of the Clean Water Act, 33 U.S.C. 1341(a)(1), as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

Any person wishing to comment on Tower Kleber's Petition may do so.[1] The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on August 8, 2022.

Dated: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14926 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–158–000.

Applicants: CXA Temple 2, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of CXA Temple 2, LLC.

Filed Date: 7/7/22.

Accession Number: 20220707–5114.

Comment Date: 5 p.m. ET 7/28/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–73–000.

Applicants: Nevada Power Company and Sierra Pacific Power Company.

Description: Petition for Declaratory Order of Nevada Power Company Sierra Pacific Power Company.

Filed Date: 6/30/22.

Accession Number: 20220630–5363.

Comment Date: 5 p.m. ET 8/1/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2144–001.

Applicants: Invenergy Nelson Expansion LLC.

Description: Tariff Amendment: Supplement to Market-Based Rate Application to be effective 9/5/2022.

Filed Date: 7/6/22.

Accession Number: 20220706–5104.

Comment Date: 5 p.m. ET 7/27/22.

Docket Numbers: ER22–2282–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1276R26 Evergy Metro NITSA NOA to be effective 7/1/2022.

Filed Date: 7/7/22.

Accession Number: 20220707–5067.

Comment Date: 5 p.m. ET 7/28/22.

Docket Numbers: ER22–2292–000.

Applicants: Idaho Power Company.

Description: Compliance filing: Compliance Filing—Attachment P to be effective 9/12/2022.

Filed Date: 7/6/22.

Accession Number: 20220706–5109.

Comment Date: 5 p.m. ET 7/27/22.

Docket Numbers: ER22–2293–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: Compliance filing: Order 881 Compliance Filing to be effective 7/12/2025.

Filed Date: 7/7/22.

Accession Number: 20220707–5039.

Comment Date: 5 p.m. ET 7/28/22.

Docket Numbers: ER22–2294–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 2961; Queue No. P11 (amend) to be effective 6/15/2011.

Filed Date: 7/7/22.

Accession Number: 20220707–5040.

Comment Date: 5 p.m. ET 7/28/22.

[1] Tower Kleber's request is part of its relicensing proceeding in Project No. 10615–058.

Docket Numbers: ER22–2295–000.
Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Virginia Electric and Power Company submits tariff filing per 35.13(a)(2)(iii: Dominion submits One WDSA, SA No. 6479 to be effective 11/15/2021.
Filed Date: 7/7/22.
Accession Number: 20220707–5060.
Comment Date: 5 p.m. ET 7/28/22.
Docket Numbers: ER22–721–001.
Applicants: Kennebec Lumber Company.
Description: Tariff Amendment: Application For Market Based Rate Authority to be effective 7/15/2022.
Filed Date: 7/7/22.
Accession Number: 20220707–5108.
Comment Date: 5 p.m. ET 7/28/22.
Docket Numbers: ER22–962–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Response to the May 18, 2022 Request for Additional Information in ER22–962 to be effective N/A.
Filed Date: 7/7/22.
Accession Number: 20220707–5079.
Comment Date: 5 p.m. ET 7/28/22.
Docket Numbers: ER22–965–002.
Applicants: Covanta Delaware Valley, L.P.
Description: Tariff Amendment: Response to Deficiency Notice to be effective 3/1/2022.
Filed Date: 7/7/22.
Accession Number: 20220707–5159.
Comment Date: 5 p.m. ET 7/28/22.
Docket Numbers: ER22–966–002.
Applicants: Covanta Essex Company.
Description: Tariff Amendment: Response to Deficiency Notice to be effective 3/1/2022.
Filed Date: 7/7/22.
Accession Number: 20220707–5169.
Comment Date: 5 p.m. ET 7/28/22.
Docket Numbers: ER22–967–002.
Applicants: Covanta Fairfax, LLC.
Description: Tariff Amendment: Response to Deficiency Notice to be effective 3/1/2022.
Filed Date: 7/7/22.
Accession Number: 20220707–5171.
Comment Date: 5 p.m. ET 7/28/22.
Docket Numbers: ER22–968–002.
Applicants: Covanta Plymouth Renewable Energy, LLC.
Description: Tariff Amendment: Response to Deficiency Notice to be effective 3/1/2022.
Filed Date: 7/7/22.
Accession Number: 20220707–5174.
Comment Date: 5 p.m. ET 7/28/22.

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: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14923 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–44–000]

Equitrans, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Ohio Valley Connector 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 Ohio Valley Connector Expansion Project (Project) involving construction and operation of facilities by Equitrans, L.P. (Equitrans) in Greene County, Pennsylvania, Wetzel County, West Virginia, and Monroe County, Ohio. 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 May 23, 2022, in Docket No. CP22–44–000, the Commission opened a scoping period to solicit comments. Commission staff intends to prepare an EIS that will address the concerns raised during the scoping process and comments received in response to this notice.

As mentioned above, the Commission opened a scoping period which expired on June 22, 2022; however, Commission staff continued to accept comments after the comment period closed. All substantive written and oral comments provided will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the previous scoping period, you do not need to file those comments again.

By this notice, the Commission requests public comments on the scope of issues to address in the EIS, including 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 August 8, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

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.

Equitrans 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 (CP22–44–000) 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.

Project Purpose and Need, Summary of Facilities, and Expected Impacts

According to Equitrans, its Project would expand Equitrans' existing Ohio Valley Connector assets to deliver approximately 350,000 dekatherms per day of incremental firm natural gas transportation to mid-continent and Gulf Coast markets along the Rockies Express and Rover pipeline systems.

Equitrans proposes to acquire and operate the existing non-jurisdictional Cygrymus Compressor Station, located in Greene County, Pennsylvania, and install two new turbines. Equitrans would also install one additional compressor unit each at the existing Corona Compressor Station Wetzel County, West Virginia and at the existing Plasma Compressor Station in Monroe County, Ohio. Equitrans would also construct approximately 5.5 miles of pipeline and ancillary facilities in different locations related to the compressor stations. Specifically, the Project would consist of the following facilities in:

Greene County, Pennsylvania

- addition of two Taurus 70 turbines at the existing Cygrymus Compressor Station;
- approximately 0.5 mile of 16-inch-diameter natural gas pipeline (H–327);
- approximately 0.5-mile of 12-inch-diameter natural gas pipeline (H–328);
- a deep anode groundbed and rectifier; and
- ancillary facilities, such as a valve yard, taps, and internal inspection device (*e.g.,* pig [1]) launchers and receivers.

Wetzel County, West Virginia

- addition of one Mars 100 compressor at the existing Corona Compressor Station;
- approximately 3.7 miles of new 24-inch-diameter natural gas pipeline (H–326);
- approximately 129 feet of new 8-inch-diameter natural gas pipeline (H–329);
- approximately 0.7 mile of new 16-inch-diameter natural gas pipeline (H–330);
- approximately 0.09 mile of new 16-inch-diameter natural gas pipeline (H–330 Spur);
- approximately 160 feet of new 12-inch-diameter natural gas pipeline (Logansport Spur); and
- ancillary facilities, such as mainline valves, valve yards, measuring equipment, and internal inspection device (pig launchers and receivers).

Monroe County, Ohio

- addition of one Titan 130 compressor at the existing Plasma Compressor Station.

The general location of the Project facilities is shown in appendix 1.[2]

Based on the environmental information provided by Equitrans, construction of the proposed facilities would disturb about 117 acres of land for the aboveground facilities and the pipeline. Following construction, Equitrans would maintain about 32 acres for operation of the Project facilities; the remaining acreage would be restored and revert to former uses. The proposed H–326, H–330, and H–330 spur pipelines would be collocated with existing pipelines for approximately 58.8 percent, 76.8 percent, and 88.9 percent of the proposed alignments, respectively, and the H–327 and H–328 pipelines are parallel and would be located within a shared pipeline construction right-of-way.

Based on an initial review of Equitrans' proposal and public comments received during scoping, Commission staff have identified several expected impacts that deserve attention in the EIS. The Project would impact 13 waterbodies and about 0.4 acre of wetland habitat. Operation of the Project would result in emissions estimated at 6.77 million metric tonnes per year of carbon dioxide (CO_2) from the end use of the natural gas. Construction of the Project would also have impacts on noise, traffic, and road conditions. In response to the Notice of Scoping, the Commission received comments from the Teamsters National Pipeline Labor Management Cooperation Trust (Teamsters); Center for Coalfield Justice (Coalfield Justice); the U.S. Environmental Protection Agency (EPA); and the U.S. Fish and Wildlife Service (USFWS). The Teamsters comments were supportive of the Project. Primary issues raised by the Coalfield Justice include potential Project impacts on environmental

[1] 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.

[2] 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.

justice communities; especially in Greene County, Pennsylvania; and climate change and air quality concerns. The EPA stated that the environmental document should discuss project need and alternatives; potential impacts on water quality and wetlands; air quality, climate change, and greenhouse gas emissions; community, social, and economic impacts, including environmental justice communities; noise impacts; and potential spread of noxious weeds. The USFWS comments included potential Project impacts on federally listed species, including Indiana and northern long-eared bats, clubshell and snuffbox mussels, migratory birds, and bald and golden eagles.

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 climate change;
- noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas, and will review alternatives as discussed further below. 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. 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 [3] 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.[4] Alternatives currently under consideration include:

- the no-action alternative, meaning the Project is not implemented;
- one route alternative for the H–327 and H–328 Pipelines and two route alternatives for the H–326 Pipeline; and
- electric motor-driven compression.

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 is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), 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.[5] 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 February 11, 2022, 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 September 2022.

Issuance of Notice of Availability of the final EIS—January 20, 2023

90-day Federal Authorization Decision Deadline [6]—April 20, 2023

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 their 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.

Agency	Permit
Federal Energy Regulatory Commission	Certificate of Public Convenience and Necessity.
U.S. Army Corps of Engineers (USACE) Pittsburgh District	Pennsylvania (PA) State Programmatic General Permit—6.
USACE Huntington West Virginia (WV) District	Nationwide Permit 12/Individual Permit.
U.S. Fish and Wildlife Service (USFWS) PA Field Office	Endangered Species Act (ESA) Consultation; Fish and Wildlife Coordination Act Coordination; Migratory Bird Treaty Act (MBTA) Coordination; Bald and Golden Eagle Protection Act (BGEPA) Consultation.
USFWS—WV Field Office	ESA Consultation, and MBTA and BGEPA Coordination.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] 40 CFR 1508.1(z).

[5] 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.

[6] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Agency	Permit
USFWS—Ohio (OH) Field Office	ESA Consultation, and MBTA and BGEPA Coordination.
PA Department of Environmental Protection—Regional Permitting Coordination Office.	Section 401 Water Quality Certificate.
PA State Historic Preservation Office (SHPO)	National Historic Preservation Act (NHPA), Section 106 Consultation.
WV Department of Environmental Protection Division of Water and Waste Management.	Section 401 Water Quality Certificate.
WV SHPO	NHPA, Section 106 Consultation.
OH Environmental Protection Agency	Clean Water Act, Section 401.
OH SHPO	NHPA, Section 106 Consultation.

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 CP22–44–000 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.,* CP22–44). 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: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14921 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–1046–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Vitol 860537 eff 07–01–22 to be effective 7/1/2022.

Filed Date: 7/6/22.

Accession Number: 20220706–5063.

Comment Date: 5 p.m. ET 7/18/22.

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.

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: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14922 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3071–007]

Rapidan Hydroelectric, LLC, Blue Earth County; Notice of Transfer of Exemption

1. On May 31, 2022, Rapidan Hydroelectric, LLC, exemptee for the 5 Megawatts Rapid Dam Hydroelectric Project No. 3071, filed a letter notifying the Commission that the project was transferred from Rapidan Hydroelectric, LLC to Blue Earth County. The exemption from licensing was originally issued on July 1, 1982.[1] The project is located on the Blue Earth River, Blue Earth County, Minnesota. The transfer of an exemption does not require Commission approval.

2. Blue Earth County is now the exemptee of the Rapidan Hydroelectric

[1] *Rapidan Redevelopment Ltd,* 20 FERC ¶ 62,006 (1982). Subsequently, on June 4, 2004, the project was transferred to Rapidan Hydroelectric, LLC.

Project No. 3071. All correspondence must be forwarded to Ryan Thilges, P.E., Engineer/Public Works Director, Blue Earth County, 35 Map Drive, P.O. Box 3083, Mankato, MN 56002–3083, Phone: (507) 304–4031, Email: *ryan.thilges@blueearthcountymn.gov.*

Dated: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14917 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD21–6–000]

Commission Information Collection Activities (FERC–725B4); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection 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 new information collection designated as FERC–725B4 (Mandatory Reliability Standards: Critical Infrastructure Protection Reliability Standards CIP–004–7 and CIP–011–3), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due August 12, 2022.

ADDRESSES: Send written comments on FERC–725B4 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–TBD) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. RD21–6–000) to the Commission as noted below. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC 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* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725B4, Mandatory Reliability Standards: Critical Infrastructure Protection Reliability Standards CIP–004–7 and CIP–011–3.[1]

OMB Control No.: TBD.

Type of Request: Approval of proposed changes as described in Docket No. RD21–6–000.

Abstract: On September 15, 2021 the North American Electric Reliability Corporation (NERC) filed a petition requesting approval of two Reliability Standards: CIP–004–7 (Cyber Security, Personnel and Training) and CIP–011–3 (Cyber Security, Information Protection). NERC described the proposed Reliability Standards as ''Addressing Bulk Electric System Cyber System Information Access Management.'' The petition was noticed on September 22, 2021, with interventions and comments due by October 6, 2021.[2] The Commission did not receive any interventions or comments.

On December 7, 2021, the Designated Letter Order (DLO) in Docket No. RD21–6–000 approved the proposed Reliability Standards, and found that the modified Reliability Standards enhance security as discussed below.

At present, Reliability Standard CIP–004–6 requires Responsible Entities to control access to Bulk Electric System Cyber System Information (BCSI) by managing access to a designated storage location, such as an electronic document or physical file room. Reliability Standard CIP–004–7 removes references to ''designated storage locations'' of BCSI and requires an access management program to authorize, verify and revoke provisioned access to BCSI. This change updates CIP–004 by focusing on controls at the file level (*e.g.,* rights, permissions, privileges) of BCSI and reduces the need for access to only a physical, designated storage location for BCSI.

Reliability Standard CIP–011–3 clarifies the requirements of protecting and handling BCSI with the goal of providing flexibility for Responsible Entities to use third-party data storage and analysis systems. Specifically, Reliability Standard CIP–011–3 requires Responsible Entities to implement specific controls related to BCSI during storage handling use, and disposal of information when implementing services provided by third parties.

Type of Respondents: Businesses and other for-profit entities.

Estimate of Annual Burden: The Commission estimates 686 responses annually, and per-response burdens of 10 hours and $850.20. The total estimated burdens per year are 6,860 hours and $583,237.20. These burdens are itemized in the following table:

[1] FERC–725B4 is an interim information collection number that, as of December 2021 (when the 60-day notice was issued) accommodated the need to seek timely approval during the pendency of an unrelated information collection request pertaining to FERC–725B (OMB Control No. 1902–0248). In addition, the implementation plan for CIP–004–7 and CIP–011–3 provides that those Reliability Standards become effective on the first day of the first calendar quarter that is 24 calendar months after the effective date of the Commission's order, so that Responsible Entities have sufficient time to come into compliance with the revised Reliability Standards. FERC–725B continues to cover the current requirements of the standards, before implementation of the revised requirements of Docket No. RD21–6–000. FERC–725B has been renewed with an expiration date of May 31, 2025. Thus, if and when OMB approves the information collection request for FERC725B4, the Commission intends to seek OMB's approval to add this collection of information to FERC–725B.

[2] 86 FR 52667, at 52668.

	A. Number of respondents [3]	B. Annual number of responses per respondent	C. Total number of responses (Column A × Column B)	D. Average burden hours [4] & cost per response [5]	E. Total annual burden hours & total annual cost [6] (Column C × Column D)	F. Cost per respondent ($) (Column E ÷ Column A)
CIP–004–7	343	1	343	10 hours & $850.20	3,430 hours & $291,618.60	10 hours & $850.20
CIP–011–3	343	1	343	10 hours & $850.20	3,430 hours & $291,618.60	10 hours & $850.20
Totals	686	.....	686	.....	6,860 hours & $583,237.20	20 hours & $1,700.40

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: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14925 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

[3] The number of respondents is based on the NERC Compliance Registry as of June 22, 2021. Currently there are 1,508 unique NERC Registered Entities, subtracting 16 Canadians Entities yields 1,492 U.S. NERC Registered Entities subject to the CIP Standards. However, only those NERC Registered Entities that own Medium Impact or High Impact BES Cyber System are subject to the CIP Standards in this filing which is estimated to be 343 NERC Registered Entities.

[4] Of the average estimated twenty (20) hours per response, all twenty (20) hours are for the one-time effort of updating or changing documentation for record-keeping burden that is already accounted for.

[5] Commission staff estimates that the average industry hourly cost for this information collection is $85.02/hour based on the following occupations from the Bureau of Labor Statistics: (1) Manager (Occupational Code: 11–0000): $97.89/hour; and (2) Electrical Engineer (Occupational Code 17–2071): $72.15/hour. Source: *http://bls.gov/oes/current/naics3_221000.htm,* as of June 2021.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–141–000]

Great Basin Gas Transmission Company; Notice of Schedule for the Preparation of an Environmental Assessment for the 2023 Mainline Replacement Project

On March 30, 2022, Great Basin Gas Transmission Company (Great Basin) filed an application in Docket No. CP22–141–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) to construct and operate certain natural gas pipeline facilities and Authorization pursuant to Section 7(b) of the Natural Gas Act to abandon certain natural gas pipeline facilities. The proposed project is known as the 2023 Mainline Replacement Project (Project) and would involve abandoning and replacing a segment of pipeline in Humboldt County, Nevada to address indications that the subject pipeline segment is approaching the end of its useful life.

On April 13, 2022, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—November 10, 2022
90-day Federal Authorization Decision Deadline [2]—February 8, 2023

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Great Basin proposes to abandon in-place approximately 20.4 miles of its existing 16-inch-diameter steel pipeline and construct, as replacement, approximately 20.4 miles of new 16-inch-diameter steel pipeline in Humboldt County, Nevada. The replacement pipeline would be constructed approximately 20 feet from the existing pipeline to be abandoned beginning just south of US–95, north of Winnemucca, Nevada, and ending south of State Highway 49/Jungo Road near Great Basin's existing Elko Lateral Tap. The Project would also include removal of existing valves and replacement with new valves and associated appurtenances within Great Basin's existing Elko Lateral Tap.

Background

On May 16, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed 2023 Mainline Replacement Project and Notice of Public Scoping Session* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the Nevada State Historic Preservation Officer, Environmental Protection Agency, and Teamsters National Pipeline Labor Management Cooperation Trust. The primary issues and topics raised by the commenters are consultation under Section 106 of the National Historic Preservation Act and recommendations

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

for what the environmental analysis should include regarding purpose and need, alternatives, scope of the assessment, environmental baseline, climate change, air quality, water resources, spills and hazardous materials, habitat and wildlife, environmental justice, land use, tribal consultations, and monitoring and adaptive management. We also received a comment letter promoting the use of Teamster union member pipeline workers and its union contractors to build the Project. All substantive comments will be addressed in the EA.

The Bureau of Land Management and Environmental Protection Agency are cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP22–141), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14920 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2284–000]

Black Bear Alabama Solar Tenant, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Black Bear Alabama Solar Tenant, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2022.

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: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14918 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6951–018]

Tallassee Shoals, LLC.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 6951–018.

c. *Date Filed:* September 15, 2021.

d. *Applicant:* Tallassee Shoals, LLC.

e. *Name of Project:* Tallassee Shoals Hydroelectric Project (project).

f. *Location:* On the Middle Oconee River, in Athens-Clarke and Jackson Counties, Georgia. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Walter Puryear, Tallassee Shoals, LLC, 2399 Tallassee Road, Athens, Georgia 30607; Phone at (706) 540–7621, or email at *wpuryear@bellsouth.net.*

i. *FERC Contact:* Michael Spencer at (202) 502–6093, or *michael.spencer@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments,

recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: 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 docket number P–6951–018.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that federal agencies use to implement the National Environmental Policy Act (NEPA) (see National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23,453–70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *The Tallassee Shoals Project consists of:* (1) a 365-foot-long, 25-foot-high concrete dam; (2) a 23-acre impoundment with a net storage capacity of 115 acre-feet, at 645 feet elevation; (3) a 100-kilowatt fixed Kaplan unit integral with the east end of the dam; (4) a 1,400-foot-long headrace canal from the dam to the powerhouse; (5) an 80-foot-long, 11-foot-diameter penstock; (6) a powerhouse containing a single 2.2-megawatt (MW) adjustable Kaplan unit; (7) a 75-foot-long tailrace; and (8) a 100-foot-long, 42-kilovolt transmission line. The project creates a 2,100-foot-long bypassed reach of the Middle Oconee River. The project's total capacity is 2.3 MW.

The current license requires Tallassee Shoals, LLC. to: (1) operate the project in run-of-river mode; (2) release a bypassed reach minimum flow of 70 cubic feet per second (cfs) all months of the year except May when the minimum flow is 138 cfs. The average annual generation of the project is approximately 6,100 megawatt-hours.

Tallassee Shoals, LLC. proposes to discontinue releasing the 138–cfs minimum flow currently required in the month of May and instead release the 70 cfs minimum flow, which is currently required from June through April, through May as well (*i.e.,* through the entire year).

m. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://www.ferc.gov/ferc-online/overview* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *The applicant must file no later than 60 days following the date of issuance of this notice:* (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for filing comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	September 2022.
Deadline for filing reply comments.	October 2022.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14927 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2283–000]

Black Bear Alabama Solar 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Black Bear Alabama Solar 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2022.

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: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14919 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or 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. 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.

Docket No.	File date	Presenter or requester
Prohibited:		
1. P–553–235	7–5–2022	FERC Staff.[1]
Exempt:		
1. P–2530–000	6–9–2022	U.S. Senator Angus S. King, Jr.
2. P–14803–001, P–2082–063	6–23–2022	FERC Staff.[2]
3. CP16–454–000	6–28–2022	U.S. Congress.[3]
4. CP22–466–000	7–1–2022	U.S. Congress.[4]

[1] Memorandum regarding ex parte communications from 7/5/22 with the Upper Skagit Indian Tribe.
[2] Representatives Cliff Bentz and Doug LaMalfa.
[3] Senators John Cornyn, Ted Cruz, and Representatives Vicente Gonzales, Lizzie Fletrcher, Henry Cuellar, and Dan Crenshaw.
[4] Senators Joe Hoeven, Kevin Cramer and Representative Kelly Armstrong.

Dated: July 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–14924 Filed 7–12–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9990–01–R6]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for Oxbow Calcining, LLC, Jefferson County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated June 14, 2022, granting a Petition dated October 28, 2020, from the Environmental Integrity Project, Port Arthur Community Action Network, Lone Star Legal Aid, and the Lone Star Chapter of the Sierra Club. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Texas Commission on Environmental Quality (TCEQ) to Oxbow Calcining located in Jefferson County, Texas.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Aimee Wilson, EPA Region 6 Office, Air Permits Section, (214) 665–7596, *wilson.aimee@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from the Environmental Integrity Project, Port Arthur Community Action Network, Lone Star Legal Aid, and the Lone Star Chapter of the Sierra Club dated October 28, 2020, requesting that the EPA object to the issuance of operating permit no. O1493, issued by TCEQ to Oxbow Calcining in Jefferson County, Texas. The Petition claims the proposed permit fails to include monitoring and recordkeeping provisions sufficient to ensure compliance with Sulfur Dioxide National Ambient Air Quality Standards and fails to establish monitoring, testing, and recordkeeping provisions that assure compliance with Lead and Volatile Organic Compound limits from kiln stacks 2, 3, 4, and 5 in NSR Permit No. 45622.

On June 14, 2022, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for the EPA's decision.

Dated: July 8, 2022.

Dzung Ngo Kidd,

Acting Director, Air and Radiation Division, Region 6.

[FR Doc. 2022–14947 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2021–7; FRL–9979–01–R4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for U.S. Steel Seamless Tubular Operations—Fairfield Works Pipe Mill (Jefferson County, Alabama)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to title V operating permit.

SUMMARY: The EPA Administrator signed an Order, dated June 16, 2022, denying the petition submitted by Greater-Birmingham Alliance to Stop Pollution (Petitioner) objecting to a proposed modification to a Clean Air Act (CAA) title V operating permit issued to U.S. Steel Seamless Tubular Operations for its Fairfield Works Pipe Mill (Permittee) located in Jefferson County, Alabama. The Order responds to a June 7, 2021, petition requesting that EPA object to the final operating permit no. 4–07–0371–09. This permitting action was a significant modification issued by the Jefferson County Department of Health (JCDH). The Order constitutes a final action on the petition addressed therein.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4; Air and Radiation Division; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *https://www.epa.gov/system/files/documents/2022-06/US%20Steel%20Order_6-16-22.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice is published in the **Federal Register**.

Petitioner submitted a petition requesting that EPA object to the CAA title V operating permit no. 4–07–0371–09 issued by JCDH to the Fairfield Works Pipe Mill. Petitioner claims: the public did not have a meaningful opportunity to comment on the applicability of major and minor new source review (NSR); the Permittee violated the state implementation plan by failing to commence construction of the electric arc furnace (EAF) within 24

months of JCDH's approval and, thus, required a new construction permit; JCDH failed to issue an NSR permit for the EAF both initially and after the failure to timely commence construction; and the permit failed to assure compliance with a valid NSR permit that should have been issued by JCDH.

On June 16, 2022, the Administrator issued an Order denying the petition. The Order explains EPA's bases for denying the petition.

Dated: July 5, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–14902 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0164; FRL–9998–01–OCSPP]

PB&ACSS JV, LLC.; Transfer of Data (June 2022)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to PB&ACSS JV, LLC. and its subcontractors and consultants, CDM Smith, Summitec LLC, ICF, Gibb Epidemiology, Jerrold Ward, DVM, and WinTech, LLC, in accordance with the CBI regulations. PB&ACSS JV, LLC. and its subcontractors and consultants have been awarded a contract to perform work for OPP, and access to this information will enable PB&ACSS JV, LLC. and its subcontractors and consultants to fulfill the obligations of the contract.

DATES: Data transfer and access to information will occur by July 18, 2022.

FOR FURTHER INFORMATION CONTACT: William Northern, Information Technology and Resources Management Division (7601T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–6478; email address: *northern.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA- EPA–HQ–OPP–2022–0164, is available at *http://www.regulations.gov.* Additional information about the docket, along with instructions for visiting the docket in-person, is available at *https://www.epa.gov/dockets.*

II. Contractor Requirements

Under Contract No. 68HERC22D0017, PB&ACSS JV, LLC. and its subcontractors and consultants, CDM Smith, Summitec, LLC, ICF, Gibb Epidemiology, Jerrold Ward, DVM, and WinTech, LLC, will perform critical reviews of EPA designated studies submitted by the registrants and/or from the open literature, and these reviews will be provided to the task order Contract Officer's Representative (COR) in DER or other similar study evaluation report form or system, as applicable. A template of the DER format provided to the contractor shall be followed in the preparation of Data Evaluation Records (DER)s. See DER Templates for Test Guidelines *https://www.epa.gov/pesticide-registration/study-profile-templates.* Specific guidance for completing each section is provided in the DER templates. Each review will encompass all items in the study that contribute to the overall knowledge of the pesticide, and will include the following:

1. An evaluation of the accuracy, credibility and scientific validity of that study;

2. Its suitability for meeting specific data requirements.

3. Any necessary graphic displays of data, and/or summary tables illustrating results of the study.

4. Sound scientific rationale for the conclusions reached on specific studies.

5. Clarity in data presentation and adherence to the template and overall guidance.

An evaluation for each study will include the following:

- Study identifying information.
- An in-depth examination of the materials and methods employed.
- An in-depth examination of the reported results.
- An in-depth discussion of the reviewer's scientific assessment of the study.
- A description of the reviewer's assessment which summarizes the overall conclusions and significance of the study.
- Establishment of a no observable adverse effects levels (NOAEL) and lowest observable adverse effects levels (LOAEL) based on significant toxicological effects, if applicable.
- Characterize Good Laboratory Practice (GLP) compliance in study protocols, reviews, and for data evaluations.
- Discussion of data's relevancy for supporting public health claims in review of efficacy data.

OPP has determined that access by PB&ACSS JV, LLC. and its subcontractors and consultants, CDM Smith, Summitec, LLC, ICF, Gibb Epidemiology, Jerrold Ward, DVM, and WinTech, LLC, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with PB&ACSS JV, LLC. and its subcontractors and consultants, CDM Smith, Summitec, LLC, ICF, Gibb Epidemiology, Jerrold Ward, DVM, and WinTech, LLC, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, to the contractor and its subcontractors and consultants are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to the contractor and its subcontractors and consultants until the requirements in this document have been fully satisfied. Records of information provided to the contractor and its subcontractors and consultants will be maintained by EPA Project Officers for this contract. All information supplied to to the contractor and its subcontractors and consultants by EPA for use in connection with this contract will be returned to EPA when to the contractor

and its subcontractors and consultants have completed their work.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: July 5, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–14937 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–9968–01–OCSPP]

Pesticide Registration Review; Proposed Interim Decisions for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for the following pesticides: 2-methyl-1-butanol, Calcium Acetate, *Candida Oleophila,* Cedarwood Oil, Chlorflurenol Methyl Ester (CME), Citral, Heptyl butyrate, L-Carvone, Sedaxane, Tebuconazole, Triadimefon and Triadimenol.

DATES: Comments must be received on or before September 12, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in Table 1 in Unit IV., through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at: *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table 1 in Unit IV. pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in Table 1 and opens a 60-day public comment period on the proposed interim registration review decisions.

TABLE 1—PROPOSED INTERIM DECISIONS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
2-methyl-1-butanol, Case Number 6308	EPA–HQ–OPP–2022–0303	Jennifer Odom, *odom.jennifer@epa.gov,* (202) 566–1536.
Calcium Acetate, Case Number 6341	EPA–HQ–OPP–2022–0304	Jennifer Odom, *odom.jennifer@epa.gov,* (202) 566–1536.
Candida oleophila, Case Number 6019	EPA–HQ–OPP–2022–0445	Hannah Dean, *dean.hannah@epa.gov,* (202) 566–1531.
Cedarwood Oil, Case Number 3150	EPA–HQ–OPP–2022–0108	Jennifer Odom, *odom.jennifer@epa.gov,* (202) 566–1536.
Chlorflurenol Methyl Ester (CME), Case Number 2095	EPA–HQ–OPP–2016–0037	Quinn Gavin, *gavin.quinn@epa.gov,* (202) 566–2284.
Citral, Case Number 6314	EPA–HQ–OPP–2022–0301	Susanne Cerrelli, *cerrelli.susanne@epa.gov,* (202) 566–1516.
Heptyl butyrate, Case Number 6305	EPA–HQ–OPP–2022–0402	Hannah Dean, *dean.hannah@epa.gov,* (202) 566–1531.
L-Carvone, Case Number 6306	EPA–HQ–OPP–2022–0392	Susanne Cerrelli, *cerrelli.susanne@epa.gov,* (202) 566–1516.
Sedaxane, Case Number 7065	EPA–HQ–OPP–2022–0448	Christian Bongard, *bongard.christian@epa.gov,* (202) 566–2248.
Tebuconazole, Case Number 7004	EPA–HQ–OPP–2015–0378	Tiffany Green, *green.tiffany@epa.gov,* (202) 566–2224.
Triadimefon and Triadimenol, Case Numbers 2700 and 7008.	EPA–HQ–OPP–2016–0114	Matthew B. Khan, *khan.matthew@epa.gov,* (202) 566–2212.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in Table 1 in Unit IV., as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in Table 1 in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Tables in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 6, 2022.

Mary Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–14871 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2021–5; FRL–9978–01–R4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Alabama Power Company—Barry Generating Plant (Mobile County, Alabama)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on petition to object to state operating permit.

SUMMARY: The EPA Administrator signed an Order, dated June 14, 2022, granting in part and denying in part the petition submitted by Sierra Club and Greater-Birmingham Alliance to Stop Pollution (Petitioners) objecting to a proposed Clean Air Act (CAA) title V operating permit issued to Alabama Power Company for its Barry Generating Plant located in Mobile County, Alabama. The Order responds to a March 30, 2021, petition requesting that EPA object to the final operating permit number 503–1001. The title V operating permit was issued by the Alabama Department of Environmental Management (ADEM). The Order constitutes a final action on the petition addressed therein.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4; Air and Radiation Division; 61 Forsyth Street SW; Atlanta, Georgia 30303–8960. The Order and petition are also available electronically at the following addresses: *https://www.epa.gov/system/files/documents/2022-06/APC%20Barry%20Order_6-14-22.pdf; https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was

impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice is published in the **Federal Register**.

Petitioners submitted a petition requesting that EPA object to proposed CAA title V operating permit number 503–1001 issued by ADEM to the Barry Generating Plant for the following reasons: the permit contained limits with the potential to exceed the National Ambient Air Quality Standard for sulfur dioxide, including inappropriate averaging limits for SO_2, in contravention of applicable state implementation plan (SIP) provisions; the permit failed to include applicable SIP requirements to control fugitive emissions from the coal handling system and to ensure compliance with SIP opacity limit, including associated monitoring, recordkeeping, and reporting; the permit failed to include emission controls and work practice standards for the coal handling operations and ADEM failed to require that Alabama Power Company disclose all fugitive emissions from the coal handling system; ADEM failed to determine compliance of the facility; ADEM failed to require complete and accurate compliance certifications from Alabama Power Company in accordance with part 70; Alabama Power Company failed to include all applicable requirements in the application for a title V permit; and ADEM failed to provide a basis for granting a permit shield to the entire facility.

On June 14, 2022, the Administrator issued an Order granting in part and denying in part the petition. The Order explains EPA's bases for granting in part and denying in part the petition.

Dated: July 5, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–14900 Filed 7–12–22; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0613; FRL–9956–01–OW]

Information Collection Request; Proposed Renewal; Comment Request; Implementation of Title I of the Marine Protection, Research, and Sanctuaries Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR) renewal, ''Implementation of Title I of the Marine Protection, Research, and Sanctuaries Act,'' (EPA ICR No. is 0824.08, OMB Control No. 2040–0008) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described 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.

DATES: Comments must be submitted on or before September 12, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2015–0613 (our preferred method), by email to: *OW-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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.

FOR FURTHER INFORMATION CONTACT: Chris Laabs, Oceans, Wetlands, and Communities Division, mail code 4504T, Office of Wetlands, Oceans, and, Watersheds, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1223; fax number: 202–566–1147; email address: *Laabs.Chris@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.*

Pursuant to section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If approved by OMB, renewals are typically granted a three-year extension.

Abstract: With limited exceptions, ocean dumping—the transportation of any material for the purpose of dumping material in ocean waters—is prohibited except in compliance with a permit issued under the Marine Protection, Research, and Sanctuaries Act (MPRSA). EPA is responsible for issuing ocean dumping permits for all materials except dredged material. The U.S. Army Corps of Engineers (USACE) is responsible for issuing ocean dumping permits for dredged material using EPA's environmental criteria, though for federal projects, the USACE may apply the environmental criteria directly in lieu of the permit process. All ocean dumping permits and federal projects involving ocean dumping of dredged material are subject to EPA review and concurrence. EPA is also responsible for designating and managing ocean sites for the disposal of materials and establishing Site Management and Monitoring Plans for ocean disposal sites. EPA collects or sponsors the collection of information for the purposes of permit issuance, reporting

of emergency dumping to safety of life at sea, compliance with permit requirements, including general permits for burial at sea, for transportation and disposal of vessels, and for ocean disposal of marine mammal carcasses.

EPA collects this information to ensure that ocean dumping is appropriately regulated and will not harm human health and the marine environment, based on applying the Ocean Dumping Criteria. The Ocean Dumping Criteria consider, among other things: the environmental impact of the dumping; the need for the dumping; the effect of the dumping on esthetic, recreational, or economic values; land-based alternatives to ocean dumping; and the adverse effects of the dumping on other uses of the ocean. The Ocean Dumping Criteria are codified in 40 CFR parts 220 through 229. To meet U.S. reporting obligation under the London Convention, an international treaty on ocean dumping, EPA also reports some of this information in the annual United States Ocean Dumping Report.

EPA uses ocean dumping information to make decisions regarding whether to issue, deny, or impose conditions on ocean dumping permits issued by EPA in order to ensure consistency with the Ocean Dumping Criteria. EPA uses monitoring and reporting data from permittees to assess compliance with ocean dumping permits, including associated monitoring activities.

Form numbers: None.

Respondents/affected entities: Respondents/affected entities may include any private person or entity, or state, local, or foreign governments.

Respondent's obligation to respond: Required to obtain or retain a benefit, specifically permit authorization and/or compliance with permits required under MPRSA sections 102 and 104, 33 U.S.C. 1402 & 1404, and implementing regulations at 40 CFR parts 220 through 229.

Estimated number of respondents: 2,488 respondents per year.

Frequency of response: The frequency of response varies for application and reporting requirements for different permits. Other than the general permit for transportation and disposal of vessels, response is required once for each permit application, whether a single notification to EPA or a permit application. Depending on the type of MPRSA permit, a permit application would be required prior to expiration if the permittee seeks re-issuance: general permit (once every seven years), special permit (once every three years), and research permit (once every 18 months).

Total estimated burden: The public reporting and recordkeeping burdens for this collection of information are estimated to be 3,298 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: Annual costs are estimated to be $355,104, which includes $159,795 for labor and $195,309 for capital or operation & maintenance costs.

Changes in Estimates: There is no significant increase in the burden. There is a decrease of 198 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is primarily due to a decrease in the average number of burial at sea activities reported over the last three years.

John Goodin,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 2022–14946 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1270; FR ID 95496]

Information Collection Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Secure and Trusted Communication Network Reimbursement Program contained in the Commission's *Procedures.*

FOR FURTHER INFORMATION CONTACT: Callie Coker, Wireline Competition Bureau at (202) 418–7400 or email: *Callie.Coker@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1270.

OMB Approval Date: June 27, 2022.

Expiration Date: June 30, 2025.

Title: Protecting National Security Through FCC Program.

Form Number: FCC Form 5640.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 3,500 respondents; 10,325 responses.

Estimated Time per Response: 0.5–12 hours.

Frequency of Response: Annual, Semi-annual and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1603–1604.

Total Annual Burden: 27,475 hours.

Total Annual Cost: 1,125,000.

Needs and Uses: On November 22, 2019, the Commission adopted the *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order, Order, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 11423 (2019) (*Report and Order*). The *Report and Order* prohibits future use of Universal Service Fund (USF) monies to purchase, maintain, improve, modify, obtain, or otherwise support any equipment or services produced or provided by a company that poses a national security threat to the integrity of communications networks or the communications supply chain.

On March 12, 2020, the President signed into law the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), Pub. L. 116–124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609), which among other measures, directs the FCC to establish the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). This program is intended to provide funding to providers of advanced communications service for the removal, replacement and disposal of certain communications equipment and services that pose an unacceptable national security risk (*i.e.,* covered equipment and services) from their networks. The Commission has designated two entities—Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE), along with their affiliates, subsidiaries, and parents—as covered companies posing such a national security threat. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—Huawei Designation,* PS Docket No. 19–351, Memorandum Opinion and Order, 35 FCC Rcd 14435 (2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—ZTE Designation,* PS Docket No. 19–352, Memorandum Opinion and Order, DA 20–1399 (PSHSB rel. Nov. 24, 2020).

On December 10, 2020, the Commission adopted the *Second Report and Order* implementing the Secure Networks Act, which contained certain new information collection requirements. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order, 35 FCC Rcd

14284 (2020) (*Second Report and Order*). These requirements will allow the Commission to receive, review and make eligibility determinations and funding decisions on applications to participate in the Reimbursement Program that are filed by certain providers of advanced communications service. These new information collection requirements will also assist the Commission in processing funding disbursement requests and in monitoring and furthering compliance with applicable program requirements to protect against waste, fraud, and abuse.

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, appropriating $1.9 billion to ''carry out'' the Reimbursement Program and amending the Reimbursement Program eligibility requirements to expand eligibility to include providers of advanced communications service with 10 million or fewer subscribers. *See* Public Law 116–260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband internet Access Service, §§ 901, 906, 134 Stat. 1182 (2020). The Commission has interpreted the term ''provider of advanced communications service'' to mean ''facilities-based providers, whether fixed or mobile, with a broadband connection to end users with at least 200 kbps in one direction.'' *Second Report and Order,* 35 FCC Rcd at 14332, para. 111. Participation in the Reimbursement Program is voluntary but compliance with the new information collection requirements is required to obtain Reimbursement Program support.

The Secure Networks Act requires all providers of advanced communications service to annually report, with exception, on whether they have purchased, rented, leased or otherwise obtained covered communications equipment or service on or after certain dates. 47 U.S.C. 1603(d)(2)(B). The *Second Report and Order* adopted a new information collection requirement to implement this statutory mandate. *See* Secure Networks Act § 5. If the provider certifies it does not have any covered equipment and services, then the provider is not required to subsequently file an annual report, unless it later obtains covered equipment and services. *Second Report and Order* at para. 215.

Separate from the Reimbursement Program, the Secure Networks Act requires all providers of advanced communications service to annually report, with exception, on whether they have purchased, rented, leased or otherwise obtained covered communications equipment or service on or after certain dates. 47 U.S.C. 1603(d)(2)(B). If the provider certifies it does not have any covered equipment and services, then the provider is not required to subsequently file an annual report, unless it later obtains covered equipment and services. *Second Report and Order,* 35 FCC Rcd at 14370, at para. 215.

The Commission therefore revised this information collection contained in the Public Notice released by the Wireline Competition Bureau on August 3, 2021. This Public Notice, among other things, required providers participating in the Reimbursement Program to notify the Commission of ownership changes using the FCC Form 5640 to ensure the accuracy of information on file for program participants when there is a change in ownership.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–14908 Filed 7–12–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201391.

Agreement Name: South Atlantic Multiport Chassis Pool Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc.; Consolidated Chassis Enterprises LLC; South Atlantic Consolidated Chassis Pool LLC; CCM Pools LLC; Consolidated Chassis Management LLC; Georgia Ports Authority; Jacksonville Port Authority; North Carolina State Ports Authority; COSCO SHIPPING Lines Co., Ltd.; Hapag-Lloyd AG and Hapag-Lloyd USA LLC (acting as a single party); Maersk A/S and Hamburg Sud (acting as a single party); MSC Mediterranean Shipping Company S.A.; Ocean Network Express Pte., Ltd.; Wan Hai Lines Ltd.; and Zim Integrated Shipping Services Ltd.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Agreement provides for the formation and operation of a regional Chassis Pool that is intended to improve the quality and efficiency of operations relating to the use and operation of intermodal chassis in the Southeastern United States.

Proposed Effective Date: 8/21/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/65506.

Dated: July 8, 2022.

William Cody,

Secretary.

[FR Doc. 2022–14943 Filed 7–12–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Interchange Transaction Fees Survey (FR 3064; OMB No. 7100–0344).

DATES: Comments must be submitted on or before September 12, 2022.

ADDRESSES: You may submit comments, identified by FR 3064, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless

modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

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.

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. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the 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 versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Interchange Transaction Fees Survey.

Collection identifier: FR 3064.

OMB control number: 7100–0344.

Frequency: Annual.

Respondents: Debit card issuers and payment card networks.

Estimated number of respondents: FR 3064a, 527; FR 3064b, 15.

Estimated average hours per response: FR 3064a, 160; FR 3064b, 75.

Estimated annual burden hours: FR 3064a, 84,320; FR 3064b, 1,125.

General description of collection: The Debit Card Issuer Survey (FR 3064a) collects data from issuers of debit cards (including general-use prepaid cards) that, together with their affiliates, have assets of $10 billion or more. The 3064a collects information regarding the volume and value of debit card transactions; chargebacks and returns; costs of authorization, clearance, and settlement of debit card transactions; other costs incurred in connection with particular debit card transactions; fraud prevention costs and fraud losses; and interchange fee revenue.[1]

The Payment Card Network Survey (FR 3064b) collects data from payment card networks. The survey includes the volume and value of debit card transactions; interchange fees; network fees; and payments and incentives paid by networks to acquirers, merchants, and issuers.[2]

The data from the FR 3064a and FR 3064b are used to fulfill a statutory requirement that the Board disclose certain information regarding debit card transactions on a biennial basis.[3] In addition, the Board uses data from the Payment Card Network Survey (FR 3064b) to publicly report on an annual basis the extent to which networks have established separate interchange fees for exempt and covered issuers.[4]

Proposed Revisions

Debit Card Issuer Survey (FR 3064a)

The Board is proposing the following changes in the Debit Card Issuer Survey instructions to include guidance that the Board has previously provided in response to questions from respondents:

- Adding ''Credit-push transactions (other than, where appropriate, returns), sometimes referred to as original credit transactions (OCTs)'' to the General Instructions, Section II (All Debit Card Transactions), ''Do Not Include'' list to indicate that credit-push transactions should not be included in the response.
- Modifying the General Instructions, Frequently Asked Questions, Q9.A to read: ''A debit card transaction is the use of a debit card (including a general-use prepaid card) by a person as a form of payment in the United States to initiate a debit to an account. Such transactions include those conducted with both business and consumer debit cards. Debit card transactions include charitable contributions, payments made to satisfy an obligation (*e.g.,* tax liability), or payments made for other purposes, such as to fund another account (sometimes referred to as account funding transactions. Debit card transactions do not include credit card transactions, transactions initiated at an ATM, or credit-push transactions, sometimes referred to as original credit transactions (OCTs).''

[1] *See* 12 CFR 235.2(k) for the definition of ''Issuer.''

[2] *See* 12 CFR 235.2(m) for the definition of ''Payment card network.''

[3] *See* 12 U.S.C. 1693o–2(a)(3)(B). The Board's biennial reports are available at *https://www.federalreserve.gov/paymentsystems/regii-data-collections.htm.*

[4] See Average Debit Card Interchange Fee by Payment Card Network *https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm.*

The Board proposes to implement these revisions starting with the next iteration of the Debit Card Issuer Survey.

Payment Card Network Survey (FR 3064b)

The Board proposes to modify the instructions for the Payment Card Network Survey to clarify guidance for survey respondents. The proposed revisions provide instructions for reporting when multiple networks are involved in the processing of transactions. The Board is also proposing to modify the instructions for the Payment Card Network Survey to include guidance that the Board has previously provided in response to questions from respondents. The Board proposes to implement the revisions starting with the next iteration of the Payment Card Network Survey.

Through recent communications with survey respondents, the Board has become aware that for debit card transactions where multiple networks are involved in the processing of the transactions, the involved payment card networks may be interpreting the existing survey instructions differently from one another. Such differing interpretations could potentially lead to overcounting of transactions, if all involved networks report such transactions in their survey responses, or undercounting, if none of them do.[5] The changes to the survey instructions outlined below clarify which network should report such transactions, looking to ensure consistent reporting across respondents and eliminate the possibility of under- or overcounting of transactions in the survey responses.

The Board is proposing to clarify the survey instructions to specify that a network should report values associated with debit card transactions for which that network establishes the interchange fee received by issuers, even if that network outsources some or all processing functions to another payment card network. Conversely, a network should not report values associated with debit card transactions for which another network establishes the interchange fee received by issuers, even if the former network performs some or all processing functions for these transactions on behalf of the other payment card network. The proposed clarification would be implemented through the following changes:

- Modifying the text under General Instructions, Section II (Debit Card Transactions) to read: ''Please enter totals for transactions related to debit cards, including general-use prepaid cards, linked to U.S.-domiciled accounts involving a merchant located in the United States during the calendar year (CY) 20XX. Important: In some cases, transactions may be processed by multiple networks due to the outsourcing of some or all processing functions. Please note the special instructions below to ensure proper treatment of such transactions.''
- Removing ''All debit card transactions (including general-use prepaid card transactions).'' from General Instructions, Section II (Debit Card Transactions), ''Include'' list.
- Adding ''Transactions for which your network establishes the interchange fee received by issuers, even if your network outsources some or all processing functions for these transactions to one or more payment card networks.'' to General Instructions, Section II (Debit Card Transactions), ''Include'' list.
- Modifying the General Instructions, Section II (Debit Card Transactions), ''Do Not Include'' list to indicate that none of the following should be included in the response: (a) ''Credit card transactions,'' (b) ''Transactions initiated at an ATM,'' (c) ''Credit-push transactions (other than, where appropriate, returns), sometimes referred to as original credit transactions (OCTs),'' and (d) ''Transactions for which another network establishes the interchange fee received by issuers, even if your network performs some or all processing functions for these transactions on behalf of the other payment card network.''

To ensure that the revised survey instructions clearly and adequately clarify responses for debit card transactions when multiple networks are involved in the processing of the transactions, the Board is seeking comment on the following questions:

- Are the proposed revisions to the survey instructions clear on which network would be responsible for reporting transactions when multiple payment card networks are involved in the processing of the transactions?
- Are there potential challenges to reporting transactions based on the revised instructions? If so, are there further changes that the Board should consider to alleviate such challenges?
- Are there other situations, similar to those described but involving different facts and circumstances, for which reporting would not be clarified by the proposed revisions? If so, are there further changes that the Board should consider to provide clarity in these situations?

In addition, the Board is proposing to further clarify the survey instructions by including guidance that the Board has previously provided in response to questions from respondents and removing glossary items no longer relevant to the survey:

- Modifying the General Instructions, Glossary of Terms, ''Debit card transaction'' definition to read: ''Debit card transaction: Use of a debit card (including a general-use prepaid card) by a person as a form of payment in the United States to initiate a debit to an account. It does not include transactions initiated at an ATM, including cash withdrawals and balance transfers initiated at an ATM. For more details, see General Instructions, Frequently Asked Questions, Q8,'' to (a) harmonize definitions across FR 3064a and FR 3064b and (b) align the definition to the language in 12 CFR 235.2(h).
- Modifying the General Instructions, Frequently Asked Questions, Q8.A to read: ''A debit card transaction is the use of a debit card (including a general-use prepaid card) by a person as a form of payment in the United States to initiate a debit to an account. Such transactions include those conducted with both business and consumer debit cards. Debit card transactions include charitable contributions, payments made to satisfy an obligation (*e.g.,* tax liability), or payments made for other purposes, such as to fund another account (sometimes referred to as account funding transactions. Debit card transactions do not include credit card transactions, transactions initiated at an ATM, or credit-push transactions, sometimes referred to as original credit transactions (OCTs).''
- Removing General Instructions, Glossary of Terms, ''Number of merchant establishments'' definition because the Payment Card Network Survey no longer collects such information.

Legal authorization and confidentiality: The FR 3064 surveys are authorized by section 920(a) of the Electronic Fund Transfer Act, as

[5] To illustrate, consider an example of two networks, A and B, that enter a reciprocal arrangement in which Network B provides services that allow Network A's debit cards (*i.e.,* debit cards that have been issued by depository institutions under agreement with Network A) to be used at a merchant that accepts Network B but does not directly accept Network A. Network B may perform some or all of the processing functions for transactions performed with Network A's debit cards at such a merchant. For its part, Network A may perform certain processing functions for such transactions, particularly with respect to issuers of Network A's debit cards. Network A may also establish fees for issuers, including network fees and the interchange fees that issuers pay and receive, respectively. In this situation, the current survey instructions do not specify whether Network A, Network B, or both should report transactions when both networks are involved in the processing of the transactions.

amended by section 1075(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[6] This provision requires the Board, at least once every two years,[7] to disclose aggregate or summary information concerning the costs incurred and interchange transaction fees charged or received by issuers or payment card networks in connection with the authorization, clearance, or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.[8] It also provides the Board with authority to require issuers and payment card networks to provide information to enable the Board to carry out the provisions of the subsection.[9] The FR 3064 surveys are mandatory.

The Board is required to release aggregate information from responses to the FR 3064 surveys.[10] The Board additionally releases, at the network level, the percentage of total number of transactions, the percentage of total value of transactions, and the average transaction value for exempt and non-exempt issuers obtained on the FR 3064b because it can be calculated based on information the Board already releases and may be useful to issuers, merchants, and policymakers in choosing payment card networks and assessing the effects of interchange regulations. The information contained in individual responses to the FR 3064 surveys is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent. The Board therefore keeps such information confidential pursuant to exemption 4 of the Freedom of Information Act (FOIA).[11]

Board of Governors of the Federal Reserve System, July 7, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–14870 Filed 7–12–22; 8:45 am]

BILLING CODE 6210–01–P

[6] 12 U.S.C. 1693o–2.

[7] The subsection refers to bi-annual disclosures and the Board interprets this to mean once every two years. *See* 76 FR 43458.

[8] 15 U.S.C. 1693o–2(a)(3)(B).

[9] *Id.*

[10] *Id.*

[11] 5 U.S.C. 552(b)(4).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2019–0015, Docket Number NIOSH–153–E]

Publication of Skin Notation Profile Documents for Chlorodiphenyl (54% Chlorine) (CAS: 11097–69–1), Diacetyl and 2,3-Pentanedione (CAS: 431–03–8; 600–14–6), Dioxane (CAS: 123–91–1), Beta Chloroprene (CAS: 126–99–8), and 2,4-Toluene Diisocyanate, 2,6-Toluene Diisocyanate, and 2,4- and 2,6-Toluene Diisocyanate Mixture (CAS: 584–84–9; 91–08–7; 26471–62–5 (as a Mixture))

AGENCY: The Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC), an operating division of the Department of Health and Human Services (HHS), announces the availability of five documents, the *Skin Notation Profiles for Chlorodiphenyl (54% chlorine) (CAS: 11097–69–1), Diacetyl and 2,3-Pentanedione (CAS: 431–03–8; 600–14–6), Dioxane (CAS: 123–91–1), beta Chloroprene (CAS: 126–99–8), and 2,4-Toluene diisocyanate, 2,6-Toluene diisocyanate, and 2,4- and 2,6-Toluene diisocyanate mixture (CAS: 584–84–9; 91–08–7; 26471–62–5 (as a mixture)).*

DATES: The final documents were published on July 7, 2022 on the CDC website.

ADDRESSES: The documents may be obtained at the following links:

Chlorodiphenyl (54% chlorine) (CAS: 11097–69–1): *https://www.cdc.gov/niosh/docs/2022-118/*;

Diacetyl and 2,3-Pentanedione (CAS: *431–03–8; 600–14–6*): *https://www.cdc.gov/niosh/docs/2022-116/*;

Dioxane (CAS: 123–91–1): *https://www.cdc.gov/niosh/docs/2022-114/*;

beta Chloroprene (CAS: 126–99–8): *https://www.cdc.gov/niosh/docs/2022-115/*;

2,4-Toluene diisocyanate, 2,6-Toluene diisocyanate, and 2,4- and 2,6-Toluene diisocyanate mixture (CAS: 584–84–9; 91–08–7; 26471–62–5 (as a mixture)): *https://www.cdc.gov/niosh/docs/2022-117/*.

FOR FURTHER INFORMATION CONTACT: Naomi Hudson, NIOSH, 1090 Tusculum Ave., MS C–15, Cincinnati, OH 45226; Telephone 513–533–8388; Email: *iuz8@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 15, 2019, NIOSH published a request for public comment in the **Federal Register** [Federal Register Number 2019–04794] [84 FR 9524] on the draft versions of the following skin notation profile documents:

Beta-Chloroprene (CAS: 126–99–8)

Cyclohexanol (CAS: 108–93–0)

Cyclohexanone (CAS: 108–94–1)

Cyclonite (CAS: 121–82–4)

Dioxane (CAS: 123–91–1)

Diacetyl/2,3-Pentanedione (CAS: 431–03–8; 600–14–6)

Diethylenetriamine (CAS: 111–40–0)

Chlorodiphenyl (42% chlorine) (CAS: 53469–21–9)

Chlorodiphenyl (54% chlorine) (CAS: 11097–69–1)

Toluene diisocyanates (CAS: 584–84–9; 91–08–7; 26471–62–5)

This notice announces that five of these documents have been finalized and published: *Chlorodiphenyl (54% chlorine) (CAS: 11097–69–1), Diacetyl and 2,3-Pentanedione (CAS: 431–03–8; 600–14–6), Dioxane (CAS: 123–91–1), beta Chloroprene (CAS: 126–99–8), and 2,4-Toluene diisocyanate, 2,6-Toluene diisocyanate, and 2,4- and 2,6-Toluene diisocyanate mixture (CAS: 584–84–9; 91–08–7; 26471–62–5 (as a mixture)).* All comments received were carefully reviewed and addressed, where relevant. In response to comments received, revisions were made to clarify the data used by NIOSH in its support of the development of the skin notation assignments for these chemicals. NIOSH Skin Notation Profiles, Group E Responses to Peer Review and Public Comments can be found in the Supporting Documents section on *www.regulations.gov* for the CDC–2019–0015 docket.

The other five documents were previously published in the **Federal Register** [Federal Register Number 2020–25300] [85 FR 73481] on November 18, 2020 (*https://www.federalregister.gov/documents/2020/11/18/2020-25300/skin-notation-profiles-for-chlorodiphenyl-42-chlorine-cas-53469-21-9-cyclohexanol-cas-108-93-0*): Chlorodiphenyl (42% chlorine) (CAS: 53469–21–9), Cyclohexanol (CAS: 108–93–0), Cyclohexanone (CAS: 108–94–1), Cyclonite (CAS: 121–82–4), and Diethylenetriamine (CAS: 111–40–0).

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2022–14906 Filed 7–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0083]

Advisory Committee to the Director, Centers for Disease Control and Prevention

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Committee to the Director, Centers for Disease Control and Prevention (ACD, CDC). This is a hybrid meeting, accessible both in person and virtually (webcast live via the World Wide Web). It is open to the public and limited only by the space available. Time will be available for public comment.

DATES: The meeting will be held on August 9, 2022, from 9:00 a.m. to 2:30 p.m., EDT (times subject to change).

Written comments must be received on or before August 1, 2022.

ADDRESSES:

Meeting address: CDC Roybal Campus, Building 19, Rooms 247 and 248, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027. The conference rooms combine to accommodate approximately 45 people.

Please note that the meeting location, the CDC Roybal Campus, is a federal facility and in-person access is limited to United States citizens unless prior authorizations, taking up to 30 to 60 days, have been made. Visitors must follow all directions for access to CDC facilities. Directions for visitors to CDC, including COVID–19 vaccination and testing guidelines, are available at *https://www.cdc.gov/screening/visitors.html.*

Registration: You must register to attend this meeting in person. If you wish to attend in person, please submit a request by email to *ACDirector@cdc.gov* or by telephone at (404) 639–7000 at least 5 business days in advance of the meeting. No registration is required to view the meeting via the World Wide Web. Information for accessing the webcast will be available at *https://www.cdc.gov/about/advisory-committee-director/.*

Written comments: You may submit comments, identified by Docket No. CDC–2022–0083, by either of the methods listed below. Do not submit comments for the docket by email. CDC does not accept comments for the docket by email.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Kerry Caudwell, MPA, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–10, Atlanta, Georgia 30329–4027. Attn: Docket No. CDC–2022–0083.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Written comments received in advance of the meeting will be included in the official record of the meeting.

FOR FURTHER INFORMATION CONTACT: Kerry Caudwell, MPA, Office of the Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–10, Atlanta, Georgia 30329–4027; Telephone: (404) 639–7000; Email: *ACDirector@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Advisory Committee to the Director, CDC, shall advise the Secretary, HHS, and the Director, CDC, on policy and broad strategies that will enable CDC to fulfill its mission of protecting health through health promotion, prevention, and preparedness. The committee recommends ways to prioritize CDC's activities, improve results, and address health disparities. It also provides guidance to help CDC work more effectively with its various private and public sector constituents to make health protection a practical reality.

Matters To Be Considered: The agenda will include discussions regarding CDC's current and future work in the following topic areas: (1) data modernization; (2) laboratory quality; and (3) health equity. The ACD will hear reports from its working groups on these three topics. In addition, the ACD will hear an update on climate change and health. Agenda items are subject to change as priorities dictate.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedure below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the August 9, 2022, ACD meeting must submit a request by visiting *https://www.cdc.gov/about/advisory-committee-director/* no later than 11:59 p.m., EDT, August 1, 2022, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by August 3, 2022. To accommodate the significant interest in participation in the oral public comment session of ACD meetings, each speaker will be limited to 2 minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–14932 Filed 7–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #0970–0531]

Submission for OMB Review; Formative Data Collections for ACF Program Support

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) plans to submit a request to the Office of Management and Budget (OMB) to extend approval of the existing overarching generic clearance for Formative Data Collections for ACF Program Support (OMB #0970–0531; expiration date 7/31/2022). ACF proposes minor updates to the description of potential generic information collections under the overarching generic and to the estimated number of respondents.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The goals of the generic information collections under this approval are to obtain information about program and grantee processes or needs and to inform the following types of activities, among others:

- Delivery of targeted assistance and/or workflows related to program and grantee processes. This could include the development and refinement of recordkeeping and communication systems.
- Planning for provision of programmatic or evaluation-related training or technical assistance (T/TA).
- Obtaining input on the development of program performance measures from grantees or others with experience or vested interest.
- Obtaining feedback about processes and/or practices to inform ACF program development or support, or ACF research.
- Use of rapid-cycle testing activities to strengthen programs in preparation for summative evaluations.
- Creating public resources with information about ACF-funded programs, systems, or activities.

ACF uses a variety of techniques such as semi-structured discussions, focus groups, surveys, templates, open-ended requests, and telephone or in-person interviews in order to reach these goals.

Information collected under this overarching generic is meant to inform ACF activities and may be incorporated into documents or presentations that are made public such as through conference presentations, websites, or social media. The following are some examples of ways in which we may share information resulting from these data collections: technical assistance plans, presentations, infographics, project specific reports, or other documents relevant to those involved with or interested in ACF programs such as federal leadership and staff, grantees, local implementing agencies, and/or T/TA providers.

Information may also be used to create public resources for users (clients, programs, researchers). Following standard OMB requirements, the Office of Planning, Research, and Evaluation will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. OMB should review requests within 10 days of submission.

The proposed types and the purpose of generic information collections submitted under this umbrella generic remain the same. Minor revisions are based on experiences over the past 3 years. These include:

- Updated burden estimates
- Broadened the description to make clearer the intention to broadly include respondents with knowledge, experience, or interest in ACF programs to allow ACF to learn about needs and processes related to ACF programs from those not necessarily funded by ACF
- Included specification about requesting information for efforts to consolidate publicly available information to build public resources for ACF programs, grantees, clients, or others who may use or be interested in services funded by ACF.

Respondents: Example respondents include current or prospective service providers, training or T/TA providers, grantees, contractors, current and potential participants in ACF programs or similar comparison groups, experts in fields pertaining to ACF programs, key groups involved in ACF projects and programs, individuals engaged in program re-design or demonstration development for evaluation, state or local government officials, or others involved in or prospectively involved in ACF programs.

Burden Estimates

At the time of this extension request, 30 GenICs are ongoing, with a total of 13,652 burden hours. See Attachment B for a list of all previously approved, ongoing GenICs. The following estimates are specific to new collections over the next three years.

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)
Semi-Structured Discussions and Focus Groups	10,000	1	2	20,000
Interviews	4,500	1	1	4,500
Questionnaires/Surveys	8,000	1.5	.5	6,000

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)
Templates and Open-ended Requests	1,000	1	10	10,000

Estimated Total Annual Burden Hours: 40,500.

Authority: Social Security Act, Sec. 1110 [42 U.S.C. 1310].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–14896 Filed 7–12–22; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–2361; FDA–2020–E–2362; and FDA–2020–E–2363]

Determination of Regulatory Review Period for Purposes of Patent Extension; ENSPRYNG

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ENSPRYNG and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 12, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicants for extension acted with due diligence during the regulatory review period by January 9, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 12, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2020–E–2361; FDA–2020–E–2362; and FDA–2020–E–2363 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ENSPRYNG.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration,

10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ENSPRYNG (satralizumab-mwge). ENSPRYNG is indicated for the treatment of neuromyelitis optica spectrum disorder in adult patients who are anti-aquaporin-4 antibody positive. Subsequent to this approval, the USPTO received patent term restoration applications for ENSPRYNG (U.S. Patent Nos. 8,562,991; 10,022,319; 10,662,245) from Genentech, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 1, 2021, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ENSPRYNG represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ENSPRYNG is 2,495 days. Of this time, 2,128 days occurred during the testing phase of the regulatory review period, while 367 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* October 18, 2013. The applicant claims October 20, 2013, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 18, 2013, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* August 15, 2019. FDA has verified the applicant's claims that the biologics license application (BLA) for ENSPRYNG (BLA 761149) was initially submitted on August 15, 2019.

3. *The date the application was approved:* August 14, 2020. FDA has verified the applicant's claims that BLA 761149 was approved on August 14, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 81 days, 563 days, or 1,428 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14930 Filed 7–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. FDA–2021–N–1322]

Kris A. Hampton-Bey II: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Kris A. Hampton-Bey II for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Hampton-Bey II engaged in a pattern of importing or offering for import misbranded drugs (*i.e.* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA. Mr. Hampton-Bey II was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of May 8, 2022 (30 days after receipt of the notice), Mr. Hampton-Bey II had not responded. Mr. Hampton-Bey II's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable July 13, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm.

1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240 402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(D) of the FD&C Act, that the individual has engaged in a pattern of importing or offering for import adulterated or misbranded drugs (*i.e.* in an amount, frequency, or dosage that is inconsistent with personal or household use by the importer) that are not designated in an entry in an authorized electronic data interchange system as products regulated by FDA.

After an investigation, FDA discovered that Mr. Hampton-Bey II has engaged in numerous instances of importing or offering for import misbranded drugs; all the parcels containing the misbranded drugs serving as the basis for this action, described in further detail below, were intercepted by FDA at either the Newark or Chicago International Mail Facilities (IMF) and were addressed to Mr. Hampton-Bey II at an address connected to him.

On or about March 11, 2019, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 550 tablets of sildenafil citrate and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label and because the article was determined to lack adequate directions for use. The product was refused entry on April 8, 2019.

On or about June 25, 2019, Mr. Hampton-Bey II offered for import two parcels intercepted and processed by FDA at the Chicago IMF and which were addressed to him. FDA determined that the product contained in the first parcel was 850 tablets of Sildenafil Tabs 100 MG and was a misbranded drug because the article was determined to lack adequate directions for use and because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label. FDA determined that the product contained in the second parcel was 850 tablets of Sildenafil 100 MG Tabs and was a misbranded drug because the article was determined to lack adequate directions for use and because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label. Both products were refused entry on July 17, 2019.

On or about August 19, 2019, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 900 tablets of Sildenafil Tabs 100 MG and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label and because the article was determined to lack adequate directions for use. The product was refused entry on September 12, 2019.

On or about December 28, 2020, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 870 tablets of Sildenafil Tabs 100 MG and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label and because the article was determined to be a drug that was not included in a list required by section 510(j) of the FD&C Act (21 U.S.C. 360(j)). The product was refused entry on January 19, 2021.

On or about December 29, 2020, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 870 tablets of sildenafil citrate and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label. The product was refused entry on January 21, 2021.

On or about December 29, 2020, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 870 tablets of sildenafil citrate and was a misbranded drug because the article was determined to lack adequate directions for use. The product was refused entry on January 22, 2021.

On or about January 5, 2021, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 870 tablets of sildenafil and was a misbranded drug because the article was determined to lack adequate directions for use and because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label. The product was refused entry on February 5, 2021.

On or about January 6, 2021, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 870 tablets of Sildenafil Tablets 100 MG and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label and because the article had been determined to lack adequate directions for use. The product was refused entry on February 1, 2021.

On or about January 7, 2021, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the first product contained in this parcel was 850 tablets of sildenafil citrate and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label and because the article had been determined to lack adequate directions for use. FDA determined that the second product contained in this parcel was 10 tablets of sildenafil citrate tablets and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label and because the article had been determined to lack adequate directions for use. Both products were refused entry on February 3, 2021.

On or about March 4, 2021, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 87 tablets of sildenafil tablets and was a misbranded drug because the article was determined: (1) to be a prescription drug but did not include the symbol ''Rx only'' on its label; (2) not to bear a label containing the name and place of business of the manufacturer, packer, or distributor; (3) to be a drug that was not included in a list required by section 510(j) of the FD&C Act; and (4) to be a drug that was manufactured, prepared, propagated, compounded, or processed in an establishment not duly registered under section 510 of the FD&C Act. The

product was refused entry on April 5, 2021.

On or about March 17, 2021, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Newark IMF and which was addressed to him. FDA determined that the product contained in this parcel was 364 tablets of BEGMA–100 Sildenafil Citrate Tablets 100 MG and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label. The product was refused entry on April 23, 2021.

On or about March 24, 2021, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 870 tablets of sildenafil citrate and was a misbranded drug because the article was determined to be a prescription drug but did not include the symbol ''Rx only'' on its label. The product was refused entry on April 19, 2021.

On or about April 20, 2021, Mr. Hampton-Bey II offered for import a parcel intercepted and processed by FDA at the Chicago IMF and which was addressed to him. FDA determined that the product contained in this parcel was 800 tablets of Sildenafil 100 MG Tablets and was a misbranded drug because the article was determined to be a drug that was not included in a list required by section 510(j) of the FD&C Act. The product was refused entry on May 11, 2021.

As a result of this pattern of importing or offering for import misbranded drugs (*i.e.* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA, in accordance with section 306(b)(3)(D) of the FD&C Act, FDA sent Mr. Hampton-Bey II, by certified mail on April 4, 2022, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States.

In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Hampton-Bey II's pattern of conduct and concluded that his conduct warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Hampton-Bey II of the proposed debarment and offered him an opportunity to request a hearing, providing 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Hampton-Bey II received the proposal and notice of opportunity for a hearing on April 8, 2022. Mr. Hampton-Bey II failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(D) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Kris A. Hampton-Bey II has engaged in a pattern of importing or offering for import misbranded drugs (*i.e.* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA. FDA finds that this pattern of conduct should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Hampton-Bey II is debarred for a period of 5 years from importing or offering for import any drug into the United States, applicable (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Hampton-Bey II is a prohibited act.

Any application by Mr. Hampton-Bey II for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2021–N–1322 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *http://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: July 5, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14899 Filed 7–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–2275]

Determination of Regulatory Review Period for Purposes of Patent Extension; BLENREP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BLENREP and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 12, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 9, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 12, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–E–2275 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BLENREP.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product BLENREP (belantamab mafodotin-blmf). BLENREP is indicated for the treatment of adult patients with relapsed or refractory multiple myeloma who have received at least four prior therapies including an anti-CD38 monoclonal antibody, a proteasome inhibitor, and an immunomodulatory agent. Subsequent to this approval, the USPTO received a patent term restoration application for BLENREP (U.S. Patent No. 9,273,141) from Glaxo Group Ltd, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 1, 2021, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of BLENREP represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BLENREP is 2,352 days. Of this time, 2,107 days occurred during the testing phase of the regulatory review period, while 245 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* February 28, 2014. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 28, 2014.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 5, 2019. FDA has verified the applicant's claim that the biologics license application (BLA) for BLENREP (BLA 761158) was initially submitted on December 5, 2019.

3. *The date the application was approved:* August 5, 2020. FDA has verified the applicant's claim that BLA 761158 was approved on August 5, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 803 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14916 Filed 7–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–0115]

Determination That REGLAN Injection (Metoclopramide Injection, USP), Equivalent to 5 Milligrams Base/Milliliter and Equivalent to 10 Milligrams Base/Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that REGLAN Injection (metoclopramide injection, USP), equivalent to (EQ) 5 milligrams (mg) base/milliliter (mL) and EQ 10 mg base/mL, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Daniel Gottlieb, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6210, Silver Spring, MD 20993–0002, 301–796–6650, *daniel.gottlieb@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to FDA's approval of an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

REGLAN Injection (metoclopramide injection, USP), EQ 5 mg base/mL and EQ 10 mg base/mL, is the subject of NDA 017862, held by Hikma Pharmaceuticals USA Inc., and initially approved on February 7, 1979 (EQ 5 mg base/mL) and May 28, 1987 (EQ 10 mg base/mL). REGLAN is indicated for the relief of symptoms associated with acute and recurrent diabetic gastric stasis, prophylaxis of vomiting associated with emetogenic cancer therapy, and prophylaxis of postoperative nausea and vomiting in those circumstances where nasogastric suction is undesirable. REGLAN may also be used to facilitate small bowel intubation in adults and pediatric patients in whom the tube does not pass the pylorus with conventional maneuvers or to stimulate gastric emptying and intestinal transit of barium in cases where delayed emptying interferes with radiological examination of the stomach and/or small intestine.

REGLAN Injection (metoclopramide injection, USP), EQ 5 mg base/mL and EQ 10 mg base/mL, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Baxter Healthcare Corp. submitted a citizen petition dated February 1, 2022 (Docket No. FDA–2022–P–0115), under 21 CFR 10.30, requesting that the Agency determine whether REGLAN Injection (metoclopramide injection, USP), 5 mg base/mL, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the EQ 10 mg base/mL strength, that strength has also been discontinued. On our own initiative, we have also determined whether that strength was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that REGLAN Injection (metoclopramide injection, USP), EQ 5 mg base/mL and EQ 10 mg base/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of REGLAN Injection (metoclopramide injection, USP), EQ 5 mg base/mL and EQ 10 mg base/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have

found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list REGLAN Injection (metoclopramide injection, USP), EQ 5 mg base/mL and EQ 10 mg base/mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14929 Filed 7–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0049]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 12, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0732. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St. North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act

OMB Control Number 0910–0732—Extension

The Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act), enacted on June 22, 2009, amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) and provided FDA with the authority to regulate the manufacture, marketing, and distribution of cigarettes, cigarette tobacco, roll-your-own (RYO) tobacco, and smokeless tobacco products to protect the public health and to reduce tobacco use by minors. The Tobacco Control Act also gave FDA the authority to issue regulations deeming other products that meet the statutory definition of a tobacco product to be subject to chapter IX of the FD&C Act (section 901(b) of the FD&C Act (21 U.S.C. 387a(b))).

In accordance with that authority, on May 10, 2016, FDA issued a final rule deeming all products that meet the statutory definition of tobacco product, except accessories of newly deemed tobacco products, to be subject to FDA's tobacco product authority (final deeming rule) (81 FR 28974).

Chapter IX of the FD&C Act now applies to newly regulated products, including sections 904(a)(3) and (c)(1) (21 U.S.C. 387d(a)(3) and (c)(1)). Section 904(a)(3) of the FD&C Act requires the submission of an initial report from each tobacco product manufacturer or importer, or agents thereof, listing all constituents, including smoke constituents as applicable, identified as a harmful and potentially harmful constituent (HPHC) to health by FDA. Reports must be by brand and by quantity in each brand and subbrand. We note that for cigarettes, smokeless tobacco, cigarette filler, and RYO tobacco products, this initial reporting was completed in 2012.

Section 904(c)(1) of the FD&C Act provides that manufacturers of tobacco products not on the market as of June 22, 2009, must also provide the information reportable under section 904(a)(3) of the FD&C Act at least 90 days prior to introducing the product into interstate commerce.

FDA has taken several steps to identify HPHCs to be reported under section 904 of the FD&C Act, including issuing a guidance discussing FDA's current thinking on the meaning of the term ''harmful and potentially harmful constituent'' in the context of implementing the HPHC list requirement under section 904(e) of the FD&C Act (76 FR 5387, January 31, 2011, revised guidance issued August 2016). The guidance is available on the internet at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/harmful-and-potentially-harmful-constituents-tobacco-products-used-section-904e-federal-food-drug.* The current established list of HPHCs also is available on the internet at *https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/harmful-and-potentially-harmful-constituents-tobacco-products-and-tobacco-smoke-established-list* (77 FR 20034, April 3, 2012).

The purpose of the information collection is to collect statutorily mandated information regarding HPHCs in certain tobacco products and tobacco smoke, by brand and by quantity in each brand and subbrand.

To facilitate the submission of HPHC information, Forms FDA 3787a-j, for cigarettes, smokeless tobacco products, and RYO tobacco products, respectively, in both paper and electronic formats, are available. Additionally, FDA is developing forms to facilitate the submission of HPHC information for the deemed tobacco products. We intend to model these forms on the current HPHC reporting forms (*i.e.,* Forms FDA 3787a–j). A proposed information collection for deemed products will be published in a separate **Federal Register** notice, and we will solicit comments on that collection at that time.

Manufacturers or importers, or their agents, may submit HPHC information either electronically or in paper format. The FDA eSubmitter tool, available at *https://www.fda.gov/industry/fda-*

esubmitter/using-esubmitter-prepare-tobacco-product-submissions, provides electronic forms to streamline the data entry and submission process for reporting HPHCs for cigarettes, smokeless tobacco products, and RYO tobacco products. Users of eSubmitter may populate an FDA-created Excel file and import data into eSubmitter. Whether respondents decide to submit reports electronically or on paper, each form provides instructions for completing and submitting HPHC information to FDA. The forms contain fields for company information, product information, and HPHC information.

In the **Federal Register** of February 7, 2022 (87 FR 6869), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We have adjusted estimates in the number of respondents and responses per respondent from the 60-day **Federal Register** notice to better align with previous assessments that utilized the number of entities. The number of respondents now reflects the estimated number of cigarettes, RYO, and smokeless tobacco product manufacturers, importers, or their agents. The burden totals were unchanged from the 60-day notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reporting for Section 904(c)(1) Products					
1. Reporting of Manufacturer/Importer Company and Product Information by Completing Submission Forms					
Cigarette	48	7.92	380	1.82	692
RYO	43	0.44	19	0.43	8
Smokeless	34	0.74	25	0.63	16
Total					716
2. Testing of HPHC Quantities in Products					
Cigarette Filler and RYO	43	0.44	19	9.42	179
Smokeless	34	0.74	25	12.06	302
Total					481
3. Testing of HPHC Quantities in Mainstream Smoke					
Cigarette: ISO Regimen	48	7.92	380	23.64	8,983
Cigarette: Health Canada Regimen	48	7.92	380	23.64	8,983
Total					17,996
Total Section 904(c)(1) Reporting Burden Hours					19,193

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information includes the time it will take to read the instructions, test the products, and prepare the HPHC report. In arriving at this burden estimate, FDA estimated the number of tobacco products to be reported under the requirements of section 904(c)(1) of the FD&C Act annually to FDA.

Section 1 of Table 1 estimates that 125 respondents (48 cigarette, 43 RYO, and 34 smokeless tobacco product manufacturers, importers, or their agents) will submit 424 HPHC reports annually. Each respondent must report their product information to FDA under section 904(c)(1) of the FD&C Act at least 90 days prior to delivery for introduction into interstate commerce for all new products. We have adjusted information in the number of respondents and responses per respondent from the 60-day **Federal Register** notice to better align with previous assessments. The number of respondents now reflects the estimated number of cigarettes, RYO, and smokeless tobacco product manufacturers, importers, or their agents. This section addresses the time required to report their company information to FDA using the electronic portal or paper forms.

The company information reported includes company name; mailing address; telephone and fax numbers; FDA Establishment Identifier number; Data Universal Numbering System number; and point of contact name, mailing address, and telephone and fax numbers, as applicable. It also addresses the time required for manufacturers and importers to report their product information by entering certain testing information into the electronic or paper forms.

The product information includes brand and subbrand name; unique product identification number; type of product identification number; product category and subcategory; and mean weight and standard deviation of tobacco in product.

We estimate that the burden to enter both the company and product information is no more than 1.82 hours per response for cigarettes, 0.43 hours per response for RYO, and 0.63 hours per response for smokeless tobacco products regardless of whether the paper or electronic Form FDA series 3787 is used. The time to report per tobacco product types varies because the number of HPHCs varies by tobacco product category. The total hours estimated for this section is 716.

The estimated total annual responses under section 904(c)(1) are based on FDA's experience and the past 4 years of tobacco products receiving marketing authorizations from FDA, and the requirements to submit HPHC data

under this provision of the FD&C Act for statutorily regulated products.

Section 2 of Table 1 estimates that 77 respondents (43 cigarette filler and RYO tobacco and 34 smokeless manufacturers, importers, or their agents) will test quantities of HPHCs in an average of 44 products annually. This section addresses the time required for manufacturers and importers (or their agents) who must test HPHC quantities in products. The burden estimates include the burden to test the tobacco products, draft testing reports, and submit the report to FDA. The total expected burden for this section is 481 hours.

Section 3 of Table 1 addresses the time required for manufacturers and importers to test quantities for HPHCs in cigarette smoke. The burden estimates include: the burden to test the number of replicate measurements; test date range; manufacture date range; extraction method; separation method; detection method; and mean quantity and standard deviation of HPHCs and includes the burden to test the tobacco products, draft testing reports, and submit the report to FDA. The annual burden reflects our estimate of the time it takes to test the tobacco products (*i.e.,* carry out laboratory work). The burden estimate assumes that manufacturers and importers report HPHC quantities in cigarette mainstream smoke according to both the ISO and Health Canada smoking regimens. The total expected burden is 17,996 hours for this section.

The total estimated burden for this information collection is expected to be 19,193 hours and 424 annual responses. Our estimated burden for the information collection reflects an overall increase of 354 annual responses and a corresponding increase of 16,677 hours. We attribute this adjustment to updated methodology in which the current estimates are derived from historical statutory tobacco product applications submitted and authorized by FDA in the past 4 years as: (1) manufacturers and importers (or their agents) of authorized products are required to submit HPHC reports at least 90 days prior to delivery for introduction into interstate commerce for all new products; and (2) initial reporting under section 904(a)(3) of the FD&C Act for statutory products was completed in 2012.

Dated: July 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14931 Filed 7–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0002]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before September 12, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0945–0002–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Civil Rights and Conscience Complaint and Health Information Privacy & Security Complaint

Type of Collection: Office of Civil Rights (OCR)—Extension

OMB No. 0945–0002

Abstract:

ESTIMATED ANNUALIZED BURDEN TABLE

Written forms/electronic forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Civil Rights/Conscience Discrimination Complaint.	Individuals or households, Not-for-profit institutions.	15,446	1	45/60	11,585
Health Information Privacy Complaint.	Individuals or households, Not-for-profit institutions.	30,392	1	45/60	22,794
Total		45,838		45/60	34,379

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–14869 Filed 7–12–22; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the 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 Deafness and Other Communication Disorders Advisory Council.

Date: September 8–9, 2022.

Closed: September 08, 2022, 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, Room 620/630, 35 Convent Drive, Bethesda, MD 20892.

Open: September 08, 2022, 1:00 p.m. to 4:00 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, Room 620/630, 35 Convent Drive, Bethesda, MD 20892.

Closed: September 09, 2022, 10:00 a.m. to 11:00 a.m.

Agenda: Board of Scientific Counselors report of the Divisional of Intramural Research to review and evaluate personnel qualifications and performance, and competence of individual investigator.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, Room 620/630, 35 Convent Drive, Bethesda, MD 20892.

Open: September 09, 2022, 11:00 a.m. to 1:00 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: PORTER NEUROSCIENCE RESEARCH CENTER, Building 35A, Room 620/630, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Rebecca Wagenaar-Miller, Ph.D., Director, Division of Extramural Activities, NIDCD/NIH, 6001 Executive Boulevard, Bethesda, MD 20892, (301) 435–1423, *rebecca.wagenaar-miller@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nidcd.nih.gov/about/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 7, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14863 Filed 7–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: August 9, 2022.

Time: 1:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700 Rockledge Drive, Suite 3400, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kathleen C. Anderson, Ph.D., Director, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3440, Bethesda, MD 20892, (301) 451–2020, *kanders1@nei.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 28, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14861 Filed 7–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0257]

National Merchant Mariner Medical Advisory Committee; August 2022 Virtual Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee virtual meeting.

SUMMARY: The National Merchant Mariner Medical Advisory Committee (Committee) will conduct virtual meetings over a series of 3 days to discuss matters relating to medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents, medical standards and guidelines for the physical qualifications of operators of commercial vessels, medical examiner education, and medical research. One of the Committee's Working Groups will also be meeting. These virtual meetings will be open to the public.

DATES:

Meeting: The Committee and one of its Working Groups will meet virtually on Wednesday, August 3, 2022, from 10:00 a.m. until 3:00 p.m. Eastern Daylight Time, (EDT), Thursday, August 4, 2022 from 10:00 a.m. until 3:00 p.m. (EDT), and Friday, August 5, 2022 from 10:00 a.m. until 2:15 p.m. (EDT). The virtual 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 virtual meeting, submit your written comments no later than July 27, 2022.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EDT on July 27, 2022, to obtain the needed information. The number of virtual lines are limited and will be available on a first-come, first-served basis. The Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email the individual in the **FOR FURTHER INFORMATION** section above as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the virtual meetings as time permits,

but if you want Committee members to review your comment before the teleconference, please submit your comments no later than July 27, 2022. 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 docket number USCG–2022–0257. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). 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 comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Dr. Adrienne Buggs, Alternate Designated Federal Officer of the National Merchant Mariner Medical Advisory Committee, telephone 202–372–1211 or email *adrienne.m.buggs@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is in compliance with the *Federal Advisory Committee Act* (5 U.S.C. appendix). The Committee is authorized by § 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* and is codified in 46 U.S.C. 15104. The Committee operates under the provisions of the *Federal Advisory Committee Act* (5 U.S.C. Appendix), and 46 U.S.C. 15109. The Committee advises the Secretary of Homeland Security through the Commandant, Coast Guard on matters relating to: (a) medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

Agenda: The National Merchant Mariner Medical Advisory Committee will meet on Wednesday, August 3, 2022, Thursday, August 4, 2022, and Friday, August 5, 2022 to review, discuss, deliberate and formulate recommendations, as appropriate on the following topics. One of the Committee's Working Groups will also be meeting.

Day 1

The agenda for the August 3, 2022 virtual meeting is as follows:

(1) The full Committee will meet briefly to discuss the Working Group business/task statement, which is listed under paragraph (6) under Day 3 below.

(2) The Working Group will then separately address and work on Task Statement 22–X1, Sexual Assault and Sexual Harassment Prevention and Culture Change in the Merchant Marine.

(3) Report of Working Group. At end of the day, the Chair of the Working Group will report to the full Committee on what was accomplished. The full Committee will not take action on this date and the Working Group will present a full report to the Committee on Day 3 of the meeting.

(4) Adjournment of meeting.

Day 2

The agenda for the August 4, 2022 virtual meeting is as follows:

(1) The full Committee will meet briefly to continue to discuss and work on Task Statement 22–X1, Sexual Assault and Sexual Harassment Prevention and Culture Change in the Merchant Marine.

(2) The Working Group will then separately address and continue to work on Task Statement 22–X1, Sexual Assault and Sexual Harassment Prevention and Culture Change in the Merchant Marine.

(3) Report of Working Group. At end of the day, the Chair of the Working Group will report to the full Committee on what was accomplished. The full Committee will not take action on this date and the Working Group will present a full report to the Committee on Day 3 of the meeting.

(4) Adjournment of meeting.

Day 3

The agenda for the August 5, 2022 virtual meeting is as follows:

(1) Introduction.

(2) Designated Federal Officer Remarks.

(3) Roll call of Committee members and determination of a quorum.

(4) Remarks from U.S. Coast Guard Leadership.

(5) Acceptance of Minutes from NMEDMAC Meeting 2.

(6) Presentation of Task: Task Statement 22–X1, Sexual Assault and Sexual

Harassment Prevention and Culture Change in the Merchant Marine.

(7) Coast Guard Presentations.

(8) Presentation from the Work Group Chairs.

The Committee will review the information presented on the following issues and deliberate on recommendations presented by the Work Groups, approve/formulate recommendations and close any completed tasks. Official action on these recommendations may be taken:

(a) Task Statement 21–01, Recommendations on Mariner Mental Health;

(b) Task Statement 21–02, Communication Between External Stakeholders and the Mariner Credentialing Program;

(c) Task Statement 21–03, Medical Certifications for Military to Mariner;

(d) Task Statement 21–04, Recommendations on Appropriate Diets and Wellness for Mariners While Onboard Merchant Vessels;

(e) Task Statement 21–06, Review of Medical Regulations and Policy to Identify Potential Barriers to Women in the U.S. Maritime Workforce; and

(f) Task Statement 22–X1, Sexual Assault and Sexual Harassment Prevention and Culture Change in the Merchant Marine.

(9) Public comment period.

(10) Closing remarks.

(11) Adjournment of meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-mariner-medical-advisory-committee-(nmedmac)* no later than July 27, 2022. Alternatively, you may contact the individual noted in the **FOR FURTHER INFORMATION** section above.

During the August 5, 2022 virtual meeting, a public comment period will be held immediately after the Presentation of Working Group Report and Recommendations, at approximately 1:30 p.m. EDT. Public comments will be limited to 3 minutes per speaker. Please note that the public comments period will end following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: July 7, 2022.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2022–14892 Filed 7–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0120]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Free Training for Civics and Citizenship Teachers of Adults; Civics and Citizenship Toolkit

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 12, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0120 in the body of the letter, the agency name and Docket ID USCIS–2011–0001. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2011–0001.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2011–0001 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Free Training for Civics and Citizenship of Adults; Civics and Citizenship Toolkit.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1190, G–1515; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information is necessary to register for civics and citizenship of adults training and to obtain a civics and citizenship toolkit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form G–1190 is 2,500 and the estimated hour burden per response is 0.083 hours. The estimated total number of respondents for the information collection Form G–1515 is 1,200 and the estimated hour burden per response is responses is 0.166 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 407 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. The registration occurs electronically which eliminates any cost for postage, and no other costs are incurred by the respondent.

Dated: July 7, 2022.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–14856 Filed 7–12–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0013]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Travel Document

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 12, 2022.

ADDRESSES: Written comments and/or suggestions regarding the items) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0045. All submissions received must include the OMB Control Number 1615–0013 in the body of the letter, the agency name and Docket ID USCIS–2007–0045.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 20, 2022, at 87 FR 23534, allowing for a 60-day public comment period. USCIS did receive three comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0045 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS), and aliens abroad seeking humanitarian parole who need to apply for a travel document to lawfully enter or reenter the United States. Eligible recipients of deferred action under childhood arrivals (DACA) may now request an advance parole document based on humanitarian, educational and employment reasons. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–131 is 483,920 and the estimated hour burden per response is 1.9 hours; the estimated total number of respondents for biometrics processing is 84,000 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for passport-style photos is 380,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,207,728 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $146,072,480.

Dated: July 7, 2022.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–14857 Filed 7–12–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7060–N–05; OMB Control No. 2528–0324]

60-Day Notice of Proposed Information Collection: Data Collection for the HUD Secretary's Awards Including the Secretary's Award for Public-Philanthropic Partnerships, The Secretary's Awards for Healthy Homes, The Secretary's Award for Excellence in Historic Preservation, The Secretary's Award for Planning, The Secretary's Housing Design Awards, and The HUD Innovation in Affordable Housing Student Design and Planning Competition

AGENCY: Office of the Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 12, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–5000; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Data Collection for the HUD Secretary's Awards Including The Secretary's Award for Public-Philanthropic Partnerships, The Secretary's Awards for Healthy Homes, The Secretary's Award for Excellence in Historic Preservation, The Secretary's Award for Planning, The Secretary's Housing Design Awards, and The HUD Innovation in Affordable Housing Student Design and Planning Competition.

OMB Approval Number: 2528–0324.

Type of Request: Revision of a currently approved collection.

Form Number: TBD.

Description of the need for the information and proposed use: HUD seeks to collect information that will be used to implement the following HUD Secretary's Awards: (1) the Secretary's Award for Public-Philanthropic Partnerships, (2) the Secretary's Awards for Healthy Homes, (3) the Secretary's Award for Excellence in Historic Preservation, (4) the Secretary's Planning Award, (5) the Secretary's Housing Design Awards, and (6) the HUD Innovation in Affordable Housing Student Design and Planning Competition.

On an annual basis, HUD accepts nominations for the above listed awards. A template application form for nominations streamlines information collection across these six award programs. Each award recognizes awardees for their innovation and commitment to raising industry standards and increasing the quality of life for low- and moderate-income households. Below is a brief description of each of the six award programs.

The HUD Secretary's Award for Public-Philanthropic Partnerships

The Public-Philanthropic Partnerships Award recognizes excellence in partnerships that have transformed the relationships between the public and philanthropic sectors and led to measurable benefits in housing and community development for low- and moderate-income families. By strengthening the connection between HUD and philanthropy, these awards highlight the power of collective impact that can be achieved through public-philanthropic partnerships between government entities and foundations.

The HUD Secretary's Awards for Healthy Homes

The Healthy Homes Awards promote the innovation and partnerships needed to create healthy homes and communities for low-income residents by working across the health, environment, and housing sectors.

HUD Secretary's Award for Excellence in Historic Preservation

The Secretary's Award for Excellence in Historic Preservation recognizes developers, organizations, and agencies for their success in advancing the goals of historic preservation while providing affordable housing and/or expanded economic opportunities for low-and moderate-income families and individuals.

HUD Secretary's Planning Award

The Secretary's Planning Award honors excellence in community planning that has led to measurable benefits in economic development, employment, education, or housing choice and mobility for low- and moderate-income residents. The award stresses that communities demonstrate how integrative planning led to tangible results, such as expanding the supply of available affordable housing, employment opportunities connected by effective transportation systems, or a host of community-empowering strategies. The award recognizes the planning discipline as an important partner in how creative housing, economic development, and private investments are used in—or in tandem with—a comprehensive community development plan.

HUD Secretary's Housing Design Awards

The Secretary's Housing Design Awards recognize excellence in affordable housing design, community-based design, participatory design, and accessibility. These awards demonstrate that design matters and provide examples of important benchmarks in the housing industry.

HUD Innovation in Affordable Housing Student Design and Planning Competition

The Innovation in Affordable Housing Student Design and Planning Competition advances design and production of livable and sustainable housing for low- and moderate-income people. This competition invites teams of graduate students from multiple disciplines to submit plans in response to a real-world affordable housing design issue. The competition encourages research and innovation in affordable housing, increases practitioner capacity to produce more livable and sustainable housing for low- and moderate-income communities through best practices in building design and construction, and fosters cross-cutting teamwork within the design and community development process.

Estimated Number of Respondents: 280.

Estimated Time per Response: 3 hours.

Frequency of Response: Once annually.

Estimated Total Annual Burden Hours: 840 hours.

Estimated Total Annual Cost: The cost to respondents to complete a nomination is estimated at the Social and Human Service Assistant median hourly wage rate ($18.08) for 3 hours of work. The total estimated cost is $15,187.20.

Respondent's Obligation: Voluntary.

Legal Authority: The authority to collect information is in Sections 501 and 502 of the Housing and Urban Development Act of 1970 (Pub. L. 91–609) (12 U.S.C. 1701z–1; 1701z–2(d) and (g)).

Respondents: Organizations.

Respondent	Occupation	SOC code	Median hourly wage rate
Secretary's Award Nominee	Social and Human Service Assistant	21–1093	$18.08

Source: Bureau of Labor Statistics, Occupational Employment Statistics (June 2022), *https://www.bls.gov/oes/current/oes211093.htm.*

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
HUD Secretary's Award for Public-Philanthropic Partnerships	50	1	50	3	150	$18.08	$2,712.00
HUD Secretary's Awards for Healthy Homes	30	1	30	3	90	18.08	1,627.20
HUD Secretary's Award for Excellence in Historic Preservation	50	1	50	3	150	18.08	2,712.00
HUD Secretary's Planning Awards	50	1	50	3	150	18.08	2,712.00
HUD Secretary's Housing Design Awards	50	1	50	3	150	18.08	2,712.00
Innovation in Affordable Housing Student Design and Planning Competition	50	1	50	3	150	18.08	2,712.00
Total	280				840		15,187.20

B. Solicitation of Public Comment

This notice solicits comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 and Title 42 U.S.C. 5424 note, Title 13 U.S.C. Section 8(b), and Title 12, U.S.C., Section 1701z–1.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2022–14948 Filed 7–12–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–25; OMB Control No.: 2502–0001]

60-Day Notice of Proposed Information Collection: Personal Financial and Credit Statement

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 12, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Personal Financial and Credit Statement.

OMB Approval Number: 2502–0001.

OMB Expiration Date: 7/31/22.

Type of Request: Revision of a currently approved collection.

Form Number(s): HUD–92417.

Description of the need for the information and proposed use: The financial analysis of the project's principal participants is an integral part of the underwriting process. The Department in accordance with regulations cited in 24 CFR 207.1, is

legally required to collect information to evaluate the character, ability, and capital of the sponsor, mortgagor, and general contractor for mortgage insurance.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,824.

Estimated Number of Response: Once.

Frequency of Response: Once.

Average Hours per Response: Once.

Total Estimated Burden: 14,592.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Janet M. Golrick,

Acting Chief of Staff for the Office of Housing–Federal Housing Administration.

[FR Doc. 2022–14939 Filed 7–12–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6334–N–01]

Proposed Changes to the Methodology Used for Calculating Fair Market Rents

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of proposed changes for calculating Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy Program, and to serve as rent ceilings for rental units in both the HOME Investment Partnerships Program and the Emergency Solutions Grants Program and a primary rent standard option for the Housing for Opportunities for Persons With AIDS (HOPWA) program. HUD also uses FMRs in the calculation of maximum award amounts for Continuum of Care grantees and in the calculation of flat rents for Public Housing units. In furtherance of that effort, HUD proposes changes in how FMRs are calculated in this notice and seeks public comment on the proposed changes.

DATES: *Comment Due Date:* August 12, 2022.

ADDRESSES: HUD invites interested persons to submit comments regarding the proposed changes to the calculation of the FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section.

There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Questions on this notice may be addressed to Adam Bibler, Director, Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research, HUD Headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410, telephone number (202)–402–6057; or via email at *pprd@hud.gov.* Persons with hearing or speech impairments may access HUD numbers through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number). This **Federal Register** notice will be available electronically from the HUD User page at *https://www.huduser.gov/portal/datasets/fmr.html.* **Federal Register** notices also are available electronically from *https://www.federalregister.gov.*

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by

FMRs established by HUD for different geographic areas. In the Housing Choice Voucher (HCV) program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family. See 24 CFR 982.503. HUD also uses the FMRs to determine initial renewal rents for some expiring project-based Section 8 contracts, initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, rent ceilings for rental units in both the HOME Investment Partnerships program and the Emergency Solution Grants program, the primary rent standard for the HOPWA program, calculation of maximum award amounts for Continuum of Care recipients and the maximum amount of rent a recipient may pay for property leased with Continuum of Care funds, and calculation of flat rents in Public Housing units. In general, the FMR for an area is the amount that a tenant would need to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. HUD's FMR calculations represent HUD's best effort to estimate the 40th percentile gross rent [1] paid by recent movers into standard quality units in each FMR area. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

Since FY 2008, HUD has used data from the Census Bureau's 1-year American Community Survey as the source for estimates of 40th percentile gross rents paid by recent movers, which is often the most accurate and comprehensive reflection of rents available at the local level. On July 29, 2021, the Census Bureau announced that it would not release standard 1-year estimates from the 2020 American Community Survey (ACS) because of the impacts of the COVID–19 pandemic on data collection.[2] Given this exceptional circumstance, HUD is reconsidering its data sources used to estimate Fair Market Rents, which are required to be statistically valid, and balance timeliness, accuracy, transparency and soundness of approach. According to numerous private-sector rent sources,[3] rents have been rising rapidly in many markets since 2020. The methods used to estimate rent inflation in the CPI result in delayed measurement of rent increases among recent movers, and local CPI data are only available for 21 large metropolitan areas, so HUD relies on Regional CPI data. While private rent data provides more timely and more geographically specific updates of rent trends than does CPI, the nature of the proprietary data does not allow HUD the same level of visibility into its soundness of methodology and samples as CPI. This Notice describes proposed changes in HUD's methodology for calculating Fair Market Rents that HUD is considering in response to the change in 2020 ACS data availability and local rent increases that are not fully captured by Regional CPI data. Both of these changes will apply only to FY 2023 FMRs.

II. FMR Calculation Methodology Changes

A. Current Methodology

HUD's current methodology for calculating FMRs consists of several steps (see: *https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/select_Geography.odn* for the calculations underlying each FY 2022 FMR).

1. *Base Rent.* First, HUD establishes a ''base rent'' for two-bedroom units from the 5-year 40th percentile estimates of gross rent from the ACS.

2. *Recent Mover Adjustments.* HUD then adjusts the base rent using a ''recent mover adjustment factor'' that is based on the ratio of the estimate of gross rent paid by recent movers from the 1-year ACS to the estimate of gross rent paid by all renters from the 5-year ACS for the smallest level of geography containing the FMR area that contains statistically reliable 1-year data.

The results of these two steps are estimates of 40th percentile rents for recent movers in two-bedroom units that are ''as of'' the current ACS year.

3. *Inflation.* HUD then accounts for inflation from the ACS year by applying a ''gross rent adjustment factor'' which is calculated from the Consumer Price Index (CPI) as produced by the Bureau of Labor Statistics (BLS).

4. *Trend Factor.* Because it calculates FMRs ahead of each fiscal year, HUD provides a further inflation adjustment in the form of a ''trend factor.'' The trend factor represents the expected future level of the gross rent CPI for the upcoming fiscal year compared to the most recent actual gross rent CPI.

5. *State minimum FMRS.* Additionally, HUD calculates state minimum FMRs based on the median FMR for non-metropolitan portions of each state.

6. Bedroom Ratios. HUD calculates FMRs for unit sizes other than two bedrooms by applying ''bedroom ratios'' calculated from the relationships between rents for units of different sizes according to the 5-year ACS.

7. Limit on Decreases. Finally, HUD does not allow an area's FMR to decline by more than 10 percent.

Under its current methodology, HUD would calculate FY 2023 FMRs based on data from the 2020 American Community Survey. On July 29, 2021 the Census Bureau announced that it would not release standard 1-year estimates from the 2020 ACS because of the impacts of the COVID–19 pandemic on data collection. The Census Bureau found that the standard 2020 ACS 1-year estimates did not meet the Census Bureau's Statistical Data Quality Standards designed to ensure the utility, objectivity and integrity of the statistical information. Without the 1-year ACS estimates, HUD cannot calculate the ''recent mover adjustment factors'' in an identical manner as described above.

B. Proposed Changes

HUD is proposing two material changes to the calculation of FMRs for FY 2023 to: (1) deal with the temporary lack of availability of 2020 ACS 1-year data; and (2) provide additional local rent inflation data that better conform FMR estimates to changes in rental markets in the wake of the COVID–19 pandemic. Both proposed changes could narrowly introduce private sector rental data from multiple sources into the FMR calculation process in limited and statistically valid situations where private sector rental data have demonstrated that they more accurately estimate changes in rental markets. These changes would apply only to FY 2023 FMRs.

While these private sector data sources do not cover the entire U.S., may not be individually representative of the rental market, and cannot be used to directly compute FMRs, they may be useful for discrete components of the calculation to inflate ACS data from the collection timeframe to the applicable period of FMRs. For FY 2023 FMRs, HUD is proposing the use of up to 6 private sector rent data sources (RealPage (formerly Axiometrics) average effective rent per unit, Moody's Analytics REIS average gross revenue

[1] HUD also calculates and posts 50th percentile rent estimates for the purposes of Success Rate Payment Standards as defined at 24 CFR 982.503(e) (estimates available at: *https://www.huduser.gov/portal/datasets/50per.html*).

[2] See: *https://www.census.gov/newsroom/press-releases/2021/changes-2020-acs-1-year.html.*

[3] Private sources examined by HUD are: RealPage (formerly Axiometrics) average effective rent per unit, Moody's Analytics REIS average gross revenue per unit, CoStar Group average effective rent, CoreLogic, Inc. single-family combined 3-bedroom rent index, ApartmentList Rent Estimates, and Zillow Observed Rent Index.

per unit, CoStar Group average effective rent, CoreLogic, Inc. single-family combined 3-bedroom rent index, ApartmentList Rent Estimates, and Zillow Observed Rent Index.) where available and would only use private sector rent data where there are at least 3 sources covering the FMR area. The specific private data sources HUD uses in estimating each fiscal year's FMRs would be published as part of the notice announcing availability of the FMRs and in HUD's FMR documentation system.

C. Replacing 2020 ACS 1-Year Data

To replace missing 2020 ACS 1-year rent data, HUD proposes a 4-prong approach. While Census will not provide 1-year tabulations of 2020 ACS data at the FMR-area level, Census does provide a special tabulation of the 5-year ACS data for 2020 of the rents paid for standard quality units by persons who moved into their units in 2019 and 2020 and responded to the 2019 or 2020 ACS surveys. This differs from the usual recent mover tabulation of 1-year ACS data as in the regular tabulation, in which all respondents come from a single ACS year and are included if they had moved into their unit during the prior 2 years. While the 40th percentile rents estimated from these 2 samples are similar, the estimates from the 5-year ACS sample tend to be slightly lower than those from the usual 1–year tabulations.

To correct for the tendency for the recent mover estimate derived from ACS 5-year data to be lower than that derived from ACS one-year data, as well as any error that may be introduced by relying heavily on the part of the 5-year ACS collected in 2020, HUD may incorporate private data sources into the methodology in limited situations. For example, in areas where private sources of rental data provide sufficient coverage (3 or more sources) and where the private sources more accurately track changes in certain types of rental markets than CPI, HUD proposes to estimate recent mover rents by taking an average of 2019 ACS recent mover rent inflated by 2019–2020 gross rent change, as calculated from private sources of rent data, and 2020 5-year ACS recent mover rent.[4] For areas without private data coverage, HUD proposes to use an average of 2019 ACS recent mover rent inflated by the 2019–2020 gross rent CPI change and 2020 ACS recent mover rent. HUD welcomes public comment on proposals and related analysis to modify available ACS and CPI with private data to replace the 2020 ACS 1-year recent mover rent.

HUD would revert to past practice of using recent mover rent estimates from 1-year ACS tabulations when they are once again made available by the Census Bureau.

D. Using Private Sector Rent Data To Update Rent Estimates

HUD ordinarily updates the latest ACS-based rent estimates with one year of gross rent inflation measured with the 24 local and 4 regional CPI components rent of primary residence and household fuels and utilities depending on the location of the FMR area. The proposed change augments the CPI methodology by including available private data sources along with CPI data in calculating an average gross rent inflation factor in limited situations. For example, in areas without BLS metro CPI data, but a sufficient number of private sector data sources (at least 3), the calculation of the average gross rent inflation factor would include the average change in private rent data along with regional CPI data. In areas covered by BLS metropolitan CPI data, HUD proposes to implement one of the two following possibilities and seeks public comment on each: (1) keeping the actual inflation adjustment unchanged from FY 2022 (*i.e.,* based on metropolitan CPI data), or (2) calculating the inflation adjustment as the average of changes in rents from all available private data sources for the area and the change in rents measured by the metropolitan CPI. In places without sufficient private rent data sources, the actual inflation adjustment process using regional CPI data is unchanged from FY 2022 and prior FMR vintages. In all cases, rent change information is blended with CPI fuels and utilities changes to estimate changes in gross rents.

This proposed change would provide more measures of local rent inflation than are possible using the BLS regional CPI data, while better conforming FMR estimates to changes in rental markets in the wake of the COVID–19 pandemic. As with the proposed replacement of the 2020 ACS 1-year data, HUD welcomes public comment on proposals and related analysis to modify available ACS data and CPI data with private data and use of private data in FMR areas covered by metropolitan CPI data.

E. Aspects of FMR Methodology Not Proposed To Be Changed by This Notice

HUD is not proposing any additional changes to the FMR calculation, meaning it would still use the 5-year ACS data to establish the base rent, and use forecasts of gross rent CPI as the trend factor. Similarly, the ''bedroom ratio'' methodology used to produce FMRs for unit sizes other than two bedrooms would remain unchanged.

F. Small Area Fair Market Rents

HUD calculates FMRs for metropolitan areas, which comprise one or more counties (or towns, in the case of New England), and single, non-metropolitan counties. Within metropolitan areas, HUD also publishes Small Area FMRs, which are delineated by ZIP code and are required for use in the Housing Choice Voucher program in certain metropolitan areas. The proposed changes to FMR calculation would affect Small Area Fair Market Rents (SAFMRs) as well.

Under its current SAFMR methodology, HUD calculates the SAFMR for areas with a statistically reliable ZIP Code-level base rent for 1-, 2-, or 3-bedroom units by adjusting the base rent with the recent mover adjustment factor and gross rent adjustment factor. Therefore, changes to those factors as described above would apply to SAFMRs as well. For areas without statistically reliable 1-, 2-, or 3-bedroom rent estimates, HUD calculates the SAFMR using the ratio of the all-bedroom ZIP Code median rent (or the median rent for the larger county containing the ZIP Code) to the median rent for the FMR area, then multiplies this ratio by the metropolitan area FMR. The proposed changes, by affecting the metropolitan FMR, would affect this step as well.

III. Request for Public Comment on Changes

HUD is requesting public comment on the proposed changes to the FMR calculation methodology. HUD seeks comment on the general appropriateness of using private sector data in the computation of FMRs as well as comments on the appropriateness of each of the specific data sources HUD is proposing to include (RealPage (formerly Axiometrics) average effective rent per unit, Moody's Analytics REIS average gross revenue per unit, CoStar Group average effective rent, CoreLogic, Inc. single-family combined 3-bedroom rent index, ApartmentList Rent

[4] In evaluating the ACS 2020 5-year recent mover estimates, HUD will continue to use the same measure of statistical reliability that it has used in the past—namely, that the ACS estimate must be based on at least 100 unweighted survey cases and have a margin of error that is less than half the size of the estimate. For areas that had a useable 2019 recent mover rent at the ''local'' level—either a HUD metropolitan fair market rent area or metropolitan statistical area—HUD will use the inflated local 2019 recent mover estimate rather than a state-based 2020 ACS recent mover estimate.

Estimates, and Zillow Observed Rent Index). HUD also seeks comments about any other data sources that may be appropriate for use in computing FMRs. Commenters are asked to consider that the change in inflation adjustment described in Section D above would mean that FMRs may be higher in areas with faster rent growth than their respective regions, but lower in other areas where this is not the case. Additionally, commenters should consider that the private sources of rent data may introduce more volatility in year-to-year changes in FMRs and the extent to which this could impact HUD program operations. The public is also asked to comment on whether HUD should continue use of private rent data in FMRs after FY 2023.

IV. Environmental Impact

This notice proposes changes in the way FMRs are calculated. The establishment and review of Fair Market Rent schedules does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Todd M. Richardson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2022–14913 Filed 7–12–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–33; OMB Control No.: 2506–0215]

30-Day Notice of Proposed Information Collection: Housing Trust Fund

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 12, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, *DCmailto:Colette.Pollard@hud.gov* 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 20, 2022, at 87 FR 23534.

A. Overview of Information Collection

Title of Information Collection: Housing Trust Fund.

OMB Approval Number: 2506–0215.

Type of Request: Extension of a currently approved collection.

Form Number: SF–1199A, HUD–27055.

Description of the need for the information and proposed use: The information collected through the Integrated Disbursement and Information System (IDIS) (24 CFR 93.402) is used by HUD Field Offices, HUD Headquarters, and HTF grantees. The information on program funds committed and disbursed is used by HUD to track grantee performance and to determine compliance with the statutory 24-month commitment deadline and the regulatory 5-year expenditure deadline (§ 93.400(d)). The project-specific property, tenant, owner, and financial data is used to make program management decisions about how well program participants are achieving the statutory objectives of the HTF Program. Program management reports are generated by IDIS to provide data on the status of program participants' commitment and disbursement of HTF funds. These reports are provided to HUD staff as well as to HTF grantees.

Financial, project, tenant and owner documentation are used to determine compliance with HTF Program cost limits (§ 93.404), eligible activities (§ 93.200), and eligible costs (§ 93.201). Other information collected under Subpart H (Other Federal Requirements) is primarily intended for local program management and is only viewed by HUD during routine monitoring visits. The written agreement with the owner for long-term obligation (§ 93.404(b)) and tenant protections (§ 93.303) are required to ensure that the property owner complies with these important elements of the HTF Program and are also reviewed by HUD during monitoring visits. HUD reviews all other data collection requirements during monitoring to assure compliance with the requirements of the Act and other related laws and authorities.

HUD tracks grantee performance and compliance with the requirements of 24 CFR parts 91 and 93. Grantees use the required information in the execution of their program, and to gauge their own performance in relation to stated goals.

Regulatory section	Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 93.100(a)	Notification of intent to participate.	56.00	1.00	56.00	4.00	224.00	$43.04	$9,640.96
31 USC § 3512	HUD Form 27055	56.00	1.00	56.00	0.50	28.00	43.04	1,205.12
§ 93.100(b)	Submission of Consolidated Plan.	56.00	0.20	11.20	40.00	448.00	43.04	19,281.92
§ 91.220	Action Plan	56.00	1.00	56.00	10.00	560.00	43.04	24,102.40
§ 93.101	Distribution of assistance.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.150(a)	Site and Neighborhood Standards.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.150(b)	New rental housing site and neighborhood requirements.	56.00	1.00	56.00	5.00	280.00	43.04	12,051.20

Regulatory section	Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 93.200(b)	Establishment of terms of assistance.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.200(d)	Terminated projects	1.00	1.00	1.00	20.00	20.00	43.04	860.80
§ 93.201(b)(2)	Establish refinancing guidelines.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.300(a)	Establish maximum per-unit development subsidy amount.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.300(b)	Underwriting and subsidy layering.	168.00	1.00	168.00	4.00	672.00	43.04	28,922.88
§ 93.301(a)	Property standards—New construction.	56.00	1.00	56.00	3.00	168.00	43.04	7,230.72
§ 93.302(b)	Establish rent limitations.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.302(c)	Establish utility allowance.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.302(d)(1)	Establish affordability requirements.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.302(d)(3)	Establish preemptive procedures before foreclosure.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.302(e)(1)	Initial income determination.	1821.00	1.00	1821.00	1.00	1821.00	43.04	78,375.84
§ 93.302(e)(1)	Annual income determination.	5600.00	1.00	5600.00	0.25	1400.00	43.04	60,256.00
§ 93.350(a)	Nondiscrimination and equal opportunity procedures.	56.00	1.00	56.00	8.00	448.00	43.04	19,281.92
§ 93.350(b)(1)	Affirmative marketing procedures.	56.00	1.00	56.00	10.00	560.00	43.04	24,102.40
§ 93.351	Lead-based paint	56.00	1.00	56.00	1.00	56.00	43.04	2,410.24
§ 93.352	Displacement, relocation, and acquisition procedures.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.353	Conflict of interest adjudication.	2.00	1.00	2.00	4.00	8.00	43.04	344.32
§ 93.354	Funding Accountability and Transparency Act.	56.00	12.00	672.00	1.00	672.00	43.04	28,922.88
§ 93.356(b)	VAWA notification requirements.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.356(d)	VAWA lease term/addendum.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.356(f)	VAWA Emergency transfer plan.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.402(b)(1)	IDIS—Project set-up	168.00	1.00	168.00	1.00	168.00	43.04	7,230.72
§ 93.402(c)(1)	IDIS—HTF drawdowns.	168.00	1.00	168.00	1.00	168.00	43.04	7,230.72
§ 93.402(d)(1)	IDIS—Project completion.	168.00	1.00	168.00	1.00	168.00	43.04	7,230.72
§ 93.403(a)	Program income administration.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.403(b)(1)	Repayment for ineligible activities.	2.00	1.00	2.00	5.00	10.00	43.04	430.40
§ 93.404(b)	Written agreement	168.00	1.00	168.00	2.00	336.00	43.04	14,461.44
§ 93.404(d)(1)	Project completion inspection.	168.00	1.00	168.00	2.00	336.00	43.04	14,461.44
§ 93.404(d)(2)(i)	Onsite inspection upon completion.	560.00	1.00	560.00	2.00	1120.00	43.04	48,204.80
§ 93.404(d)(2)(ii)	Onsite inspections post completion.	504.00	1.00	504.00	2.00	1008.00	43.04	43,384.32
§ 93.404(d)(2)(iv)	Project owner annual certification.	168.00	1.00	168.00	2.00	336.00	43.04	14,461.44
§ 93.404(e)	Annual financial oversight of 10 or more units.	168.00	1.00	168.00	2.00	336.00	43.04	14,461.44
§ 93.405	Uniform administrative requirements.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.406 (a)	Annual CFR 200 audit.	56.00	1.00	56.00	10.00	560.00	43.04	24,102.40
§ 93.407 (a)(1)	Program recordkeeping.	56.00	1.00	56.00	8.00	448.00	43.04	19,281.92
§ 93.407 (a)(2)	Project recordkeeping.	560.00	1.00	560.00	2.00	1120.00	43.04	48,204.80
§ 93.407 (a)(3)	Financial recordkeeping.	56.00	12.00	672.00	2.00	1344.00	43.04	57,845.76
§ 93.407 (a)(4)	Program administration records.	56.00	12.00	672.00	8.00	5376.00	43.04	231,383.04

Regulatory section	Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 93.407 (a)(5)	Records concerning other Federal requirements.	56.00	1.00	56.00	10.00	560.00	43.04	24,102.40
§ 93.408	Performance reports	56.00	12.00	672.00	2.50	1680.00	43.04	72,307.20
§ 93.451	Annual performance reviews.	56.00	1.00	56.00	8.00	448.00	43.04	19,281.92
Total	.....	12,186.00	.....	14,605.20	.....	26,247.00	.....	1,129,670.88
Total cost: 26,247.00 hours * 43.04 (Hourly rate for GS12)								

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.\

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Data Officer.

[FR Doc. 2022–14935 Filed 7–12–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0346]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Withdrawal

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: Notice; withdrawal.

SUMMARY: On July 6, 2022, the Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, published a notice for eCollection of eComments on reinstatement with change, of a previously approved collection for which approval has expired: 2022 Census of State and Local Law Enforcement Agencies (CSLLEA). The notice is hereby withdrawn.

DATES: The document published at 87 FR 40552–40553 is withdrawn as of July 13, 2022.

SUPPLEMENTARY INFORMATION: On July 6, 2022, the Department of Justice published a **Federal Register** Notice requesting comments regarding the planned reinstatement of a previously approved information collection, the 2022 Census of State and Local Law Enforcement Agencies (CSLLEA). This notice was published in error as a notice requesting comments on this collection had previously been published on June 6, 2022 at 87 FR 34906. Therefore, the Department of Justice hereby withdraws the notice.

If additional information is required contact: Robert Houser, Assistant Director, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 8, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2022–14915 Filed 7–12–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1803]

Coordinating Council on Juvenile Justice and Delinquency Prevention Charter Renewal

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention (''Council''), Office of Justice Programs, Department of Justice.

ACTION: Notice of charter renewal.

SUMMARY: Notice that the charter of the Coordinating Council on Juvenile Justice and Delinquency Prevention has been renewed.

FOR FURTHER INFORMATION CONTACT: Visit the website for the Coordinating Council at *www.juvenilecouncil.gov* or contact Julie Herr, Designated Federal Official (DFO), Office of Juvenile Justice and Delinquency Prevention (OJJDP), by telephone at (202) 598–6885 (not a toll-free number) or via email: *julie.herr@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: This **Federal Register** notice notifies the public that the Charter of the Coordinating Council on Juvenile Justice and Delinquency Prevention has been renewed in accordance with the Federal Advisory Committee Act, Section 14(a)(1). The renewal Charter was renewed on June 28, 2022. One can obtain a copy of the renewal Charter by accessing the Coordinating Council on Juvenile Justice and Delinquency Prevention's website at *www.juvenilecouncil.gov.*

Julie Herr,

Designated Federal Official, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2022–14848 Filed 7–12–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; 4,4′-Methylenedianiline in Construction

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 12, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this Standard and its information collection requirements is to provide protection for workers from adverse health effects associated with occupational exposure to Methylenedianiline in the construction industry. Employers must monitor exposure, ensure worker exposures are within the permissible exposure limits, provide workers with medical examinations and training, and establish and maintain worker exposure-monitoring and medical records. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 2, 2022 (87 FR 25675).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: 4,4′-Methylenedianiline in Construction.

OMB Control Number: 1218–0183.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 330.

Total Estimated Number of Responses: 2,530.

Total Estimated Annual Time Burden: 1,012 hours.

Total Estimated Annual Other Costs Burden: $152,658.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–14941 Filed 7–12–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Notice of Final Determination To Add Cambodia Bricks to the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of final determination.

SUMMARY: This notice is a final determination to revise the list required by Executive Order No. 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor'', hereafter the E.O. List). The E.O. List identifies a list of products, by their country of origin, that the Department of Labor (DOL), in consultation and cooperation with the Department of State (DOS) and the Department of Homeland Security (DHS) (collectively, the Departments), has a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor. The Departments proposed adding bricks from Cambodia to the E.O. List in a Notice of Initial Determination that was published in the **Federal Register** on October 2, 2020. After a thorough review of the comments received and information available, the Departments have determined that the use of forced child labor in brick kilns in Cambodia has been occurring in more than isolated incidents. As a result, this product meets the criteria for inclusion in the E.O. List.

SUPPLEMENTARY INFORMATION: This final determination is the sixth revision of the E.O. List required by E.O. 13126 in accordance with DOL's Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (Procedural Guidelines).

I. Initial Determination

On October 2, 2020, DOL, in consultation and cooperation with DOS and DHS, published a Notice of Initial Determination in the **Federal Register** proposing to add bricks from Cambodia to the E.O. List.[1] The initial determination stated the Departments had preliminarily determined that there was a reasonable basis to believe that bricks from Cambodia might have been mined, produced, or manufactured by forced or indentured child labor. Public comments remained open until December 1, 2020 on whether bricks from Cambodia should be added to the E.O. List, as well as any other issues related to the fair and effective implementation of E.O. 13126. The initial determination, and the public comments submitted, can be viewed at Docket ID No. DOL–2020–0008 or requested from Nadia Al-Dayel at: Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–4896, email: *Al-Dayel.Nadia.A@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Information Relay Service at 1–877–889–5627.

II. Public Comment Period

During the public comment period, two comments were submitted. One comment received was an electronic message; however, the Department of Labor determined that the content of the comment was not applicable to the Notice of Initial Determination. The other comment received was a letter from the Minister of Labour and Vocational Training, on behalf of the Government of Cambodia. This comment is available for public viewing at *http://www.regulations.gov* (reference Docket ID No. DOL–2020–0008).

[1] 85 FR 62325. (October 2, 2020). *https://www.federalregister.gov/documents/2020/10/02/2020-21789/notice-of-initial-determination-revising-the-list-of-products-requiring-federal-contractor.*

In its letter, the Government of Cambodia discussed the efforts it has made in combating the worst forms of child labor by addressing some of the gaps that were identified in the Cambodia profile in the 2019 Findings on the Words Forms of Child Labor report.[2]

III. Analysis of Comment Submitted

After the public comment period closed on December 1, 2020, the Departments carefully reviewed and considered the public comments received.[3] In so doing, the Departments considered and weighed the factors identified in the Procedural Guidelines: The source of the information presented, the date of the information, the extent of corroboration of the information, whether the information involved more than an isolated incident, and whether recent and credible efforts are being made to address forced or indentured child labor in the country and industry.[4]

The Government of Cambodia cited its efforts to address child labor, forced labor, and debt bondage at brick kilns by conducting a census of all 486 operational brick kilns in the country in 2019. The government stated that no child labor, forced labor, or debt bondage were found at any of these brick kilns, and they were working with local authorities to create accessible education for marginalized children found to be living in and around the brick kilns to stop them from dropping out of school. The Government of Cambodia's submission also reiterated that judges in Cambodia have a clear mandate to prosecute child labor crimes and issue fines, and that they will continue to investigate and prosecute all perpetrators of child labor violations.

IV. Final Determination

The Departments have carefully reviewed and analyzed the comment submitted in considering whether to add bricks from Cambodia to the E.O. List. In addition, the Departments have continued to monitor the production of bricks since the issuance of the Initial Determination and will continue to monitor future brick production in the course of maintaining the E.O. List. The letter submitted from the Government of Cambodia failed to provide sufficient evidence to persuade the Departments to not include bricks on the E.O. List. The Government of Cambodia indicated in its letter that there were zero instances of child labor across 486 brick kilns. However, this information is inconsistent with the findings from an independent survey of the Cambodia brick industry. The independent survey found that child labor was occurring in brick kilns in more than isolated instances. Field research, including interviews with workers at brick kilns, also revealed that child labor occurred at brick kilns. The Departments conclude that based on available information, there is a reasonable basis to believe that bricks in Cambodia have been produced with the use of forced or indentured child labor in more than isolated incidents.

V. Background

E.O. 13126 was signed on June 12, 1999 and published in the **Federal Register** on June 16, 1999 (64 FR 32383). E.O. 13126 declared that it was ''the policy of the United States Government . . . that executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.'' [5] The E.O. defines ''forced or indentured child labor'' as:

[A]ll work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Pursuant to E.O. 13126, and following public notice and comment, DOL published in the January 18, 2001 **Federal Register** the first E.O. List of products, along with their respective countries of origin, that DOL, in consultation and cooperation with the Department of State and the Department of the Treasury (relevant responsibilities now within DHS), had a reasonable basis to believe might have been mined, produced or manufactured by forced or indentured child labor.[6]

The Department also published the Procedural Guidelines on January 18, 2001, which provide procedures for the maintenance, review, and, as appropriate, revision of the E.O. List.[7] The Procedural Guidelines provide that the E.O. List may be revised through consideration of submissions by individuals and on the Department's own initiative. When proposing a revision to the E.O. List, DOL must publish a notice of initial determination in the **Federal Register**, which includes any proposed alteration to the E.O. List. The Departments will consider all public comments prior to the publication of a final determination of a revised E.O. List. The E.O. List was subsequently revised on July 20, 2010; [8] on May 31, 2011; [9] on April 3, 2012; [10] July 23, 2013; [11] and on March 25, 2019.[12] The most recent E.O. List, finalized on March 25, 2019, includes 34 products from 25 countries.[13]

Under a final rule by the Federal Acquisition Regulatory Council, which also implements E.O. 13126, federal contractors who supply products that appear on the E.O. List are required to certify, among other things, that they have made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. See 48 CFR subpart 22.15.

The current E.O. List and Procedural Guidelines can be accessed at *https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products?page=1* or can be obtained from: OCFT, Bureau of

[2] Government of Cambodia. Minister of Labor and Vocational Training Letter. November 10, 2020. *https://www.regulations.gov/docket/DOL-2020-0008.*

[3] Ibid.

[4] 66 FR 5351, at 5352. (January 18, 2001). *https://www.federalregister.gov/documents/2001/01/18/01-952/bureau-of-international-labor-affairs-procedural-guidelines-for-the-maintenance-of-the-list-of.*

[5] 66 FR 32383. (June 12, 1999). *https://www.federalregister.gov/documents/1999/06/16/99-15491/prohibition-of-acquisition-of-products-produced-by-forced-or-indentured-child-labor.*

[6] 66 FR 5353. (January 18, 2001). *https://www.federalregister.gov/documents/2001/01/18/01-953/bureau-of-international-labor-affairs-notice-of-final-list-of-products-requiring-federal-contractor.*

[7] 66 FR 5351, at 5352. (January 18, 2001). *https://www.federalregister.gov/documents/2001/01/18/01-952/bureau-of-international-labor-affairs-procedural-guidelines-for-the-maintenance-of-the-list-of.*

[8] 75 FR 42164. (July 20, 2010). *https://www.federalregister.gov/documents/2010/07/20/2010-16886/notice-of-final-determination-updating-the-list-of-products-requiring-federal-contractor.*

[9] 76 FR 31364. (May 31, 2011). *https://www.federalregister.gov/documents/2011/05/31/2011-13342/notice-of-final-determination-revising-the-list-of-products-requiring-federal-contractor.*

[10] 77 FR 20051. (April 3, 2012). *https://www.federalregister.gov/documents/2012/04/03/2012-7961/notice-of-final-determination-revising-the-list-of-products-requiring-federal-contractor.*

[11] 78 FR 44158. (July 23, 2013). *https://www.federalregister.gov/documents/2013/07/23/2013-17520/notice-of-final-determination-revising-the-list-of-products-requiring-federal-contractor.*

[12] 84 FR 11123. (March 25, 2019). *https://www.federalregister.gov/documents/2019/03/25/2019-05360/notice-of-final-determination-to-remove-uzbek-cotton-from-the-list-of-products-requiring-federal#footnote-34-p11126.*

[13] Department of Labor. List of Products Produced by Forced or Indentured Child Labor. *https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products.*

International Labor Affairs, Room S–5313, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4843.

Signed at Washington, DC, on July 6, 2022.

Thea Lee,

Deputy Undersecretary for International Affairs.

[FR Doc. 2022–14799 Filed 7–12–22; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Foreign Labor Certification Activity Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 12, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This Information Collection Request (ICR) is necessary to carry out the Department's functions under the Immigration and Nationality Act, sections 101, 214(c), and 218. This ICR is authorized by Wagner-Peyser Act, Section 9 (29 U.S.C. 49(i)). The Department, under the foreign labor certification programs administered by ETA, provides funds for State Workforce Agencies (SWAs) through annually reimbursable grants. These grants fund certain activities that support the processing of applications for temporary labor certification filed by U.S. employers seeking to hire foreign workers in the H–2B or H–2A visa categories to perform non-agricultural or agricultural services or labor. The Department requires SWAs to report their workloads related to these activities on a quarterly basis to effectively monitor the administration of foreign labor certification activities. This collection of information is conducted through Form ETA–9127, Foreign Labor Certification Quarterly Activity Report, to ensure accountability and for future program management. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 16, 2021 (86 FR 71524).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Foreign Labor Certification Activity Report.

OMB Control Number: 1205–0457.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 216.

Total Estimated Annual Time Burden: 378 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: July 7, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–14940 Filed 7–12–22; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Committee on Strategy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Friday, July 15, 2022, from 11:00 a.m.–1:00 p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Committee Chair's introductory remarks; remarks by the NSF Director; discussion of NSF investments to strengthen established NSF; updates on missing millions efforts and TIP; discussion of strategies to deliver benefits in the context of the FY 2024 and beyond budget development process; and the NSF—NSB budget engagement plan.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Kathy Jacquart, *kjaquart@nsf.gov* (703) 292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–15008 Filed 7–11–22; 11:15 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–79 and CP2022–85]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This

notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 14, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–79 and CP2022–85; *Filing Title:* USPS Request to Add Priority Mail Express Contract 95 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 6, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 14, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–14858 Filed 7–12–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–80 and CP2022–86]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 15, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–80 and CP2022–86; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 15 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 7, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public*

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Representative: Jennaca D. Upperman; *Comments Due:* July 15, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–14933 Filed 7–12–22; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information; Identifying Critical Data Gaps and Needs To Inform Federal Strategic Plan for PFAS Research and Development

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of Request for Information (RFI).

SUMMARY: The Office of Science and Technology Policy (OSTP) requests input from all interested parties to identify data gaps in research and development regarding several aspects of per- and polyfluoroalkyl substances (PFAS). This information will be used to inform a strategic plan for Federal coordination of PFAS research and development and, in compliance with Section 332 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA), the interagency strategy team on PFAS will also develop an implementation plan for Federal agencies.

DATES: Interested persons and organizations are invited to submit comments on or before 5:00 p.m. ET, August 29, 2022.

ADDRESSES: Interested individuals and organizations should submit comments electronically to *JEEP@ostp.eop.gov* and include ''RFI Response: PFAS Strategic Plan'' in the subject line of the email. Email submissions should be machine-readable [PDF, Word] and should not be copy-protected. Submissions received after the deadline may not be taken into consideration.

Instructions: Response to this RFI is voluntary. Each individual or organization is requested to submit only one response. Commenters can respond to one or many questions. However, responses must not exceed a total of five (5) pages in 12 point or larger font, with a page number provided on each page. Submissions should clearly indicate which questions are being addressed. A bibliography does not count towards the page limit. Responses should include the name of the person(s) or organization(s) filing the response. Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA). No business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI. Please be aware that comments submitted in response to this RFI, including the submitter's identification (as noted above), may be posted, without change, on OSTP's or another Federal website or otherwise released publicly.

In accordance with FAR 15–202(3), responses to this notice are not offers and cannot be accepted by the U.S. Government to form a binding contract. Additionally, the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Melanie Buser at *JEEP@ostp.eop.gov* or 202–456–4444.

SUPPLEMENTARY INFORMATION:

Background: The Biden-Harris Administration is committed to combatting PFAS pollution and to ensuring access to clean drinking water for all Americans.[1] [2] OSTP has been tasked under Section 332 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA) (Pub. L. 116–283) with developing a strategic plan for PFAS research and development. This strategic plan should identify ''scientific and technological challenges that must be addressed to understand and to significantly reduce the environmental and human health impacts of PFAS and to identify cost-effective—

(i) alternatives to PFAS that are designed to be safer and more environmentally friendly;

(ii) methods for removal of PFAS from the environment; and

(iii) methods to safely destroy or degrade PFAS;'' and subsequently to establish ''goals, priorities, and metrics for federally funded PFAS research and development that takes into account the current state of research and development.''

This strategic plan will be the precursor to an R&D implementation plan for Federal agencies. Two agencies currently have existing agency plans that speak to PFAS R&D: the USGS Strategic Science Vision [3] and the EPA PFAS Strategic Roadmap.[4] Other Federal agencies may develop their own PFAS R&D plans and may use answers from this RFI to inform future directions.

For purposes of this RFI, the term per- and polyfluoroalkyl substances or PFAS has the definition provided in Section 332(g)(1) of the FY21 NDAA: ''(A) man-made chemicals of which all of the carbon atoms are fully fluorinated carbon atoms; and (B) man-made chemicals containing a mix of fully fluorinated carbon atoms, partially fluorinated carbon atoms, and nonfluorinated carbon atoms''. PFAS have been widely used in industry and consumer products since the 1940s because of their useful properties. Examples of products that use PFAS include food contact materials (*e.g.,* packaging, cookware), stain and water-repellant fabrics and carpets, and firefighting foams. PFAS may be present in water, soil, air, food, and other materials. Research has shown that PFAS are highly stable chemicals that accumulate in people, animals, and the environment over time, and in several cases, have been shown to cause adverse health effects.

Scope: OSTP invites input from States; Tribes; territories; individuals, including those belonging to groups that have been historically underserved, marginalized, or subject to discrimination or systemic disadvantage; local governments; appropriate industries; academic institutions; nongovernmental organizations; and international organizations with expertise in PFAS research and development, treatment, management, and alternative development.

Information Requested: Respondents may provide information for *one or as many topics* below as they choose. *Submissions should clearly indicate which questions are being addressed.* For the purpose of this RFI, ''PFAS research and development'' includes any research or project meeting one or more of the following goals:

(A) The removal of PFAS from the environment, in part or in total;

[1] FACT SHEET: Biden-Harris Administration Launches Plan to Combat PFAS Pollution | The White House.

[2] FACT SHEET: Biden-Harris Administration Combatting PFAS Pollution to Safeguard Clean Drinking Water for All Americans | The White House.

[3] *https://pubs.er.usgs.gov/publication/cir1490.*

[4] *https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf.*

(B) The safe destruction or degradation of PFAS;

(C) The development and deployment of safer and more environmentally-friendly alternative substances that are functionally similar to those made with PFAS;

(D) The understanding of sources of environmental PFAS contamination and pathways to exposure for the public; and/or,

(E) The understanding of the toxicity of PFAS to humans and animals.[5]

Given PFAS are a large, diverse class of substances, making it difficult to comprehensively evaluate the environmental and human impacts, OSTP is interested in responses to the following questions:

1. Should the USG consider identifying priority PFAS when developing a strategic plan for PFAS research and development? If so, what criteria should be used to identify priority PFAS for research and development (*e.g.,* tonnage used per year; releases to the environment per year; toxicology or other human or environmental health concerns; national security or critical infrastructure uses)?

2. Are there criteria which could be applied across the five research goals identified above, or should specific criteria be developed for each individual research goal?

3. Based on the definition of PFAS in this RFI, what are the scientific, technological, and human challenges that must be addressed to understand and to significantly reduce the environmental and human impacts of PFAS and to identify cost-effective:

a. Alternatives to PFAS that are designed to be safer and more environmentally friendly;

b. Methods for removal of PFAS from the environment; and

c. Methods to safely destroy or degrade PFAS?

4. Are there specific chemistries and/or intended uses that PFAS provide for which there are no known alternatives at this time?

5. What are alternatives to the definition of PFAS provided in this RFI? What are the implications of these alternative definitions on possible remediation strategies?

6. What should be the research and development priorities for accelerating progress, improving efficiency, and reducing the cost of: analytical methods, detection limits, non-targeted detection?

7. What studies would yield the most useful information and address the current gaps in understanding PFAS health effects in humans (*e.g., in vitro,* animal toxicological, and epidemiological studies)? Which health effects should be prioritized? What additional impacts beyond health should be prioritized? Social scientific approaches are welcome in addressing this question and any others, as appropriate.

8. One challenge across all research goals is PFAS mixtures and formulations. Currently, more information is needed to understand the identity, composition, occurrence, source, or effects on human health and the environment for mixtures of PFAS found in environmental media. Additionally, more information is needed to understand the best way to remediate or destroy media contaminated with multiple PFAS. What should be the research and development priorities for accelerating progress in these areas?

9. What goals, priorities, and performance metrics would be valuable in measuring the success of National, federally funded PFAS research and development initiatives relating to:

a. The removal of PFAS from the environment;

b. Safely destroying or degrading PFAS; and

c. Developing safer and more environmentally-friendly alternatives to PFAS?

d. Mitigating negative human effects of PFAS, whether related to health or additional domains?

Dated: July 7, 2022.

Stacy Murphy,

Operations Manager.

[FR Doc. 2022–14862 Filed 7–12–22; 8:45 am]

BILLING CODE 3270–F2–P

[5] *https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95210; File No. SR–PEARL–2022–26

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend the MIAX Pearl Equities Fee Schedule

July 7, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 5, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule to adopt new liquidity indicator codes and associated fees and rebates to the Liquidity Indicator Codes and Associated Fees table. The Exchange originally filed this proposal on June 23, 2022, (SR–PEARL–2022–24). On July 5, 2022, the Exchange withdrew SR–PEARL–2022–24 and resubmitted this proposal.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues,

to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading, and the Exchange currently represents approximately 1% of the overall market share.[3]

Background

The Exchange filed a proposal[4] to adopt a new routing option called Route to Primary Auction (''PAC'') that would be available to orders in equity securities traded on the Exchange's equity trading platform. The PAC routing option would enable an Equity Member[5] (''Member'') to designate that their order be routed to the primary listing market to participate in the primary listing market's opening, re-opening or closing process.[6] Exchange Rule 2617(b)(5)(B) provides that PAC is a routing option for Market Orders[7] and displayed Limit Orders[8] designated with a time-in-force of Regular Hours Only (''RHO'')[9] that the entering firm wishes to designate for participation in the opening, re-opening (following a regulatory halt, suspension, or pause), or closing process[10] of a primary listing market (Cboe BZX Exchange, Inc. (''BZX''), the New York Stock Exchange LLC (''NYSE''), The Nasdaq Stock Market LLC (''Nasdaq''), NYSE American LLC (''NYSE American''), or NYSE Arca, Inc. (''NYSE Arca'')) if received before the opening, re-opening, or closing process of such market.

The Exchange currently has a liquidity indicator code of ''X'' for routed liquidity. This code will continue to be applied to an order that is routed to and executed on an away market. Additionally, this code will be used to identify orders that were routed to an away market (including orders that were routed using the PAC routing strategy) and executed as ''Taker.'' The proposed liquidity indicator codes described below are specifically related to the PAC routing strategy.

New Liquidity Indicator Codes

In conjunction with the Exchange's proposal to provide a PAC routing option as described above, the Exchange now proposes to amend the Liquidity Indicator Codes and Associated Fees Table to adopt new routing fees and rebates as follows:

- Add new liquidity indicator code XA, Re-routed by Primary Listing Exchange. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XA would be charged a fee $0.003 per share in securities priced at or above $1.00 and 0.3% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XB, Routed Primary Listing Exchange Execution (Other). The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XB would be charged a fee $0.003 per share in securities priced at or above $1.00 and 0.3% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XC, Routed to NYSE, Opening/Re-Opening Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XC would be charged a fee $0.00105 per share in securities priced at or above $1.00 and 0.3% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XD, Routed to NYSE, Closing Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XD would be charged a fee $0.00085 per share in securities priced at or above $1.00 and 0.3% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XE, Routed to NYSE, Adds Displayed Liquidity. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XE would receive a rebate of $0.0015 per share in securities priced at or above $1.00 and would be charged a fee of 0.01% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XF, Routed to NYSE Arca, Opening/Re-Opening Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XF would be charged a fee of $0.00155 per share in securities priced at or above $1.00 and 0.105% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XG, Routed to NYSE Arca, Closing Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XG would be charged a fee of $0.00105 per share in securities priced at or above $1.00 and a fee of 0.105% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XH, Routed to NYSE Arca, Adds Displayed Liquidity. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XH would receive a rebate of $0.0015 per share in securities priced at or above $1.00 and would be charged a fee of 0.01% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XI, Routed to NYSE American, Opening/Re-Opening Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XI would be charged a fee of $0.00055 per share in securities priced at or above $1.00 and 0.055% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XJ, Routed to NYSE American, Closing Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XJ would be charged a fee of $0.00055 per share in securities priced at or above $1.00 and 0.055% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XK, Routed to NYSE American, Adds Displayed Liquidity. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XK would receive a rebate of $0.001 per share in securities priced at or above $1.00 and would be charged a fee of 0.01% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code XL, Routed to Cboe BZX, Opening/Re-Opening Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XL would be charged a fee of $0.0008 per share in securities priced at or above $1.00 and

[3] *See* MIAX's ''The market at a glance, MTD Average'', available at *https://www.miaxoptions.com/*, (last visited June 30, 2022).

[4] *See* Securities Exchange Act Release No. 94301 (February 23, 2022), 87 FR 11739 (March 2, 2022) (SR–PEARL–2022–06).

[5] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[6] *See* Exchange Rule 2617(b)(5)(B).

[7] *See* Exchange Rule 2614(a)(2).

[8] *See* Exchange Rule 2614(a)(1).

[9] Exchange Rule 2614(b)(2) defines ''Regular Hours Only'' or ''RHO'' as ''[a]n order that is designated for execution only during Regular Trading Hours, which includes the Opening Process for equity securities. An order with a time-in-force of RHO entered into the System before the opening of business on the Exchange as determined pursuant to Exchange Rule 2600 will be accepted but not eligible for execution until the start of Regular Trading Hours.''

[10] The Exchange notes that it will not route Market Orders to the primary listing market's closing process.

0.08% of the transaction's dollar value in securities priced below $1.00.

• Add new liquidity indicator code XM, Routed to Cboe BZX, Closing Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XM would be charged a fee of $0.00105 per share in securities priced at or above $1.00 and 0.105% of the transaction's dollar value in securities priced below $1.00.

• Add new liquidity indicator code XN, Routed to Cboe BZX, Adds Displayed Liquidity. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XN would receive a rebate of $0.0015 per share in securities priced at or above $1.00 and be charged a fee of 0.01% of the transaction's dollar value in securities priced below $1.00.

• Add new liquidity indicator code XO, Routed to Nasdaq, Opening/Re-Opening Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XO would be charged a fee of $0.00155 per share in securities priced at or above $1.00 and 0.30% of the transaction's dollar value in securities priced below $1.00.

• Add new liquidity indicator code XP, Routed to Nasdaq, Closing Auction. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XP would be charged a fee of $0.00085 per share in securities priced at or above $1.00 and 0.09% of the transaction's dollar value in securities priced below $1.00.

• Add new liquidity indicator code XQ, Routed to Nasdaq, Adds Displayed Liquidity. The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code XQ would receive a rebate of $0.0015 per share in securities priced at or above $1.00 and be charged a fee of 0.01% of the transaction's dollar value in securities priced below $1.00.

As part of the PAC order routing strategy the Exchange will route a limit order to participate in the primary listing market's closing process prior to the primary listing market's order entry cut-off time.[11] These orders may rest on the primary listing market's book until such time as the closing auction commences. During this period these orders are subject to standard order handling and may be executed or routed by the primary listing market depending upon market conditions. Therefore the Exchange is proposing to adopt liquidity indicator codes to reflect the disposition of the order (*i.e.,* an order routed to NYSE that rests on the book and is executed prior to the closing auction would receive liquidity indicator code XE; an order routed to NYSE Arca that rests on the book and is executed prior to the closing auction would receive liquidity indicator code XH; an order routed to NYSE American that rests on the book and is executed prior to the closing auction would receive liquidity indicator code XK; an order routed to Cboe BZX that rests on the book and is executed prior to the closing auction would receive liquidity indicator code XN; and an order routed to Nasdaq that rests on the book and is executed prior to the closing auction would receive liquidity indicator code XQ; further an order routed to a primary listing market that is subsequently routed by the primary listing market prior to the start of the closing auction would receive liquidity indicator code XA).

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[14] that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading.[15] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 1% of the overall market share. 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, 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.''[16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal will further remove impediments to and perfect the mechanism of a free and open market and a national market system, and will introduce the PAC routing strategy on the Exchange which will provide Members with greater flexibility in routing orders to other exchanges.

New Liquidity Indicator Codes

The Exchange believes that its proposal to adopt liquidity indicator codes is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory. The use of liquidity indicator codes is not unique

[11] *See* Exchange Rule 2617(b)(5)(B)(1)(ii)(a).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 3.

[16] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

to the Exchange as liquidity indicator codes are currently utilized and described in the fee schedules of other equity exchanges.[17] Additionally, the Exchange believes its fee changes proposed for each liquidity indicator code are reasonable because competing exchanges that offer similar functionality charge similar fees as those proposed herein.[18]

Specifically, the proposed fee of $0.003 for liquidity indicator code XA, Re-routed by Primary Listing Exchange and the proposed fee of $0.003 for liquidity indicator code XB, Routed Primary Listing Exchange Execution (Other) are equal to the current fee charged for liquidity indicator code X, Routed, on the Exchange. The proposed fee of $0.00105 for liquidity indicator code XC, Routed to NYSE Opening/Re-Opening Auction, is comparable to the fee charged by NYSE Arca of $0.001 to route orders to NYSE Auctions.[19] Similarly, the proposed fee of $0.00085 for liquidity indicator code XD, Closing Auction, is comparable to the fee charged by NYSE Arca of $0.001 to route orders to NYSE Auctions.[20] The proposed fee of $0.00055 for liquidity indicator code XI, Routed to NYSE American Opening/Re-Opening Auction, is comparable to the fee charged by NYSE Arca of $0.0005 to route orders to NYSE American Auctions.[21] Similarly, the proposed fee of $0.00055 for liquidity indicator code XJ, Routed to NYSE American, Closing Auction, is comparable to the fee charged by NYSE Arca of $0.0005 to route orders to NYSE American Auctions.[22] The proposed fee of $0.0008 for liquidity indicator code XL, Routed to Cboe BZX, Opening/Re-Opening Auction, is comparable to the fee charged by NYSE Arca of $0.003 for routing orders to Cboe BZX auctions.[23] Similarly, the proposed fee of $0.00105 for liquidity indicator code XM, Routed to Cboe BZX, Closing Auction, is less than the fee charged by NYSE Arca of $0.003 to route orders to Cboe BZX auctions.[24] The proposed fee of $0.00155 for liquidity indicator code XO, Routed to Nasdaq, Opening/Re-Opening Auction, is less than the fee charged by NYSE Arca of $0.003 for routing orders to Nasdaq auctions.[25] Similarly, the proposed fee of $0.00085 for liquidity indicator code XP, Routed to Nasdaq, Closing Auction, is comparable to the fee charged by NYSE Arca of $0.003 to route orders to Nasdaq auctions.[26] The proposed fee of $0.00155 for liquidity indicator code XF, Routed to NYSE Arca, Opening/Re-Opening Auction, is comparable to the fee charged by Cboe BZX of $0.0015 for routing orders to a listing market's opening or re-opening cross.[27] Similarly, the proposed fee of $0.00105 for liquidity indicator code XG, Routed to NYSE Arca, Closing Auction, is comparable to the fee charged by Cboe BZX of $0.001 to route orders to a listing market's closing process.[28] The proposed fee of $0.00085 for liquidity indicator code XP, Routed to Nasdaq, Closing Auction, is comparable to the fee charged by Cboe EDGX of $0.001 for fee code ''CL'' to route orders to a listing market's closing process.[29] The proposed credit of $0.0015 for liquidity indicator code XE, Routed to NYSE, Adds Displayed Liquidity, is comparable to the credit of $0.0015 provided by Cboe BZX for fee code ''F'', routed to NYSE, adds liquidity.[30] The proposed credit of $0.0015 for liquidity indicator code XH, Routed to NYSE Arca, Adds Displayed Liquidity, is comparable to the credit of $0.0022 provided by Cboe BZX for fee code ''10'' routed to NYSE Arca, adds liquidity.[31] The proposed credit of $0.001 for liquidity indicator code XK, Routed to NYSE American, Adds Displayed Liquidity, is comparable to the credit of $0.002 provided by NYSE American for Adding Displayed Liquidity.[32] The proposed credit of $0.0015 for liquidity indicator code XN, Routed to Cboe BZX, Adds Displayed Liquidity, is comparable to the credit of $0.002 provided by Cboe EDGX for fee code ''RZ'' routed to Cboe BZX, adds liquidity.[33] The proposed credit of $0.0015 for liquidity indicator code XQ, Routed to Nasdaq, Adds Displayed Liquidity is comparable to the credit provided by Cboe BZX of $0.0015 for fee code ''A'' routed to Nasdaq, adds liquidity.[34]

Regarding the proposed rates for securities priced below $1.00, the Exchange believes its rates are reasonable because, as indicated above, in order to operate in the highly competitive equities markets, the Exchange, and its competing exchanges, seek to offer similar pricing structures, including assessing comparable standard fees and rebates. The Exchange currently charges a fee of 0.30% of the total dollar value of the transaction for executions in securities priced below $1.00 that occur on away exchanges under liquidity indicator code ''X.'' Other competing exchanges charge similar fees, such as NYSE American, that assesses a fee of 0.30% of the total dollar value of the transaction for executions in securities priced below $1.00 occurring in an away market auction. The Exchange notes that none of its proposed fees for executions in securities priced below $1.00 exceed 0.30% and are thus reasonably priced and competitive with other competing equity exchanges.

The Exchange further believes the proposed fees and rebates are equitable and reasonable and not unfairly discriminatory because they will apply equally to all Members of the Exchange that submit orders with the PAC routing option to the Exchange. Further, routing through the Exchange is voluntary and the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections

[17] *See* NYSE Arca Equities Exchange Fee Schedule, Section V., Standard Rates-Routing, on its public website (available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf*); *see also* Cboe BZX U.S. Equities Exchange Fee Schedule, Fees Codes and Associated Fees, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*); *see also* Cboe EDGX U.S. Equities Exchange Fee Schedule, Fee Codes and Associate Fees, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*).

[18] *See* NYSE Arca Equities Exchange Fee Schedule, Section V., Standard Rates-Routing, on its public website (available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf*); *see also* Cboe BZX U.S. Equities Exchange Fee Schedule, Fees Codes and Associated Fees, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*); *see also* Cboe EDGX U.S. Equities Exchange Fee Schedule, Fee Codes and Associate Fees, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*).

[19] *See* NYSE Arca Equities Exchange Fee Schedule, Section V., Standard Rates-Routing, on its public website (available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf*).

[20] *Id.*

[21] *See Id.*

[22] *See Id.*

[23] *See Id.*

[24] *See Id.*

[25] *See Id.*

[26] *See Id.*

[27] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, Fees Codes and Associated Fees, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*).

[28] *Id.*

[29] *See supra* note 27.

[30] *Id.*

[31] *See Id.*

[32] See NYSE American Equities Price List on its public website (available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf*.)

[33] *See* Cboe EDGX U.S. Equities Exchange Fee Schedule, Fee Codes and Associated Fees, on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*).

[34] *See Id.*

6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed fees are competitive in that they provide comparable fees and credits for routing orders as other exchanges. The Exchange notes that Members may opt not to select the PAC routing option on orders submitted to the Exchange and accordingly will not incur the associated routing fees proposed herein.

Intramarket Competition

The Exchange does not believe that the proposal will impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees and rebates would be available to all similarly situated market participants, and, as such the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Specifically, all Members that use the PAC routing option will be subject to the same fees and rebates. The Exchange does not believe its adoption of new liquidity indicator codes for orders that use the PAC routing option would impose any burden on intramarket competition as the use of liquidity indicator codes is not new or novel and liquidity indicator codes are used on other equity exchanges.[35] The use of liquidity indicator codes provides additional specificity to the fee schedule so that Equity Members may connect an execution to the applicable fee or rebate. As such the Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 17% of the total market share of executed volume of equities trading.[36] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of Removed Volume, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

Accordingly, the Exchange believes its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer routing strategies.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [37] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. circuit stated: ''[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 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 possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .''.[38] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[39] and Rule 19b–4(f)(2)[40] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[35] See Cboe BZX U.S. Equities Fee Schedule (''CboeBZX'') available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*; and also MEMX LLC (''MEMX'') Fee Schedule available on their public website at *https://info.memxtrading.com/fee-schedule/.*

[36] *See supra* note 3.

[37] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[38] *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–NYSE–2006–21)).

[39] 15 U.S.C. 78s(b)(3)(A)(ii).

[40] 17 CFR 240.19b–4(f)(2).

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–PEARL–2022–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–26. 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–PEARL–2022–26 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14886 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95218; File No. SR–CboeBZX–2022–035]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

July 7, 2022.

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 June 24, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the VanEck Bitcoin Trust (the ''Trust''),[3] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust was formed as a Delaware statutory trust on December 17, 2020 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[4] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[5] VanEck Digital Assets, LLC is the sponsor of the Trust (''Sponsor'').[6] The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[7] A third-party regulated custodian will be responsible for custody of the Trust's bitcoin (the ''Custodian''). As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[8] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity

[4] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[6] The Exchange notes that another proposal to list and trade shares of the Trust was previously disapproved pursuant to delegated authority and is currently pending Commission Review pursuant to Rule 431 of the Commission's Rules of Practice, 17 CFR 201.431. *See* Securities Exchange Act Release No. 93559 (November 12, 2021), 86 FR 64539 (November 18, 2021). *See also* Letter from Assistant Secretary J. Matthew DeLesDernier to Kyle Murray, Assistant General Counsel, Cboe Global Markets, dated November 12, 2021.

[7] *See* Amendment No. 2 to Registration Statement on Form S–1, dated June 22, 2022, submitted to the Commission by the Sponsor on behalf of the Trust (333–251808). The descriptions of the Trust, the Shares, and the Benchmark contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[8] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

Futures Trading Commission (the ''CFTC'') regulated futures market.[9] Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [10]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Bitcoin Futures market, as defined below, is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has recently approved proposals related to the listing and trading of funds that would primarily hold Bitcoin Futures that are registered under the Securities Act of 1933 instead of the Investment Company Act of 1940, as amended (the ''1940 Act'').[11] In the Teucrium Approval, the Commission found the Bitcoin Futures market to be a regulated market of significant size as it relates to Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the Bitcoin Futures market represents a regulated market of significant size as it relates both to the Bitcoin Futures

[9] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical–1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[10] *See* Winklevoss Order at 37592.

[11] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

market and to the spot bitcoin market and that this proposal should be approved.

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value.[12] The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[13] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[14] Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[15] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[16] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[17] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[18] Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [19] and shares in investment vehicles holding bitcoin futures, including Bitcoin Futures ETFs (as defined below). Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in May 2021, the Staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled bitcoin futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [20] in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [21] in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[22] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[23]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[24] According to the CME Bitcoin Futures Report, from March 28, 2022 through April 22, 2022, CFTC regulated bitcoin futures represented approximately $1.3 billion in notional trading volume on Chicago Mercantile Exchange (''CME'') (''Bitcoin Futures'') on a daily basis and notional volume was never below $670

[12] For additional information about bitcoin and the Bitcoin Network, *see https://bitcoin.org/en/getting-started; https://www.fidelitydigitalassets.com/articles/addressing-bitcoin-criticisms*; and *https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/*.

[13] *See* Winklevoss Order.

[14] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[15] See ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated:

''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC*, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[16] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[17] Data as of March 31, 2016 according to publicly available filings. See Bitcoin Investment Trust Form S–1, dated May 27, 2016, *available: https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[18] See letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[19] See Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[20] See Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[21] See letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[22] See letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[23] *See, e.g.*, Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[24] As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately $1.08 trillion.

million.[25] Open interest was over $2 billion for the entirety of the period and at one point was over $3 billion. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[26] The U.S. Office of the Comptroller of the Currency (the ''OCC'') has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.[27] The OCC recently granted conditional approval of two charter conversions by state-chartered trust companies to national banks, both of which provide cryptocurrency custody services.[28] NYDFS has granted no fewer than twenty-five BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. The U.S. Treasury Financial Crimes Enforcement Network (''FinCEN'') has released extensive guidance regarding the applicability of the Bank Secrecy Act (''BSA'') and implementing regulations to virtual currency businesses,[29] and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.[30] In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[31]

In addition to the regulatory developments laid out above, more traditional financial market participants have embraced and continue to embrace cryptocurrency: large insurance companies,[32] asset managers,[33] university endowments,[34] pension funds,[35] and even historically bitcoin skeptical fund managers [36] are allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[37] Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have made substantial investments in bitcoin. The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [38] (ii) facing the technical risk, complexity and generally high fees associated with buying spot bitcoin; (iii) purchasing shares of operating companies that they

[25] Data sourced from the CME Bitcoin Futures Report: 19 Nov, 2021, *available at: https://www.cmegroup.com/ftp/bitcoinfutures/Bitcoin_Futures_Liquidity_Report.pdf.*

[26] The CFTC's annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC ''continued to aggressively prosecute misconduct involving digital assets that fit within the CEA's definition of commodity'' and ''brought a record setting seven cases involving digital assets.'' *See* CFTC FY2020 Division of Enforcement Annual Report, *available at: https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download.* Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8270–20 (October 1, 2020) *available at: https://www.cftc.gov/PressRoom/PressReleases/8270-20.*

[27] *See* OCC News Release 2021-2 (January 4, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html.*

[28] *See* OCC News Release 2021-6 (January 13, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html* and OCC News Release 2021-19 (February 5, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html.*

[29] See FinCEN Guidance FIN–2019–G001 (May 9, 2019) (Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies) *available at: https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.*

[30] *See* U.S. Department of the Treasury Press Release: ''The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions'' (December 18, 2020), *available at: https://home.treasury.gov/news/press-releases/sm1216.*

[31] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf.*

[32] On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased $100 million in bitcoin for its general investment account. *See* MassMutual Press Release ''Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual'' (December 10, 2020) *available at: https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual.*

[33] *See e.g.,* ''BlackRock's Rick Rieder says the world's largest asset manager has 'started to dabble' in bitcoin'' (February 17, 2021) *available at: https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-rieder.html* and ''Guggenheim's Scott Minerd Says Bitcoin Should Be Worth $400,000'' (December 16, 2020) *available at: https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott-minerd-says-bitcoin-should-be-worth-400-000.*

[34] *See e.g.,* ''Harvard and Yale Endowments Among Those Reportedly Buying Crypto'' (January 25, 2021) *available at: https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto.*

[35] *See e.g.,* ''Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin'' (February 14, 2019) *available at: https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html.*

[36] *See e.g.,* ''Bridgewater: Our Thoughts on Bitcoin'' (January 28, 2021) *available at: https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin* and ''Paul Tudor Jones says he likes bitcoin even more now, rally still in the 'first inning' '' (October 22, 2020) *available at: https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html.*

[37] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[38] The largest OTC Bitcoin Fund has an AUM of $23 billion. The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/20, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [39] or (iv) purchasing Bitcoin Futures ETFs, as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical bitcoin) to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with more risky means of getting bitcoin exposure.[40] Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. Further to this point, the lack of a U.S.-listed Spot Bitcoin ETP is not preventing U.S. funds from gaining exposure to bitcoin—several U.S. exchange-traded funds are using Canadian bitcoin ETPs to gain exposure to spot bitcoin. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. exchange-traded funds and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the 1940 Act and the recent Bitcoin Futures Approvals that provide exposure to bitcoin primarily through Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[41] Leaving aside the analysis of that standard until later in this proposal,[42] the Exchange believes that the following rationale that the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[43]

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts. . .indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin exchanges that are not part of the CME CF Bitcoin Reference

[39] Recently a number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html*; and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html*. Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by such operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors. In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

[40] The Exchange notes that securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs.

[41] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[42] As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[43] *See* Teucrium Approval at 21679.

Rate and that arbitrage opportunities across bitcoin exchanges means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through ''trading outside of the CME bitcoin futures market,'' it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the CME Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and notes that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate, as further discussed below.

The Exchange also notes that a Bitcoin Futures ETF may also be more susceptible to potential manipulation than a Spot Bitcoin ETP that offers only in-kind creation and redemption because Bitcoin Futures pricing (and thus the value of the underlying holdings of a Bitcoin Futures ETF) is based on a single price derived from spot bitcoin pricing, while shares of a Spot Bitcoin ETP would represent interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP (as proposed herein) would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. As such, the Exchange believes that, in addition to the CME Bitcoin Futures market representing a regulated market of significant size as it relates to the spot bitcoin market, in-kind Spot Bitcoin ETPs are likely less susceptible to manipulation than Bitcoin Futures ETFs because of the underlying creation and redemption arbitrage mechanism that will operate in the same manner as it does for all other ETFs.

In addition to potentially being more susceptible to manipulation than a Spot Bitcoin ETP, the structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[44] Specifically, the cost of rolling Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. While the 1940 Act does offer certain investor protections, those protections do not relate to mitigating potential manipulation of the holdings of an ETF in a way that warrants distinction between Bitcoin Futures ETFs and Spot Bitcoin ETPs. To be clear, both the Exchange and Sponsor believe that the Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated as described throughout this proposal. After issuing the Bitcoin Futures Approvals which conclude the CME Bitcoin Futures market is a regulated market of significant size as it relates to Bitcoin Futures, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the Bitcoin Futures market is also a regulated market of significant size as it relates to the bitcoin spot market. Including in the analysis the significant and preventable losses to U.S. investors that comes with Bitcoin Futures ETFs, disapproving Spot Bitcoin ETPs seems even more arbitrary and capricious. Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Spot and Proxy Exposure to Bitcoin

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage from the Sponsor's perspective is the elimination of the need for an individual retail investor to either manage their own private keys or to hold bitcoin through a cryptocurrency exchange that lacks sufficient protections. Typically, retail exchanges hold most, if not all, retail investors' bitcoin in ''hot'' (internet-connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which could cause them to lose some or all of their bitcoin holdings. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly.

Finally, as described in the Background section above, a number of operating companies largely engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced significant investments in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure

[44] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580*; ''Physical Bitcoin ETF Prospects Accelerate,'' ETF.com (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&_cf_chl_jschl_tk_=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.[45] In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP.[46] Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.[47] In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[48] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 219,089 Bitcoin Futures contracts traded in April 2022 (approximately $31.2 billion) compared to 89,852 ($5.4 billion), 118,235 ($4.6b billion), and 201,295 ($55.8b billion) contracts traded in April 2019, April 2020, and April 2021, respectively.[49]

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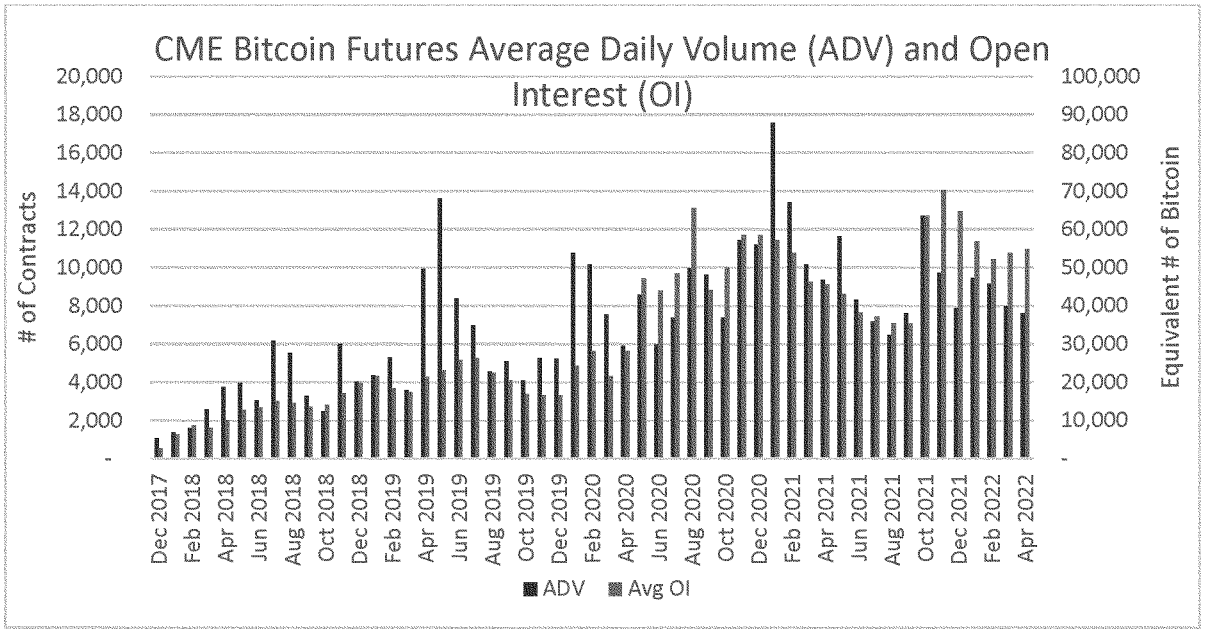


[45] In August 2017, the Commission's Office of Investor Education and Advocacy warned investors about situations where companies were publicly announcing events relating to digital coins or tokens in an effort to affect the price of the company's publicly traded common stock. *See https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims.*

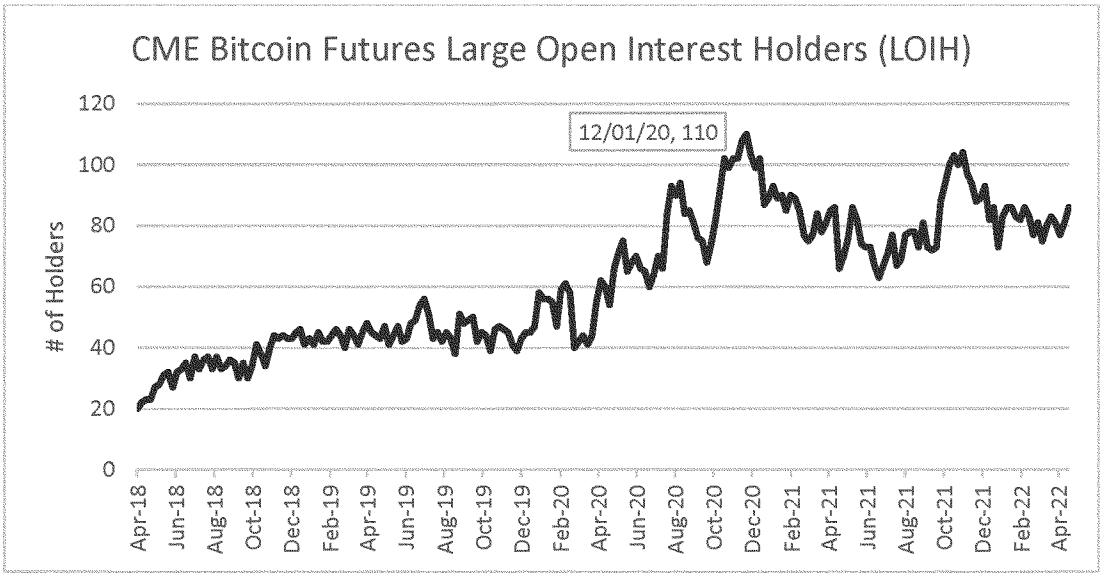
[46] *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html*; and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

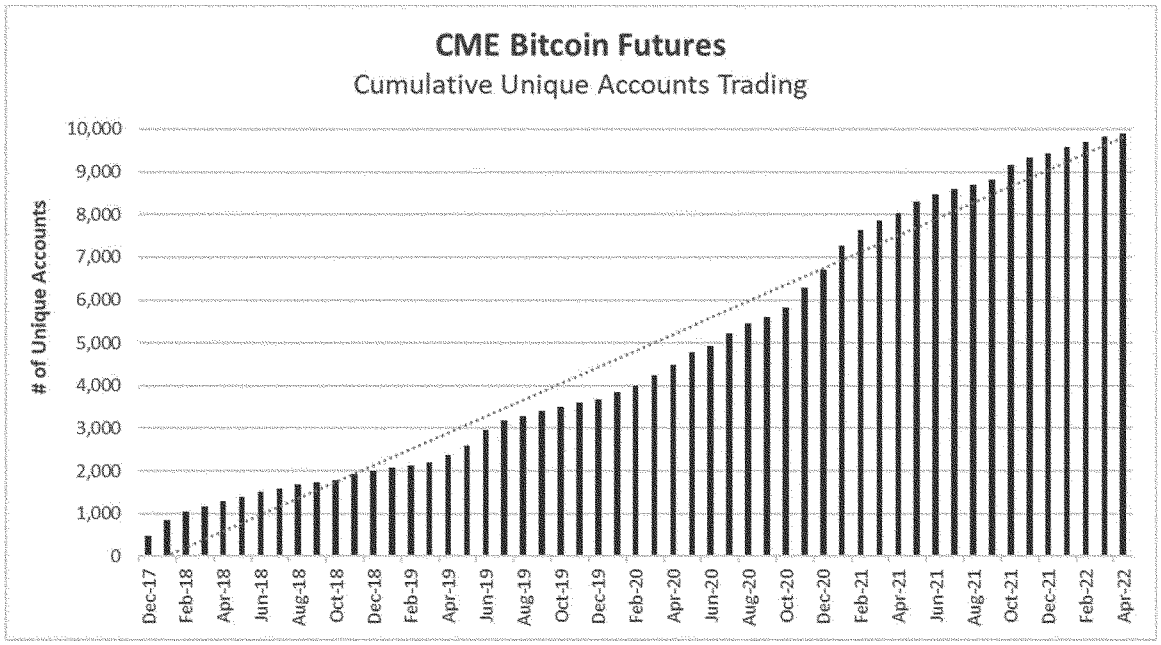
[47] *See, e.g.,* Tesla 10–K for the year ended December 31, 2020, which mentions bitcoin just nine times: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[48] The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[49] Source: CME, Bloomberg 4/30/22.

The number of large open interest holders [50]and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened Bitcoin price volatility.





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The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates

[50] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $38,605 per bitcoin on 4/30/2022, more than 80 firms had outstanding positions of greater than $4.8 million in Bitcoin Futures.

that bitcoin futures lead the bitcoin spot market in price formation.[51]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[52] including Commodity-Based Trust Shares,[53] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [54] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [55] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[56] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[57]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[58]

(a) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot

[51] *See* Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically ''Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares''); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). *See also* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[52] *See* Exchange Rule 14.11(f).

[53] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[54] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[55] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[56] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[57] *See* Wilshire Phoenix Disapproval.

[58] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' Id. at 37582.

bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

Additionally, a Bitcoin Futures ETF is actually potentially more susceptible to manipulation than a Spot Bitcoin ETP where the underlying trust offers only in-kind creation and redemption. Specifically, the pricing of Bitcoin Futures is based on prices from spot bitcoin markets, while shares of a Spot Bitcoin ETP would represent an interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. Potential manipulation of a Bitcoin Futures ETF would require manipulation on the spot markets on which the pricing for Bitcoin Futures are based while the in-kind creation and redemption process and fungibility of bitcoin means that a would be manipulator of a Spot Bitcoin ETP would need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants. Further to this point, this arbitrage opportunity also acts to reduce any incentives to manipulate the price of a Spot Bitcoin ETP because the underlying trust will create and redeem shares at set rates of bitcoin per share without regard to the price that the ETP is trading at in the secondary market or the price of the underlying index. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the in-kind creation and redemption process, the spot market arbitrage opportunities that such in-kind creation and redemption process creates, the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Skew, the cost to buy or sell $5 million worth of bitcoin averages roughly 48 basis points with a market impact of $139.08.[59] Stated another way, a market participant could enter a market buy or sell order for $5 million of bitcoin and only move the market 0.48%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

As such, the combination of the in-kind creation and redemption process, the Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. Consistent with prior points above, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Benchmark which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Benchmark significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[60] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Benchmark because there is little financial incentive to do so.

VanEck Bitcoin Trust

Delaware Trust Company is the trustee (''Trustee''). The State Street Bank and Trust Company will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). Van Eck Securities Corporation will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' of Shares. Van Eck Securities Corporation (''VanEck'') provides assistance in the marketing of the Shares. The Custodian will be responsible for custody of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[61] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions in blocks of 50,000 Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the

[59] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase, FTX and Kraken during the one year period ending May 2022.

[60] While the Benchmark will not be particularly important for the creation and redemption process, it will be used for calculating fees.

[61] 15 U.S.C. 80a–1.

Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is for the Shares to reflect the performance of the MVIS® CryptoCompare Bitcoin Benchmark Rate less the expenses of the Trust's operations. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value its Shares daily based on the reported MVIS® CryptoCompare Bitcoin Benchmark Rate and process all creations and redemptions in-kind in transactions with authorized participants. The Trust is not actively managed.

The Benchmark

As described in the Registration Statement, the Fund will use the Benchmark to calculate the Trust's NAV. The Benchmark is designed to be a robust price for bitcoin in USD and there is no component other than bitcoin in the index. The underlying exchanges are sourced from the industry leading CryptoCompare Exchange Benchmark review report. CryptoCompare Exchange Benchmark was established in 2019 as a tool designed to bring clarity to the digital asset exchange sector by providing a framework for assessing risk and in turn bringing transparency and accountability to a complex and rapidly evolving market.[62] The current exchange composition of the Benchmark is Bitstamp, Coinbase, Gemini, itBit and Kraken, which are the same constituents that compose the CME CF Bitcoin Reference Rate.

In calculating the MVIS® CryptoCompare Bitcoin Benchmark Rate, the methodology captures trade prices and sizes from exchanges and examines twenty three-minute periods leading up to 4:00 p.m. EST. It then calculates an equal-weighted average of the volume-weighted median price of these twenty three-minute periods, removing the highest and lowest contributed prices. Using twenty consecutive three-minute segments over a sixty-minute period means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or would need to replicate efforts multiple times across exchanges, potentially triggering review. This extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction. The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because, any manipulation attempt would have to involve a majority of global spot bitcoin volume in a three-minute window to have any influence on the NAV. As discussed in the Registration Statement, removing the highest and lowest prices further protects against attempts to manipulate the NAV, requiring bad actors to act on multiple exchanges at once to have any ability to influence the price.

Availability of Information

In addition to the price transparency of the Benchmark, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[63] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Benchmark, including key elements of how the Benchmark is calculated, will be publicly available at *www.mvis-indices.com/*.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Benchmark. Information relating to trading, including price and volume

[62] The CryptoCompare Exchange Benchmark methodology utilizes a combination of qualitative and quantitative metrics to analyze a comprehensive data set across eight categories of evaluation legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events. The CryptoCompare Exchange Benchmark review report assigns a grade to each exchange which helps identify what it believes to be the lowest risk exchanges in the industry. Based on the CryptoCompare Exchange Benchmark, MVIS initially selects the top five exchanges by rank for inclusion in the MVIS® CryptoCompare Bitcoin Benchmark Rate. If an eligible exchange is downgraded by two or more notches in a semi-annual review and is no longer in the top five by rank, it is replaced by the highest ranked non-component exchange. Adjustments to exchange coverage are announced four business days prior to the first business day of each of March and September at 23:00 CET. The MVIS® CryptoCompare Bitcoin Benchmark Rate is rebalanced at 16:00:00 GMT/BST on the last business day of each of February and August.

[63] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

The Bitcoin Custodian

The Custodian's services (i) allow bitcoin to be deposited from a public blockchain address to the Trust's bitcoin account and (ii) allow bitcoin to be withdrawn from the bitcoin account to a public blockchain address as instructed by the Trust. The Custody Agreement requires the Custodian to hold the Trust's bitcoin in cold storage, unless required to facilitate withdrawals as a temporary measure. The Custodian will use segregated cold storage bitcoin addresses for the Trust which are separate from the bitcoin addresses that the Custodian uses for its other customers and which are directly verifiable via the Bitcoin Blockchain. The Custodian will safeguard the private keys to the bitcoin associated with the Trust's bitcoin account. The Custodian will at all times record and identify in its books and records that such bitcoins constitute the property of the Trust. The Custodian will not withdraw the Trust's bitcoin from the Trust's account with the Custodian, or loan, hypothecate, pledge or otherwise encumber the Trust's bitcoin, without the Trust's instruction. If the custody agreement terminates, the Sponsor may appoint another custodian and the Trust may enter into a custodian agreement with such custodian.

Net Asset Value

NAV means the total assets of the Trust including, but not limited to, all bitcoin and cash, if any, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator will determine the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the MVIS® CryptoCompare Bitcoin Benchmark Rate as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 50,000. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds a specified commodity [64] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or

[64] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[65]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[66] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[67] in general and Section 6(b)(5) of the Act[68] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[69] including Commodity-Based Trust Shares,[70] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[71] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act because this filing sufficiently demonstrates that the standard that has previously been articulated by the Commission applicable to Commodity-

[65] For a list of the current members and affiliate members of ISG, *see www.isgportal.com*.

[66] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[67] 15 U.S.C. 78f.

[68] 15 U.S.C. 78f(b)(5).

[69] *See* Exchange Rule 14.11(f).

[70] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[71] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

Based Trust Shares has been met as outlined below.

Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order for a proposal to list and trade a series of Commodity-Based Trust Shares to be deemed consistent with the Act, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [72] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[73] As such, the only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[74]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[75]

(a) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

Additionally, a Bitcoin Futures ETF is actually potentially more susceptible to manipulation than a Spot Bitcoin ETP where the underlying trust offers only in-kind creation and redemption. Specifically, the pricing of Bitcoin Futures is based on prices from spot bitcoin markets, while shares of a Spot Bitcoin ETP would represent an interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. Potential manipulation of a Bitcoin Futures ETF would require manipulation on the spot markets on which the pricing for Bitcoin Futures are based while the in-kind creation and redemption process and fungibility of bitcoin means that a would be manipulator of a Spot Bitcoin ETP would need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants. Further to this point, this arbitrage opportunity also acts to reduce any incentives to manipulate the price of a Spot Bitcoin ETP because the underlying trust will create and redeem shares at set rates of bitcoin per share without regard to the price that the ETP is trading at in the secondary market or the price of the underlying index. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the in-kind creation and redemption process, the spot market arbitrage opportunities that such in-kind creation and redemption process creates, the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Skew, the cost to buy or sell $5 million worth of bitcoin averages roughly 48 basis points with a market impact of $139.08.[76] Stated another way, a market participant could enter a market buy or sell order for $5 million of bitcoin and only move the market 0.48%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

As such, the combination of the in-kind creation and redemption process, the Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized

[72] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[73] For a list of the current members and affiliate members of ISG, *see www.isgportal.com*.

[74] *See* Wilshire Phoenix Disapproval.

[75] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

[76] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase, FTX and Kraken during the one year period ending May 2022.

participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. Consistent with prior points above, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Benchmark which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Benchmark significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[77] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Benchmark because there is little financial incentive to do so.

The Exchange also believes that reviewing this proposal through the lens of the Bitcoin Futures Approvals would also lead the Commission to approving this proposal. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[78] The Exchange believes that the following excerpt from the Teucrium Approval is particular informative:

The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[79]

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin exchanges that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin exchanges means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through ''trading outside of the CME bitcoin futures market,'' it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the CME Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and further notes that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under

[77] While the Benchmark will not be particularly important for the creation and redemption process, it will be used for calculating

[78] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[79] *See* Teucrium Approval at 21679.

Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Benchmark, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Benchmark, including key elements of how the Benchmark is calculated, will be publicly available at *www.mvis-indices.com/*.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Benchmark. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. Premium and discount volatility, high fees, rolling costs, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a Spot Bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle, specifically by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to Bitcoin Futures ETFs which will eliminate roll cost; (iv) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (v) providing an alternative to custodying spot bitcoin. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establishes the Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2022–035 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–CboeBZX–2022–035. 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–CboeBZX–2022–035 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[80]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14884 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

[80] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95215; File No. SR–CboeBZX–2022–036]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''BZX Equities'') by: (i) introducing a new Step-Up Tier 3 and (ii) modifying the criteria in Single MPID Investor Tier 1. The Exchange proposes to implement these changes effective July 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity.

The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. For orders in securities priced below $1.00, the Exchange does not provide a rebate or assess a fee for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental

[3] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 27, 2022), available at *https://markets.cboe.com/us/equities/market_statistics/*.

incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying more stringent criteria.

Step-Up Tier 3

Pursuant to footnote 2 of the Fee Schedule, the Exchange currently offers two Step-Up Tiers that provide Members an opportunity to qualify for an enhanced rebate for liquidity adding orders that yield fee codes B,[4] V,[5] and Y [6] where they increase their relative liquidity each month over a predetermined baseline. The Exchange notes that Step-Up Tiers are designed to encourage Members that provide displayed liquidity on the Exchange to increase their order flow, which would benefit all Members by providing greater execution opportunities on the Exchange. Now the Exchange proposes to add an additional Step-Up Tier 3 to footnote 2 of the Fee Schedule. Proposed Step-Up Tier 3 is as follows:

• Proposed Step-Up Tier 3 offers an enhanced rebate of $0.0032 per share for qualifying orders (*i.e.,* orders yielding fee code B, V or Y) where an MPID (i) has a Step-Up ADAV [7] from May 2021 greater than or equal to 30,000,000 shares or MPID has a Step-Up Add TCV [8] from May 2021 greater than or equal to 0.30%; and (ii) MPID has an ADV [9] greater than or equal to 0.30% of the TCV [10] or MPID has an ADV greater than or equal to 35,000,000 shares.

The Exchange notes that the Step-Up tiers, including proposed Step-Up Tier 3, are designed to provide Members with additional opportunities to receive enhanced rebates by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. The proposed change is designed to give Members an additional opportunity to receive an enhanced rebate for orders meeting the applicable threshold. Furthermore, the proposed Step-Up Tier 3 is designed to increase the Members' provision of liquidity to the Exchange, which increases execution opportunities and provides for overall enhanced price discovery and price improvement opportunities on the Exchange. Increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

Single MPID Investor Tier 1

The Single MPID Investor Tier set forth under footnote 4 of the Fee Schedule provides an enhanced rebate of $0.0032 [11] or $0.0033 [12] per share for qualifying orders which yield fee codes B,[13] V,[14] or Y.[15] The Exchange proposes to amend the criteria necessary to achieve Tier 1 under footnote 4 as described below. Currently, under Tier 1 a Member may receive an enhanced rebate where their MPID has: (i) a Step-Up ADV [16] as a percentage of TCV greater than or equal to 0.10% from May 2021 or the MPID has a Step-Up ADV greater than or equal to 8,000,000 shares from May 2021; and (ii) the MPID has an ADAV as a percentage of TCV greater than or equal to 0.55% or the MPID has an ADAV greater than or equal to 50,000,000 shares. The Exchange is proposing to amend the criteria under Tier 1 as follows:

• Proposed Single MPID Tier 1 offers an enhanced rebate of $0.0032 or $0.0033 per share for qualifying orders (*i.e.,* those yielding fee codes B, V or Y) where an MPID (i) has a Step-Up ADV as a percentage of TCV greater than or equal to 0.10% from May 2021 or has a Step-Up ADV of 10,000,000 (as compared to 8,000,000) from May 2021; and (ii) has an ADAV as a percentage of TCV greater than or equal to 0.50% (as compared to 0.55%); or MPID has an ADAV greater than or equal to 45,000,000 (as compared to 50,000,000).

The Exchange believes that Members who strive to achieve the proposed amended Single MPID Tier 1 criteria continue to be incentivized to increase the overall amount of liquidity provided on the Exchange, both add and remove volume, thereby contributing to a deeper and more liquid market and providing more execution opportunities to market participants. Incentivizing an increase in both liquidity adding volume and liquidity removing volume, through revised criteria and enhanced rebate opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market and to increase transactions and take execution opportunities provided by such increased activity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

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.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] 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) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange notes that volume-based rebates such as those proposed herein have been widely adopted by exchanges,[20] including the Exchange,[21] and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher

[4] Orders yielding Fee Code ''B'' are displayed orders adding liquidity to BZX (Tape B).

[5] Orders yielding Fee Code ''V'' are displayed orders adding liquidity to BZX (Tape A).

[6] Orders yielding Fee Cody ''Y'' are displayed orders adding liquidity to BZX (Tape C).

[7] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV. ADAV means average daily added volume calculated as the number of shares added per day and is calculated on a monthly basis.

[8] ''Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

[9] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

[10] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[11] An enhanced rebate of $0.0032 per share is paid to MPIDs who satisfy the criteria in Tier 1 in Tape B securities.

[12] An enhanced rebate of $0.0033 per share is paid to MPIDs who satisfy the criteria in Tier 1 in Tape A or Tape C securities.

[13] *Supra* note 4.

[14] *Supra* note 4 [sic].

[15] *Supra* note 6.

[16] ''Step-Up ADV'' means ADV in the relevant baseline month subtracted from current day ADV.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *See* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[21] *See* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

levels or liquidity provision and/or growth patterns. The Exchange believes the proposed Step-Up Tier 3 is reasonable, fair and equitable, and not unfairly discriminatory because the proposed Tier provides an additional opportunity for all Members to receive an enhanced rebate by achieving the proposed threshold. Furthermore, the Exchange believes that the proposed Step-Up Tier 3 is reasonable as it serves to incentivize Members to increase their displayed liquidity adding volume on the Exchange. Additionally, the Exchange believes that the proposed amendments to Single MPID Tier 1 are a reasonable means to encourage Members to increase their relative add and remove liquidity on the Exchange each month over a predetermined baseline by offering Members an enhanced rebate, albeit with slightly modified criteria. Greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, and greater remove volume order flow may increase transactions on the Exchange, which the Exchange believes incentivizes liquidity providers to submit additional liquidity and execution opportunities. An overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange further believes that the proposed Step-Up Tier 3 and proposed changes to Single MPID Tier 1 represent an equitable allocation of reasonable dues, fees, and other charges because the threshold necessary to achieve the tiers encourages Members to add increased liquidity to the Exchange and the Exchange believes the proposed and current enhanced rebates, respectively, are commensurate with the proposed thresholds. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed Step-Up Tier 3 and Single MPID Tier 1 enhanced rebates and will have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate for each tier if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for the proposed Step-Up Tier 3 or Single MPID Tier 1. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, the Exchange anticipates one Member will be able to compete for and reach the criteria under proposed Step-Up Tier 3 and anticipates three Members may be able to compete for and reach the proposed amended criteria under Single MPID Tier 1. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

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.

Particularly, the proposed Step-Up Tier 3 and proposed amendments to Single MPID Tier 1 do not impose a burden on intramarket competition that is not in furtherance of the Act in that each tier will be eligible to all Members equally in that all Members have the opportunity to submit orders in an attempt to satisfy the proposed amended criteria and receive the enhanced rebates associated with each tier. Furthermore, the Exchange believes that the criteria under proposed Step-Up Tier 3 and the proposed amended criteria under Single MPID Tier 1 will continue to incentivize Members to submit additional liquidity to the Exchange and to increase their order flow on the Exchange generally, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange believes the proposed Step-Up Tier 3 and proposed amendments to Single MPID Tier 1 do not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from pricing currently offered by the Exchange or pricing offered by other equities exchanges. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.[22] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.'. . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . .''.[24]

[22] *Supra* note 3.

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release

Continued

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and paragraph (f) of Rule 19b–4 [26] 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-CboeBZX–2022–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-CboeBZX–2022–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX–2022–036 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14875 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95216; File No. SR–NASDAQ–2022–038]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date of Its Post-Trade Risk Management Product to Q4 2022

July 7, 2022.

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 June 30, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 extend the implementation date of its Post-Trade Risk Management product to Q4 2022.

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

Nasdaq is filing this proposal to extend the implementation date of its Post-Trade Risk Management tool to Q4 2022.

Nasdaq proposed to enhance its connectivity, surveillance and risk management services by launching three re-platformed products: (i) WorkX, (ii) Real-Time Stats and (iii) Post-Trade Risk Management. These changes were filed by Nasdaq on April 20, 2021 and published in the **Federal Register** on May 7, 2021.[3]

Nasdaq initially proposed that WorkX and Real-Time Stats would launch on April 12, 2021 and Post-Trade Risk Management would launch no later than Q3 2021.[4] Due to re-prioritization in the Nasdaq product pipeline, on September 14, 2021, Nasdaq proposed to delay the implementation date of Post-Trade Risk Management until Q1 2022.[5] Nasdaq subsequently proposed to delay the implementation date from Q1 2022 to

[3] *See* Securities Exchange Act Release No. 91744 (May 3, 2021), 86 FR 24685 (May 7, 2021) (NASDAQ–2021–025) (''Proposal'').

[4] *See* Proposal *supra* n. 3 at 24685.

[5] *See* Securities Exchange Act Release No. 93125 (September 24, 2021), 86 FR 54255 (September 30, 2021) (SR–NASDAQ–2021–073).

Q2 2022.[6] Due to continued re-prioritization, Nasdaq is further delaying the implementation of Post-Trade Risk Management until Q4 2022.[7] The Exchange will announce the new implementation date in an Equity Trader Alert at least ten days in advance of implementing the Post-Trade Risk Management product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The purpose of this proposal is to modify the timing of the planned implementation for the Post-Trade Risk Management product and to inform the SEC and market participants of that change. The introduction of the Post-Trade Risk Management product was proposed in a rule filing that was submitted to the SEC, and the Exchange is not proposing with this filing, any changes other than to modify the implementation date for the Post-Trade Risk Management product. Nasdaq is delaying the implementation date in order to complete testing in line with Nasdaq's re-prioritized product pipeline.

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. As explained above, the purpose of this proposal is to modify the timing of the planned implementation for the Post-Trade Risk Management product and to inform the SEC and market participants of that change. The existing Nasdaq Risk Management product will continue to be available, and the implementation delay will impact all market participants equally. The Exchange does not expect the date change to place any burden on competition and clearing brokers will continue to have use of Nasdaq Risk Management service to monitor correspondent activity against limit settings and manage credit risk exposure.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[13] 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. Waiver of the operative delay would allow the Exchange to immediately delay the implementation date of the Post-Trade Risk Management product to Q4 2022, so that the Exchange may complete testing in line with its re-prioritized product pipeline. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[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 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–NASDAQ–2022–038 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–2022–038. 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

[6] See Securities Exchange Act Release No. 94704 (April 12, 2022), 87 FR 22958 (April 18, 2022) (SR–NASDAQ–2022–029).

[7] As a result of the delay, the Exchange is designating Equity 7, Section 116–A, the Post-Trade Risk Management Rule, to be operative in Q4 2022.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

submissions should refer to File Number SR–NASDAQ–2022–038 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14882 Filed 7–12–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- 95214; File No. SR–ICC–2022–006]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Model Validation Framework

July 7, 2022.

I. Introduction

On May 17, 2022, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Model Validation Framework (the ''Framework''). The proposed rule change was published for comment in the **Federal Register** on June 3, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change[4]

A. Background

The Framework describes the process for ICC assuring the effectiveness of its models, including changes to existing models and the adoption of new models. ICC's processes rely on four controls: initial validation; ongoing monitoring and validation; investigation; and independent periodic review. The proposed rule change would: (a) expand the scope of the Framework to include all of ICC's models; (b) reorganize certain sections of the Framework; (c) update and strengthen ICC's requirements regarding initial validation, ongoing monitoring and validation, and independent periodic review; (d) assign additional responsibilities under the Framework to ICC's Risk Oversight Officer (''ROO''); and (e) clarify the independence requirements for validators.

B. Scope

The current Framework applies to ICC's models that make up its risk management system, meaning its models relating to margin, guaranty fund, and liquidity. The proposed rule change would expand the scope of the Framework so that it applies to all of ICC's models and not just those related to its risk management system. The proposed rule change therefore would define a ''Model'' as a quantitative method, system, or approach that applies statistical, economic, financial, or mathematical theories, techniques, and assumptions to process input data into quantitative estimates. This change would bring within the scope of the Framework ICC's Model related to counterparty credit.[5] Thus, after the proposed rule change, the Framework would apply to all of ICC's Models, not only those related to its risk management system. ICC is making this change because it determined it was beneficial to apply the requirements of the Framework to all of its Models, and not just those related to its risk management system.

As part of this change, the proposed rule change would make two changes to the organization of the current Framework. First, the current Framework begins with an introductory section that describes ICC's risk management system and the Models that comprise the risk management system. Given that, as proposed, the Framework would apply to all of ICC's Models and not just those Models that are part of its risk management system, the proposed rule change would delete the current introductory section and replace it with a new overview section. Instead of describing ICC's risk management system and the components of the risk management system, the new overview section would provide a general description of ICC's Models. The new overview section further would define the purpose of the Framework as providing assurances that ICC's Models are performing as expected, in line with their design objectives and business use.

Second, throughout the Framework, the proposed rule change would replace references to ICC's risk management system with references to ICC's Models. For example, the current Framework classifies changes to ICC's Models based on how the changes affect the risk management system's assessment of risk. The proposed rule change instead would classify changes based on how they affect a Model's assessment of risk.

C. Other Organizational Changes

The proposed rule change would make three organizational changes that would, in ICC's view, more appropriately position details regarding Model controls, Model Change materiality, and Model development. First, with regard to controls, the proposed rule change would move information found in current Subsection 1.3 to a new Subsection 3.1. Current Subsection 1.3 provides an overview of the four controls used by ICC to assure the effectiveness of its Models, including changes to existing Models and new Models: initial validation; ongoing monitoring and validation; investigation; and independent periodic review. The proposed rule change would move the description of these controls, including a visual diagram of how the controls work together, to a new Subsection 3.1. Because Section 3 of the Framework describes each of the four controls in detail, ICC maintains that this overview of the controls is more appropriate in new Subsection 3.1, rather than at the beginning of the Framework.[6]

Second, with regard to materiality, the proposed rule change would renumber current Subsection 2.2 as new Subsection 1.3. New Subsection 1.3 would be substantively the same as current Subsection 2.2 and would contain a discussion of how ICC classifies proposed changes to its Models. ICC classifies Model Changes as either Materiality A or Materiality B, depending on how substantially the proposed change affects a Model's assessment of risk.[7]

Finally, with regard to development, the proposed rule change would move to new Subsection 1.4 language currently found in Subsection 1.2 regarding the development of Models and Model Change, while maintaining the substance of this language.[8] Thus, under the proposed rule change, as in the current Framework, new Model and

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Model Validation Framework; Exchange Act Release No. 95002 (May 27, 2022); 87 FR 33851 (June 3, 2022) (File No. SR–ICC–2022–006) (''Notice'').

[4] Capitalized terms not otherwise defined herein have the meanings assigned to them in the Framework or ICC's Clearing Rules, as applicable.

[5] Notice, 87 FR at 33851.

[6] Notice, 87 FR at 33852.

[7] Notice, 87 FR at 33852.

[8] The change would clarify, without changing ICC's processes, that the model development process is applicable to new Models as well as Model Changes.

Model Change development includes design, implementation, user-acceptance testing, and deployment phases, and is subject to additional ICC governance, as appropriate.[9]

D. Controls

As mentioned above, the current Framework describes ICC's process for assuring the effectiveness of its Models, including Model changes and the adoption of new Models, using four controls: initial validation; ongoing monitoring and validation; investigation; and independent periodic review. While maintaining the overall substance of these four controls, the proposed rule change would revise certain details relating to how ICC carries out the first, second, and fourth controls.

Initial Validation

The current Framework requires that ICC complete an internal initial validation for all changes to its Models and an independent initial validation for Materiality A Model Changes. ICC relies on this control to validate the conceptual soundness of a change, as well as the soundness of the proposed approach to ongoing monitoring and validation of the change.

Under the proposed rule change, ICC would be required to complete an internal initial validation for all changes to its Models and an independent initial validation for Materiality A Model Changes, the same as the current Framework. The proposed rule change also would require that ICC conduct an independent initial validation for all new Models, consistent with the application of the Framework to all of ICC's Models. As part of this revision, the proposed rule change would add the term Model or new Model to certain provisions that describe the components of the independent initial validation.

Moreover, as part of the independent initial validation, the current Framework requires a report detailing all open items reflecting the independent validator's comments, rated using a priority scale. The proposed rule change would maintain this requirement for a report, but would further specify that the report should include information describing the work performed by the independent validator as part of the independent initial validation process, including, but not limited to, any analysis of or challenges to the assumptions of the change to existing Model or the new Model. This change would memorialize ICC's current practice with respect to these reports.[10]

Ongoing Monitoring and Validation

The current Framework requires that ICC use the second control, ongoing monitoring and validation, to assure that it has appropriately configured and calibrated a Model and any change, and to assure that a Model is performing as desired. Under the proposed rule change, ICC would be required to conduct ongoing monitoring and validation, the same as in the current Framework, but the proposed rule change would apply the ongoing monitoring and validation to all of ICC's Models, in accordance with the change to the scope of the Framework discussed above.

The current Framework describes three components of ongoing monitoring and validation: parameter setting, execution monitoring, and outcome analysis. The proposed rule change would retain these same three components, while revising the description of parameter setting and outcome analysis as described below.

The current Framework describes parameter setting, which ICC conducts pursuant to its Risk Parameter Setting and Review Policy. The proposed rule change would maintain the current description of parameter setting but would replace the specific reference to the Risk Parameter Setting and Review Policy with a general reference to ICC's policies. As described in the Notice, ICC is making this change because ICC considers such references unnecessary, as the Framework is not intended to introduce other policies.[11]

The current Framework describes outcome analysis, which involves comparing the results of a Model to actual or hypothetical outcomes. The current Framework explains that ICC performs two types of outcome analysis: historical back testing and forward looking stress testing. The current Framework goes on to state that ICC describes its back-testing practices in the ICC Back-Testing Framework and its stress testing practices in the ICC Stress-Testing Framework. The proposed rule change would revise this description to note that ICC conducts several types of outcome analyses, rather than just two, and further would remove the references to the ICC Back-Testing Framework and the ICC Stress-Testing Framework. ICC is making this change because ICC in fact performs other outcome analysis, in addition to historical back testing and forward looking stress testing, such as liquidity stress testing.[12]

Independent Periodic Review

The current Framework describes the purpose of the fourth and final control, independent periodic review, as confirming that a Model or change is still fit for purpose, that underlying assumptions are still valid, and that ICC has performed the ongoing monitoring and validation as required in the initial validation. The proposed rule change would not alter this overall description, but would revise aspects of the independent periodic review, as currently described in the Framework.

First, the current Framework states that ICC's Chief Risk Officer (''CRO'') provides support and information to allow the independent validators to perform periodic reviews of all ICC Model Components and related practice at least every twelve months. The proposed rule change would revise this language slightly, to state that the CRO would provide support and information to allow the independent validators to perform the periodic reviews of all ICC Model Components and related practices, in line with the established periodicity of review.

To clarify the periodicity of review, the proposed rule change would add language explaining that, under applicable regulations issued by the Commission and the Commodity Futures Trading Commission, ICC is required to perform independent periodic reviews on its Models related to financial risk management and liquidity risk management on an annual basis.[13] Moreover, the proposed rule change would add language to explain that for those Models not subject to these regulatory requirements, ICC's ROO, in consultation with the Risk Committee, would set an established periodicity for independent periodic review, and ICC would rely on the date of the engagement letter to track the requirement.[14] ICC noted that currently the ROO, as the individual responsible for the operation and maintenance of the Framework, determines the appropriate periodicity of review for Models, in consultation with the Risk Committee.[15]

Moreover, the proposed rule change would revise the description of the

[9] Notice, 87 FR at 33852.

[10] Notice, 87 FR at 33852.

[11] Notice, 87 FR at 33852.

[12] Notice, 87 FR at 33852.

[13] ICC stated that in practice ICC would continue to ensure that not more than twelve months passes between each independent periodic review. Notice, 87 FR at 33852.

[14] ICC explained in the Notice that this language memorializes a current responsibility of the ROO. Notice, 87 FR at 33852.

[15] Notice, 87 FR at 33852.

components of the independent periodic review. The current Framework provides that the independent periodic review must demonstrate that a Model or change is fit for purpose; that its underlying assumptions are still valid; that ICC has complied with any conditions associated with approval of the Model or change; and that ICC has been complying with its ongoing monitoring and validation requirements. The proposed rule change would add language to note that the third component, compliance with any conditions associated with the approval of the Model or change, may not always be applicable. This component would not be applicable, for example, if there were no open items or conditions established during ICC's approval of the Model or change.

The proposed rule change also would revise the description of the report that an independent periodic review must produce. The current Framework requires that an independent periodic review produce a report from the independent validator providing a summary of the completed evaluation and details of any remaining open items for remediation, classified by priority. The proposed rule change would maintain this requirement, but would further specify that the report should include information describing the work performed by the independent validator as part of the independent periodic review process, including, but not limited to, any analysis of or challenges to the assumptions of the Model.[16]

The proposed rule change also would add language stating that timelines for remedial actions would consider any applicable governance or regulatory actions, or technology implementations, and ICC would consult with the Risk Committee regarding closure of any priority items or observation items, and any changes to previously presented timeframes. ICC stated in the Notice that it is making this change to ensure that it remediates high priority items as soon as possible and considers any applicable governance or regulatory actions or technology implementations in timelines for remedial actions.[17]

Finally, the proposed rule change would add language to state that ICC, at its discretion, could undertake ad hoc reviews of methodologies that do not meet the definition of a Model under the Framework. These methodologies could include, for example, third-party or vendor-supplied products. The current Framework does not contain provisions related to ad hoc reviews of third-party products. This change would allow ICC to apply the Framework to such products that could include, for example, the ISDA pricing model.

E. Risk Oversight Officer

Currently, the ROO is the owner of the Framework, and in that role is responsible to the ICC President for the successful operation and maintenance of the Framework. The current Framework assigns certain responsibilities to the ROO, such as maintaining a list of pre-approved Independent Model Validators. Under the proposed rule change, the ROO would remain the owner of the Framework and would retain its current responsibilities. The proposed rule change would specify certain other responsibilities for the ROO, in addition to these current responsibilities, as described below.[18]

The current Framework requires ICC's CRO to review and determine what changes to ICC's Models qualify as Model Changes, and further classify such changes as Materiality A or Materiality B. The current Framework further states that if the ROO and CRO cannot reach agreement on a specific change, ICC classifies the change as Materiality A. Thus, the current Framework contemplates the ROO having a role in reviewing and classifying Model Changes. The proposed rule change would make this role explicit by requiring that the ROO, in addition to the CRO, review and determine what changes to ICC's Models qualify as Model Changes, and further classify such changes as Materiality A or Materiality B.

The current Framework requires ICC's Risk Department to maintain the ICC Model Inventory, which is a central repository of key information about all ICC Models, their components, and any changes to the Models. Under the proposed rule change, the ROO, rather than the Risk Department, would maintain the Model Inventory. In addition, the current Framework requires the ROO to review the model inventory at least quarterly. Under the proposed rule change, the ROO also would review the model inventory at least quarterly, but the ROO would do so in conjunction with the Risk Department.

Before implementing a Materiality A Model Change, the current Framework requires ICC to, among other things, complete an independent validation, obtain a report of the independent validation, and receive no objection to the independent validation from the Risk Committee. As part of receiving the no-objection, the current Framework requires that the CRO or its designee present the independent validation report to the Risk Committee. Under the proposed rule change, ROO and CRO (or its designee) together would present this report to the Risk Committee.

Similarly, when completing an independent periodic review, the current Framework requires the independent validator to produce a report, as described above. The current Framework requires that the CRO or its designee present the independent periodic review report to the Risk Committee. Under the proposed rule change, ROO and CRO (or its designee) together would present this report to the Risk Committee.

Moreover, the proposed rule change would assign the ROO an additional responsibility with respect to independent periodic reviews. As discussed above, applicable regulations specify how often ICC must review certain of its Models. For those Models not subject to these regulatory requirements, the ROO, in consultation with the Risk Committee, would establish the periodicity for review.

Finally, the current Framework requires the ROO to maintain a list of pre-approved Independent Model Validators. The current Framework further provides that the CRO or ROO can propose new Model Validators to add to the list and makes the ROO responsible for adding a new Model Validator. As part of adding a Model Validator, the current Framework requires that the ROO provide a written summary describing how the proposed new Model Validator meets the necessary technical expertise and independence requirements. Under the proposed rule change, the ROO would continue to maintain a list of pre-approved Independent Model Validators, the CRO or ROO would propose new Model Validators, and the ROO would continue to be responsible for adding a new Model Validator. As part of adding a new Model Validator, the proposed rule change would further require that the ROO review resumés/CVs of the proposed new Model Validator, in addition to providing a written summary demonstrating how the proposed new Model Validator meets the necessary technical expertise and independence requirements.

[16] ICC stated in the Notice that this change would memorialize current practices. Notice, 87 FR at 33852.

[17] Notice, 87 FR at 33852.

[18] ICC explained in the Notice that these changes would memorialize current responsibilities of the ROO. Notice, 87 FR at 33853.

F. Independence Requirements

The current Framework requires that independent validators meet certain independence and technical expertise requirements. The proposed rule change would maintain these requirements while further specifying that in cases of a team of validators, all members must meet the independence requirements, and ICC will consider members on a collective basis when evaluating for technical expertise requirements.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[19] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[20] and Rules 17Ad–22(e)(2)(v) and 17Ad–22(e)(3)(i) thereunder.[21]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions.[22] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed rule change is consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions at ICC because it would expand the scope of the Framework and improve the operation of the Framework.

With respect to the scope of the Framework, as discussed in Part II.B above, the proposed rule change would apply the Framework to all of ICC's Models. This change would bring into the Framework ICC's Model related to counterparty credit and other Models that ICC may adopt in the future. The Commission believes this change should help ICC to maintain the effectiveness of its Model related to counterparty credit—and any other Models that ICC may adopt in the future—by subjecting these Models to the Framework's requirements and controls. The Commission further believes that having an effective counterparty credit Model may in turn allow ICC to avoid credit losses that could disrupt its ability to promptly and accurately clear transactions.

The Commission believes the other aspects of the proposed rule change discussed above should improve the operation of the Framework. For example, the Commission believes that the changes discussed in Part II.C above should help to improve the organization and readability of the Framework and therefore make it easier to use and apply. The Commission further believes that memorializing additional responsibilities for the ROO, as discussed in Part II.E above, should clarify these responsibilities and help to ensure that ICC personnel, including the current ROO and successor ROOs, can review, understand, and follow these responsibilities. Finally, the Commission believes that specifying how the independence requirements would apply to a team of validators, as discussed in Part II.F above, should help to ensure a clear and consistent application of these requirements to such teams. The Commission believes these changes, overall, should improve the operation of the Framework.

The Commission also believes that the changes discussed in Part II.D above should improve the Framework by revising certain details with respect to the four controls. For example, specifying that ICC must conduct an independent initial validation for all new Models should help to ensure that ICC personnel complete such validations, consistent with current practice. Because independent initial validations can identify errors and issues, the Commission believes that requiring independent initial validations for all new Models should help to ensure that any new Model is effective and well calibrated. Specifying that an independent validator's report must describe the work performed by the independent validator, including, but not limited to, any analysis of or challenges to the assumptions of the change to existing Model or the new Model should help ICC to revise and improve such assumptions, as needed. Revising the description of parameter setting and outcome analysis to remove references to other extraneous ICC policies would simplify this description and help to ensure that it does not become out of date due to changes to other policies. Finally, the Commission believes that the revisions to the independent periodic review would help to ensure that ICC completes validations as required by applicable regulations, while making the provisions broad enough to encompass reviews not covered by applicable regulations, including ad hoc reviews of methodologies that do not meet the definition of a Model.

For these reasons, the Commission believes the proposed rule change would expand the scope of the Framework and improve the operation of the Framework. The Commission further believes that because the Framework enables ICC to confirm the appropriate functioning of its Models, expanding the scope and improving the operation of the Framework should in turn help ICC to maintain effective and well-designed Models. Such Models may in turn allow ICC to avoid credit losses or liquidity shortfalls that could disrupt its ability to promptly and accurately clear transactions.

The Commission therefore believes that, by improving the Framework, the proposed rule change would help to ensure the effectiveness of ICC's models and therefore its ability to promptly and accurately clear and settle securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[23]

B. Consistency With Rule 17Ad–22(e)(2)(v)

Rule 17Ad–22(e)(2)(v) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[24] As discussed in Part II.E above, the proposed rule change would make a number of amendments to the Framework to memorialize additional responsibilities of ICC's ROO.[25] The Commission believes that memorializing these responsibilities in the Framework, as opposed to following unwritten practices, is consistent with the maintaining written policies and procedures designed to provide for clear and direct lines or responsibility. The Commission believes this is true because memorializing these responsibilities should help to ensure that they can be reviewed, understood, and followed by ICC personnel, including the current ROO and successor ROOs. The Commission therefore believes these changes would specify clear and direct lines of responsibility for the ROO, consistent with Rule 17Ad–22(e)(2)(v).[26]

C. Consistency With Rule 17Ad–22(e)(3)(i)

Rule 17Ad–22(e)(3)(i) requires that ICC establish, implement, maintain and

[19] 15 U.S.C. 78s(b)(2)(C).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(3)(i).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] 17 CFR 240.17Ad–22(e)(2)(v).

[25] Notice, 87 FR at 33852.

[26] 17 CFR 240.17Ad–22(e)(2)(v).

enforce written policies and procedures reasonably designed to, as applicable, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which, among other things, includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by ICC, that are subject to review on a periodic basis and approved by the board of directors annually.[27] As discussed above, the proposed rule change would expand the scope of the Framework so that it applies consistently across all of ICC's Models and not just those related to its risk management system. For example, bringing within the scope of the Framework ICC's Model related to counterparty credit. Moreover, under the revised Framework, ICC would review this Model on a periodic basis. The Commission further believes that this Model helps ICC manage a risk borne by ICC, the risk created by credit exposures to ICC's counterparties. The Commission therefore believes this change should help ensure that ICC reviews on a periodic basis a policy that ICC uses to identify, measure, monitor, and manage a risk borne by ICC, consistent with Rule 17Ad–22(e)(3)(i).[28]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[29] and Rules 17Ad–22(e)(2)(v) and 17Ad–22(e)(3)(i) thereunder.[30]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[31] that the proposed rule change (SR–ICC–2022–006), be, and hereby is, approved.[32]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14888 Filed 7–12–22; 8:45 am]

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[27] 17 CFR 240.17Ad–22(e)(3)(i).

[28] 17 CFR 240.17Ad–22(e)(3)(i).

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(3)(i).

[31] 15 U.S.C. 78s(b)(2).

[32] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95220; File No. SR–NASDAQ–2022–027]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing With a Capital Raise

July 7, 2022

I. Introduction

On March 21, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify certain pricing limitations for companies listing in connection with a direct listing with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange. The proposed rule change was published for comment in the **Federal Register** on April 8, 2022.[3] On May 19, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5]

On May 23, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 was published for comment in the **Federal Register** on June 2, 2022.[6] The Commission has received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Nasdaq Listing Rule IM–5315–2 provides listing requirements for Nasdaq's Global Select Market for a company that has not previously had its common equity securities registered under the Exchange Act to list its common equity securities on the Exchange at the time of effectiveness of a registration statement[8] pursuant to which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise'').[9] Securities qualified for listing under Nasdaq Listing Rule IM–5315–2 must begin trading on the Exchange following the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9) and Nasdaq Rule 4753 for the opening auction, otherwise known as the Nasdaq Halt Cross.[10] Currently, in the case of a Direct Listing with a Capital Raise, the Exchange will release the security for trading on the first day of listing if, among other things, the actual price calculated by the Nasdaq Halt Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement[11] (the ''Pricing Range Limitation'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94592 (April 4, 2022), 87 FR 20905 (April 8, 2022).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94947 (May 19, 2022), 87 FR 31915 (May 25, 2022). The Commission designated July 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Securities Exchange Act Release No. 94989 (May 26, 2022), 87 FR 33558 (June 2, 2022) (''Notice'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 (''Securities Act'').

[9] A Direct Listing with a Capital Raise includes listings where either: (i) only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction. *See* Nasdaq Listing Rule IM–5315–2. *See also* Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (order approving rules to permit a Direct Listing with a Capital Raise and adopting related rules concerning how the opening transaction for such listing will be effected) (''2021 Order''). The Exchange's rules provide for a company listing pursuant to a Direct Listing with a Capital Raise to list only on the Nasdaq Global Select Market.

[10] *See* Nasdaq Listing Rule IM–5315–2. ''Nasdaq Halt Cross'' means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Nasdaq Rule 4753(a)(4). ''Eligible Interest'' means any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Nasdaq Halt Cross. *See* Nasdaq Rule 4753(a)(5). Pursuant to Nasdaq Rule 4120, the Exchange will halt trading in a security that is the subject of an initial public offering (or direct listing), and terminate that halt when the Exchange releases the security for trading upon certain conditions being met, as discussed further below. *See* Nasdaq Rule 4120(a)(7) and (c)(8).

[11] The Exchange states that references in the proposal to the price range established by the issuer in its effective registration statement refer to the price range disclosed in the prospectus in such effective registration statement. *See* Notice, *supra*

The Exchange has proposed to modify the Pricing Range Limitation to provide that the Exchange would release the security for trading if: (a) the actual price calculated by the Nasdaq Halt Cross is at or above the price that is 20% below the lowest price of the disclosed price range; or (b) the actual price calculated by the Nasdaq Halt Cross is at a price above the highest price of such price range. For the Nasdaq Halt Cross to execute at a price outside of the disclosed price range, the company would be required to publicly disclose and certify to the Exchange that the company does not expect that such price would materially change the company's previous disclosure in its effective registration statement and that its effective registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering are less than or exceed the amount in the disclosed price range.[12] The Exchange would calculate the 20% threshold below the disclosed price range based on the maximum offering price set forth in the registration fee table in the company's effective registration statement, which the Exchange argues is consistent with the Instruction to paragraph (a) of Securities Act Rule 430A.[13] The Exchange has also proposed to make related conforming changes.

Currently Nasdaq Rule 4120(c)(9)(B) states that, notwithstanding the provisions of Nasdaq Rule 4120(c)(8)(A) and (c)(9)(A), in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, the Exchange, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade. The Exchange will release the security for trading if: (i) all market orders will be executed in the Nasdaq Halt Cross; and (ii) the actual price calculated by the Nasdaq Halt Cross complies with the Pricing Range Limitation. The Exchange will postpone and reschedule the offering only if either or both of such conditions are not met.[14] The Exchange states that if there is insufficient buy interest to satisfy the CDL Order [15] and all other market orders or if the Pricing Range Limitation is not satisfied, the Nasdaq Halt Cross would not proceed and such security would not begin trading.[16]

According to the Exchange, based on conversations it has had with companies and their advisors, the Exchange believes that some companies may be reluctant to use the existing rules for a Direct Listing with a Capital Raise because of concerns about the Pricing Range Limitation.[17] The Exchange states it believes ''that the Pricing Range Limitation imposed on a Direct Listing with a Capital Raise (but not on a traditional IPO) increases the probability of a failed offering because the offering cannot proceed without some delay not only for the lack of investor interest, but also if investor interest is greater than the company and its advisors anticipated.'' [18] According to the Exchange, the Exchange believes that there may be instances of offerings where the price determined by the Exchange's opening auction will exceed the highest price of the price range disclosed in the company's effective registration statement.[19] The Exchange states that, under the existing rule, a security subject to a Direct Listing with a Capital Raise cannot be released for trading by the Exchange if the actual price calculated by the Nasdaq Halt Cross is above the highest price of the disclosed price range.[20] The Exchange further states that, in this case, the Exchange would have to cancel or postpone the offering until the company amends its effective registration statement, and that, at a minimum, such a delay exposes the company to market risk of changing investor sentiment in the event of an adverse market event.[21] In addition, the Exchange states that the determination of the public offering price of a traditional IPO is not subject to limitations similar to the Pricing Range Limitation for a Direct Listing with a Capital Raise, which, in the Exchange's view, could make companies reluctant to use this alternative method of going public despite its expected potential benefits.[22]

The Exchange has proposed to modify the Pricing Range Limitation such that even if the actual price calculated by the Nasdaq Halt Cross is outside the disclosed price range, the Exchange would release a security for trading if the actual price at which the Nasdaq Halt Cross would occur is as much as 20% below the lowest price of the disclosed price range or above the highest price of the disclosed price range, provided all other necessary conditions are satisfied, and that the company has specified the quantity of shares registered, as permitted by Securities Act Rule 457.[23] In such circumstances, the company's registration statement would be required to contain a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering are less than or exceed the amount assumed in the disclosed price range, and, as stated above, the company would be required to certify to the Exchange that it has met this requirement.[24] In addition, the company would be required to publicly disclose and certify to the Exchange prior to the beginning of the Display Only Period [25] that the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement.[26] If the company's certification submitted to the Exchange in that regard includes an upside limit, the Exchange would not execute the Nasdaq Halt Cross if it would result in

note 6, 87 FR at 33559 n.10. Throughout this order, we refer to this as the ''disclosed price range.''

[12] *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii)d.2. The Exchange has proposed additional conditions, as discussed in more detail below, before the Nasdaq Halt Cross could proceed including a Post-Pricing Period and that the Price Volatility Constraint has been satisfied.

[13] *See* proposed Nasdaq Rule 4120(c)(9)(B). If the company provides an upper limit in its certification, that price would serve as the upper limit of the price range within which the Nasdaq Halt Cross could proceed. *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii)d.2.

[14] *See* Nasdaq Rule 4120(c)(9)(B).

[15] A ''Company Direct Listing Order'' or ''CDL Order'' is a market order that may be entered only on behalf of the issuer and may be executed only in the Nasdaq Halt Cross for a Direct Listing with a Capital Raise. The CDL Order is entered without a price (with a price later set in accordance with the requirements of Nasdaq Rule 4120(c)(9)(B)), must be for the quantity of shares offered by the issuer as disclosed in its effective registration statement, must be executed in full in the Nasdaq Halt Cross, and may not be canceled or modified. *See* Nasdaq Rule 4702(b)(16).

[16] *See* Notice, *supra* note 6, 87 FR at 33559. The Exchange represents that in such event, because the Nasdaq Halt Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange would be cancelled back to the entering firms. *See id.*

[17] *See id.* The Exchange states that it believes a Direct Listing with a Capital Raise could maximize the chances of more efficient price discovery of the initial public sale of securities for issuers and investors, because, unlike in a traditional firm commitment underwritten initial public offering (''IPO'') the initial sale price is determined based on market interest and the matching of buy and sell orders in an auction open to all market participants. *See id.*

[18] *See id.* The Exchange states that if an offering cannot be completed due to lack of investor interest, there is likely to be a substantial amount of negative publicity for the company and the offering may be delayed or cancelled. *See id.*

[19] *See id.* at 33559–60.

[20] *See id.* at 33560.

[21] *See id.*

[22] *See id.*

[23] *See id.*

[24] *See* Notice, *supra* note 6, 87 FR at 33560.

[25] *See* Nasdaq Rule 4120(c)(7)(A) and proposed Nasdaq Rule 4120(c)(9)(B)(iii)–(v) for a description of the ''Display Only Period.''

[26] *See* Notice, *supra* note 6, 87 FR at 33560.

an offering price above such limit.[27] The Exchange states that the goal of these requirements is to have disclosure that allows investors to see how changes in share price ripple through critical elements of the disclosure.[28]

The Exchange states that it believes that its proposed approach is consistent with Securities Act Rule 430A and staff guidance, which, according to the Exchange, generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.[29] According to the Exchange, the Exchange believes such guidance also allows deviation above the price range beyond the 20% threshold if such change or deviation does not materially change the previous disclosure.[30] The Exchange states that, accordingly, the Exchange believes that a company listing in connection with a Direct Listing with a Capital Raise can specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when an auction prices outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either: (i) the 20% threshold noted in the instructions to Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% threshold noted in the instructions to Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus.[31] The Exchange states that, for purposes of this rule, the 20% threshold would be calculated based on the maximum offering price set forth in the registration fee table, and that this method of calculation is consistent with the SEC Staff's guidance on Securities Act Rule 430A.[32]

The Exchange states that the burden of complying with the disclosures required under federal securities laws, including providing any disclosure necessary to avoid any material misstatements or omissions, remains with the issuer.[33] The Exchange further states that, in that regard, the Post-Pricing Period (as defined below), which is applicable in circumstances where the actual price calculated by the Nasdaq Halt Cross is outside of the disclosed price range, provides the company an opportunity, prior to the completion of the offering, to provide any additional disclosures that are dependent on the price of the offering, if any, or to determine and confirm to the Exchange that no additional disclosures are required under federal securities laws based on the actual price calculated by the Nasdaq Halt Cross.[34]

The Exchange also proposes to adopt a new Price Volatility Constraint and disseminate information about whether the Price Volatility Constraint has been satisfied, which will indicate whether the security may be ready to trade.[35] The Exchange states that prior to releasing a security for trading, the Exchange allows a ''Pre-Launch Period'' of indeterminate length, during which price discovery takes place.[36] The ''Price Volatility Constraint'' would require that the Current Reference Price has not deviated by 10% or more from any Current Reference Price during the Pre-Launch Period within the previous 10 minutes.[37] The Pre-Launch Period would continue until at least five minutes after the Price Volatility Constraint has been satisfied.[38] The Exchange states that this change would provide investors with notice that the Nasdaq Halt Cross nears execution and allow a period of at least five minutes for investors to modify their orders, if needed, based on the Near Execution Price, prior to the execution of the Nasdaq Halt Cross and the pricing of the offering.[39] The Exchange also states that to assure that the Near Execution Price is a meaningful benchmark for investors and that the offering price does not deviate substantially from the Near Execution Price, the Exchange proposes to require that the Nasdaq Halt Cross may execute only if the actual price calculated by the Nasdaq Halt Cross is no more than 10% below or above the Near Execution Price (the ''10% Price Collar''), in addition to the other existing conditions stated in proposed Nasdaq Rule 4120(c)(9)(B)(vii).[40]

The Exchange states that an imbalance between buy and sell orders could sometimes cause the Current Reference Price to fall outside of the 10% Price Collar after the Price Volatility Constraint has been satisfied.[41] According to the Exchange, such price fluctuations could be temporary and the Current Reference Price may return to and remain within the 10% Price Collar, or the price fluctuation could be lasting such that the Current Reference Price remains outside of the 10% Price Collar.[42] The Exchange proposes to assess the Current Reference Price as compared to the 10% Price Collar 30 minutes after the Near Execution Time.[43] If at that time the Current Reference Price is outside of the 10% Price Collar, all requirements of the Pre-Launch Period would reset and

[27] *See id.* The Exchange proposes to define the ''Price Range'' as the price range established by the issuer in its preliminary prospectus included in the effective registration statement. *See* proposed Nasdaq Rule 4120(c)(9)(B). In addition, the Exchange proposes to define the ''DLCR Price Range'' as the price range starting from the price that is at or above 20% below the lowest price of the Price Range and continuing above the highest price of the Price Range, with an upper limit if one is provided by the company in its certification. *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii)d.2.

[28] *See* Notice, *supra* note 6, 87 FR at 33560.

[29] *See id.* The Exchange states that Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount, and the Exchange proposes to require that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount. *See id.* at 33560 n.17. The Exchange also states that the Exchange believes that the proposed modification of the Pricing Range Limitation is consistent with the protection of investors, because, according to the Exchange, this approach is similar to the pricing of an IPO where an issuer is permitted to price outside of the disclosed price range in accordance with the SEC Staff's guidance. *See id.* at 33563.

[30] *See id.* at 33560. The Exchange states that in a prior proposal that the Commission disapproved, the Exchange proposed different requirements based on whether the Nasdaq Halt Cross would occur at a price that was within 20% of the disclosed price range, but that the Exchange is eliminating this proposed distinction and instead proposing to treat uniformly all instances when the actual price of the Nasdaq Halt Cross would occur outside of the disclosed price range. *See id.* at 33560 n.16 (citing Securities Exchange Act Release No. 94311 (February 24, 2022), 87 FR 11780 (March 2, 2022)).

[31] *See* Notice, *supra* note 6, 87 FR at 33560.

[32] *See id.*

[33] *See id.* The Commission previously stated that while Securities Act Rule 430A permits companies to omit specified price-related information from the prospectus included in the registration statement at the time of effectiveness, and later file the omitted information with the Commission as specified in the rule, it neither prohibits a company from conducting a registered offering at prices beyond those that would permit a company to provide pricing information through a Securities Act Rule 424(b) prospectus supplement nor absolves any company relying on the rule from any liability for potentially misleading disclosure under the federal securities laws. *See id.* (citing Securities Exchange Act Release No. 93119 (September 24, 2021), 86 FR 54262 (September 30, 2021)).

[34] *See* Notice, *supra* note 6, 87 FR at 33560–61.

[35] *See id.* at 33561.

[36] *See id.*

[37] *See id. See* Nasdaq Rule 4753(a)(3) for a description of the ''Current Reference Price.''

[38] *See* Notice, *supra* note 6, 87 FR at 33561.

[39] *See id.* The Exchange proposes to define ''Near Execution Price'' as the Current Reference Price at the time the Price Volatility Constraint has been satisfied, and to define the ''Near Execution Time'' as such time. *See id.*

[40] *See id.*

[41] *See id.*

[42] *See id.*

[43] *See id.*

would need to be satisfied again.[44] Alternatively, if at that time the Current Reference Price is within the 10% Price Collar, price formation would continue without limitations until the Exchange, in consultation with the financial advisor to the issuer, makes the determination that the security is ready to trade and the conditions in proposed Nasdaq Rule 4120(c)(9)(B)(vii) and (viii) are met, at which time the Pre-Launch Period would end.[45]

According to the Exchange, given that there may be a Direct Listing with a Capital Raise that could price outside of the disclosed price range and that there may be no upside limit above which the Nasdaq Halt Cross could not proceed, the Exchange proposes to enhance transparency by providing readily available, real time pricing information to investors.[46] To that end, the Exchange states that it would disseminate, free of charge, the Current Reference Price on a public website, such as *Nasdaq.com,* during the Pre-Launch Period and indicate whether the Current Reference Price is within the disclosed price range.[47] Once the Price Volatility Constraint has been satisfied, the Exchange would also disseminate the Near Execution Price, the Near Execution Time, and the 30-minute countdown from such time.[48] The Exchange states that, in this way, investors interested in participating in the opening auction would be informed when volatility has settled to a range that would allow the opening auction to take place, would be informed of the price range at which the auction would take place, and, if the price remains outside of that range for 30 minutes, would have at least five minutes to reevaluate their investment decision.[49]

The Exchange also proposes to prohibit market orders (other than by the company through its CDL Order) from the opening of a Direct Listing with a Capital Raise.[50] The Exchange states that this would protect investors by assuring that investors only purchase shares at a price at or better than the price they affirmatively set, after having the opportunity to review the company's effective registration statement, including the sensitivity analysis describing how the company would use any additional proceeds raised.[51] The Exchange states that, accordingly, an investor participating in a Direct Listing with a Capital Raise would make their initial investment decision prior to the launch of the offering by setting a price in their limit order above which they will not buy shares in the offering, but would also have the opportunity to reevaluate their initial investment decision during the price formation process of the Pre-Launch Period based on the Near Execution Price, and would have at least five minutes once the Near Execution Price has been set and before the offering may be priced by the Exchange to modify their order, if needed.[52]

In addition, the Exchange states that to protect investors and assure that they are informed about the attributes of a Direct Listing with a Capital Raise, the Exchange proposes to impose specific requirements on Nasdaq members with respect to a Direct Listing with a Capital Raise.[53] These rules would require members to provide to a customer, before that customer places an order to be executed in the Nasdaq Halt Cross, a notice describing the mechanics of pricing a security subject to a Direct Listing with a Capital Raise in the Nasdaq Halt Cross, including information regarding the location of the public website where the Exchange would disseminate the Current Reference Price.[54]

The Exchange states that to assure that members have the necessary information to be provided to their customers, the Exchange proposes to distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Direct Listing with a Capital Raise, an information circular to its members.[55] This information circular would describe any special characteristics of the offering and the Exchange's rules that apply to the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9)(B) and Nasdaq Rule 4753 for the opening auction, including information about the notice that members must provide to their customers.[56] This information circular would also describe other requirements that: (a) members use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer, and concerning the authority of each person acting on behalf of such customer; (b) members in recommending transactions for a security subject to a Direct Listing with a Capital Raise have a reasonable basis to believe that (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such members, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in such security; and (c) members cannot accept market orders to be executed in the Nasdaq Halt Cross.[57] The Exchange states that these member requirements are intended to remind members of their obligations to ''know their customers,'' increase transparency of the pricing mechanisms of a Direct Listing with a Capital Raise, and help assure that investors have sufficient price discovery information.[58]

The Exchange represents that in each instance of a Direct Listing with a Capital Raise, the Exchange's information circular would inform market participants that the auction could price up to 20% below the lowest price of the disclosed price range and would specify that price. The Exchange also represents that it would indicate in such circular whether or not there is an upside limit above which the Nasdaq Halt Cross could not proceed, based on the company's certification.[59]

The Exchange states that to assure that the issuer has the ability, prior to the completion of the offering, to

[44] *See id.* The Exchange states that once the Price Volatility Constraint has been satisfied anew, the Current Reference Price at such time would become the updated Near Execution Price and such time would become the Near Execution Time. *See id.* The Exchange further states that this process would continue iteratively if new resets are triggered, until the Nasdaq Halt Cross is executed or the offering is postponed. *See id.*

[45] *See id.;* proposed Nasdaq Rule 4120(c)(9)(B)(vii). The Exchange states that if at any time more than 30 minutes after the Near Execution Time the Current Reference Price falls outside of the 10% Price Collar, all requirements of the Pre-Launch Period would reset and would need to be satisfied again. *See* Notice, *supra* note 6, 87 FR at 33561.

[46] *See* Notice, *supra* note 6, 87 FR at 33561. The Exchange states that if the company's certification submitted to the Exchange includes an upside limit and the actual price calculated by the Nasdaq Halt Cross exceeds such limit, the Exchange will postpone and reschedule the offering. *See id.* at 33561 n.23.

[47] *See id.* at 33561.

[48] *See id.* The Exchange represents that the disclosure would indicate that the Near Execution Price and the Near Execution Time may be reset if the security is not released for trading within 30 minutes of the Near Execution Time and the Current Reference Price at such time (or any time thereafter) is more than 10% below or more than 10% above the Near Execution Price. *See id.*

[49] *See id.*

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *See id.* at 33562.

[54] *See id.*

[55] *See id.* The Exchange states that an information circular is an industry-wide, free service provided by the Exchange. *See id.* at 33562 n.25.

[56] *See id.* at 33562.

[57] *See id.;* proposed Nasdaq Rule 4120(c)(9)(B)(i).

[58] *See* Notice, *supra* note 6, 87 FR at 33562.

[59] *See id.* The Exchange states that it believes that investors have become familiar with the approach of pricing an IPO outside of the price range stated in an effective registration statement. *See id.* at 33565.

provide any necessary additional disclosures that are dependent on the price of the offering, the Exchange proposes to introduce to the operation of the Nasdaq Halt Cross a brief Post-Pricing Period, in circumstances where the actual price calculated by the Nasdaq Halt Cross is outside of the disclosed price range.[60] Specifically, in such circumstances, the Exchange would initiate a ''Post-Pricing Period'' following the calculation of the actual price.'' [61] During the Post-Pricing Period, the issuer must confirm to the Exchange that no additional disclosures are required under the federal securities laws based on the actual price calculated by the Nasdaq Halt Cross. Further, during this period no additional orders for the security could be entered in the Nasdaq Halt Cross, and no existing orders could be modified.[62] The Exchange states that the security would be released for trading immediately following the Post-Pricing Period.[63] However, if the company cannot provide the required confirmation, then the Exchange would postpone and reschedule the offering.[64]

The Exchange also proposes to clarify several provisions of existing rules by restating the provisions of Nasdaq Rule 4120(c)(8)(A) and (c)(9)(A) in a clear and direct manner in proposed Nasdaq Rule 4120(c)(9)(B) without substantively changing the requirements.[65] Specifically, the Exchange proposes to clarify the mechanics of the Nasdaq Halt Cross by specifying that the Exchange will initiate a 10-minute Display Only Period only after the CDL Order has been entered and that the Exchange shall select price bands for purposes of applying the price validation test in the Nasdaq Halt Cross in connection with a Direct Listing with a Capital Raise.[66] The Exchange proposes to clarify that the ''actual price,'' as the term is used in the rule, is the Current Reference Price at the time the system applies the price validation test.[67]

Nasdaq Listing Rule IM–5315–2 provides that in determining whether a company listing in connection with a Direct Listing with a Capital Raise satisfies the Market Value of Unrestricted Publicly Held Shares [68] for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement [69] if the amount of the company's Unrestricted Publicly Held Shares before the offering, along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise, is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million). For this purpose, under current rules, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the lowest price of the disclosed price range.[70] The Exchange states that because the Exchange proposes to allow the opening auction to price up to 20% below the lowest price of the disclosed price range, the Exchange proposes to make a conforming change to Nasdaq Listing Rule IM–5315–2 to provide that the price used to determine such company's compliance with the required Market Value of Unrestricted Publicly Held Shares would be the price per share equal to the price that is 20% below the lowest price of the disclosed price range.[71] The Exchange further states that this is the minimum price at which the company could sell its shares in the opening transaction for a Direct Listing with a Capital Raise and thus assures that the company will satisfy the listing requirements at any price at which the opening auction successfully executes.[72]

The Exchange states that any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements, including the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[73] The Exchange also proposes to amend Nasdaq Listing Rule IM–5315–2 to specify that a company offering securities for sale in connection with a Direct Listing with a Capital Raise must register securities by specifying the quantity of shares registered, as permitted by Securities Act Rule 457(a), and that securities qualified for listing under Nasdaq Listing Rule IM–5315–2 must satisfy the additional requirements of Nasdaq Rule 4120(c)(9)(B).[74]

Finally, the Exchange has proposed to amend Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2) to conform the requirements for disseminating information and establishing the opening price through the Nasdaq Halt Cross in a Direct Listing with a Capital Raise to the proposed amendment to allow the opening auction to price as much as 20% below the lowest price of the disclosed price range.[75] Specifically, the Exchange proposes changes to Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator,[76] and to the calculation of the price at which the Nasdaq Halt Cross will execute, for a Direct Listing with a Capital Raise. Under these rules currently, where there are multiple prices that would satisfy the conditions for determining the price, the fourth tie-breaker for a Direct Listing with a Capital Raise is the price that is closest to the lowest price of the disclosed price range. The Exchange states that, to conform these rules to the proposed modification of the price range within which the opening auction would proceed, the Exchange proposes to modify the fourth tie-breaker for a Direct Listing with a Capital Raise to use the price closest to the price that is 20% below the lowest price of the disclosed price range.[77]

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2022–027 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposal should be approved or disapproved.[78] Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by Amendment No. 1, as discussed below. Institution of disapproval proceedings does not indicate that the Commission

[60] *See id.* at 33562.

[61] *See id.*

[62] *See id.*

[63] *See id.*

[64] *See id.*

[65] *See id.*

[66] *See id.* The Exchange would select an upper price band and a lower price band with the default for an upper and lower price band set at zero. The Exchange represents that if a security does not pass the price validation test, the Exchange may select different price bands before recommencing the process to release the security for trading. *See id.*

[67] *See id.*

[68] *See* Nasdaq Listing Rule 5005(a)(23) and (45) for the definitions of ''Market Value'' and ''Unrestricted Publicly Held Shares,'' respectively.

[69] *See* Nasdaq Listing Rule 5315(f)(2).

[70] *See* Nasdaq Listing Rule IM–5315–2. The Exchange will determine that the company has met the applicable bid price and market capitalization requirements based on the same per share price. *See id.*

[71] *See* Notice, *supra* note 6, 87 FR at 33562.

[72] *See id.*

[73] *See id.* (citing Nasdaq Listing Rules 5315(e)(1) and (2) and 5315(f)(1)).

[74] *See* proposed Nasdaq Listing Rule IM–5315–2.

[75] *See* proposed Nasdaq Rules 4753(a)(3)(A)(iv)c. and 4753(b)(2)(D)(iii).

[76] *See* Nasdaq Rule 4753(a)(3) for a description of the ''Order Imbalance Indicator.''

[77] *See* Notice, *supra* note 6, 87 FR at 33562–63.

[78] 15 U.S.C. 78s(b)(2)(B).

has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Exchange Act and, in particular, with Section 6(b)(5) [79] of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[80]

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[81]

The Exchange is proposing to modify the rules concerning the opening transaction on the first day of trading for a Direct Listing with a Capital Raise so that the opening transaction is not constrained by the Pricing Range Limitation, which limits the price of the opening transaction to the price range disclosed in the issuer's effective registration statement. Instead, the proposal would allow the opening transaction to proceed, provided other requirements are satisfied, at or above the price that is as low as 20% below the lowest price in the disclosed price range; or at a price above the highest price of such price range.

Specifically, under the proposal, to execute at a price outside of the disclosed price range, the company has to certify to Nasdaq and publicly disclose that the company does not expect that such price would materially change the company's previous disclosure in its effective registration statement and that the company's registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering were less than or exceeded the amount assumed in such price range.

In support of its proposal, the Exchange states that allowing an opening transaction to proceed at prices not within the disclosed price range is consistent with the protection of investors because it ''is similar to the pricing of an IPO where an issuer is permitted to price outside of the price range disclosed by the issuer in its effective registration statement.'' [82] Nasdaq also states that various aspects of its proposal are designed to protect investors, including, among others, those intended to increase the transparency and information available to investors on the price discovery process during the opening auction, provide investors an opportunity to modify their orders after notice that the Nasdaq Halt Cross nears execution, and ensure that the offering price does not deviate substantially from the Near Execution Price.[83] Nasdaq also states that allowing Direct Listings with a Capital Raise to price up to 20% below the lowest price and at a price above the highest price of the disclosed price range would be consistent with Chair Gensler's recent call to treat ''like cases alike.'' [84]

We have concerns about whether the Exchange has met its burden to demonstrate that its proposal to expand the conditions under which Direct Listings with a Capital Raise are permitted [85] is consistent with the protection of investors and the public interest, and other relevant provisions under Section 6(b)(5) and the Exchange Act and the rules and regulations thereunder. Under existing Nasdaq rules that permit Direct Listings with a Capital Raise, such offerings are required to price within the price range disclosed in the issuer's effective registration statement. When these rules were approved in 2021, the Commission considered that required feature and also stated that the related registration statements would include, among other disclosures, a bona fide price range.[86] The Exchange has indicated that it believes that some companies may be reluctant to use the existing rules for a Direct Listing with a Capital Raise because of concerns about the Pricing Range Limitation.[87] Permitting Direct Listings with a Capital Raise to price outside of the disclosed price range could increase the frequency of such offerings and may raise investor protection concerns.

While the Exchange has indicated that the proposal is intended to treat like cases alike with respect to pricing flexibility, it has not addressed certain differences between listings that would occur under this proposed rule change and firm commitment underwritten initial public offerings on the Exchange that may affect investor protection, including the lack of a named underwriter,[88] any challenges to

[79] 15 U.S.C. 78f(b)(5).

[80] *Id.*

[81] The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* 2021 Order, *supra* note 9, 86 FR at 28172 n.47; Securities Exchange Act Release Nos. 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR–NYSE–2019–67) (''NYSE 2020 Order''); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order''); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* 2021 Order, *supra* note 9, 86 FR at 28172 n.47; NYSE 2020 Order, 85 FR at 85811 n.55; NYSE 2018 Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR–NASDAQ–2019–059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR–NASDAQ–2020–001).

[82] *See* Notice, *supra* note 6, 87 FR at 33563.

[83] *See* generally *id.* at 33564–65.

[84] *See id.* at 33565.

[85] Under the Nasdaq rules for a Direct Listing with a Capital Raise approved by the Commission in May 2021, the actual price calculated by the Cross must be at or above the lowest price and at or below the highest price of the disclosed price range.

[86] *See* 2021 Order, *supra* note 9, 86 FR at 28174–75, 28177.

[87] *See* Notice, *supra* note 6, 87 FR at 33559.

[88] Section 2(a)(11) of the Securities Act defines ''underwriter'' to mean ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking.'' Given this broad definition of ''underwriter,'' a financial advisor to an issuer engaged in a Direct Listing with a Capital Raise may, depending on the facts and circumstances including the nature and extent of the financial advisor's activities, be deemed a statutory ''underwriter'' with respect to the securities offering, with attendant underwriter liabilities. *See* 2021 Order, *supra* note 9, 86 FR at 28176. Whether or not any person would be considered a statutory underwriter would be evaluated based on the particular facts and circumstances, in light of the definition of underwriter contained in Section 2(a)(11). In the context of a firm commitment underwritten initial public offering, Item 508 of Regulation S–K requires the underwriters to be named in the registration statement.

bringing claims under Section 11 of the Securities Act due to the potential assertion of tracing defenses,[89] and how those differences could affect the consistency of the proposal with Section 6(b)(5) of the Exchange Act.[90] It is not clear from the proposal what consideration, if any, the Exchange has given to addressing these issues, or why it believes the proposal is consistent with investor protection, as required by Section 6(b)(5) of the Exchange Act, in light of the pricing flexibility proposed by the Exchange.

In a firm commitment underwritten initial public offering, issuers often adjust the price range disclosed in their registration statements prior to effectiveness in light of pricing feedback received from market analysts and potential investors. These revisions to the disclosed price range may provide valuable information to potential investors as to the issuer's valuation. If, under the proposal, the opening auction can proceed at any price above the disclosed price range, and up to 20% below the low end of the disclosed price range, it is not clear whether issuers pursuing Direct Listings with a Capital Raise would make similar revisions to the disclosed price range based on investor or market analyst sentiment, and whether the absence of any such corrective price signaling would detrimentally affect investors.

In the absence of a named underwriter in a direct listing where the opening price is executed outside of the disclosed price range, there may not be an adequate assurance that a party who may meet the definition of underwriter will review the information disclosed in the registration statement and take the steps necessary to claim a ''due diligence'' defense. To assert such a defense, a party must establish that, after reasonable investigation, the party had reasonable ground to believe and did believe, at the time the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.[91] Underwriters play a critical role in the securities offering process as gatekeepers to the public markets.[92]

The Exchange's proposed expansion of its rules permitting Direct Listings with a Capital Raise could potentially result in increased regulatory arbitrage, if and to the extent that issuers and intermediaries, including financial advisors, are not subject to equivalent liability standards in the direct listings context as they would be in traditional firm commitment underwritten initial public offerings. Any ability of issuers or intermediaries to minimize potential liability through choosing a direct listing over other methods to become listed on the Exchange could be inconsistent with Section 6(b)(5) of the Exchange Act.

Although financial advisors may, depending on facts and circumstances, be held liable as statutory underwriters, absent greater clarity as to a financial advisor's status as a statutory underwriter in listings that would occur under this proposed rule change, investors would have no way to know whether financial advisors named as assisting with the direct listing would face Section 11 liability for the disclosure in the registration statement. Investors also may assume that financial advisors would incur equivalent liability, without any assurance that such is the case. Some legal observers have raised concerns that, without clarity on whether financial advisors would be held liable as statutory underwriters, any due diligence may not be as robust as that performed by named underwriters in traditional initial public offerings.[93] Less robust due diligence could result in reduced disclosure quality and lead investors to improperly value the securities offered under the proposed rules. As the proposed rules would permit direct listings to be conducted at prices outside of the disclosed price range, would investors be able to make reasonable pricing decisions without greater clarity as to whether financial advisors would face liability as statutory underwriters? Without increased clarity on this point, would the proposed rule change be inconsistent with investor protection and the public interest?

There are a number of additional questions relating to investor protection and Securities Act liability that merit examination in connection with our consideration of whether the Exchange has met its burden to demonstrate its proposal is consistent with Section 6(b)(5) of the Exchange Act. It is not clear what role a financial advisor would perform, in relation to price range disclosures, in a direct listing where the offering can price outside of the disclosed price range. Would additional transparency into the functions performed by financial

[89] Where a Securities Act registration statement, at the time of effectiveness, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, Section 11(a) of the Securities Act provides a cause of action to ''any person acquiring such security,'' unless it is proved that at the time of the acquisition the person knew of such untruth or omission. Courts have interpreted this statutory provision to permit aftermarket purchasers (*i.e.,* those who acquire their securities in secondary market transactions rather than in the initial distribution from the issuer or underwriter) to recover damages under Section 11, but only if they can ''trace'' the acquired shares back to the offering covered by the false or misleading registration statement. *See, e.g.,* In re Century Aluminum Co. Sec. Litig., 729 F.3d 1104 (9th Cir. 2013). Tracing is not set forth in Section 11 and is a judicially-developed doctrine. The Commission has previously stated that shareholders' ability to pursue claims pursuant to Section 11 of the Securities Act due to traceability issues are not exclusive to nor necessarily inherent in direct listings with a primary capital-raising component, and that this issue is potentially implicated any time securities that are not the subject of a recently effective registration statement trade in the same market as the shares issued pursuant to the registration statement. *See* 2021 Order, *supra* note 9, 86 FR at 28176. The Ninth Circuit has held that investors who purchase shares in a direct listing may bring claims pursuant to Section 11, even if they cannot prove that the shares they acquired were registered shares. *See* Pirani v. Slack Techs., Inc., 13 F.4th 940 (9th Cir. 2021).

[90] Tracing concerns may be more prevalent in direct listings than traditional underwritten initial public offerings. As compared to traditional firm commitment underwritten initial public offerings in which lock-up arrangements are routinely imposed, direct listings to date typically have not imposed lock-up arrangements. This raises a concern that there may be a heightened risk that investors in direct listings may face difficulties tracing their shares, potentially jeopardizing their ability to pursue Section 11 claims. *See supra* note 89. Given the limited judicial precedent addressing tracing requirements in the context of direct listings, and the typical absence of lock-up arrangements in connection with direct listings to date, we are considering whether the Exchange has met its burden of establishing that the proposal to allow a direct listing to proceed at a price outside of the disclosed price range is consistent with Section 6(b)(5) of the Exchange Act that requires the rules of the Exchange be designed to protect investors and the public interest.

[91] *See* U.S.C. 77k(b)(3).

[92] *See* Securities Act Release No. 7393 (February 20, 1997), 62 FR 9276 (February 28, 1997) (''The due diligence efforts performed by underwriters, accounting professionals and others play a critical role in the integrity of our disclosure system.''); Securities Act Release No. 6335 (August 6, 1981), 46 FR 42015 (August 18, 1981) (''[T]he Securities Act imposes a high standard of conduct on specific persons, including underwriters and directors, associated with a registered public offering of securities. Under Section 11, they must make a reasonable investigation and have reasonable grounds to believe the disclosures in the registration statement are accurate.'').

[93] *See* Tuch, Andrew F. and Seligman, Joel, The Further Erosion of Investor Protection: Expanded Exemptions, SPAC Mergers and Direct Listings (December 15, 2021), at 70–71, Washington University in St. Louis Legal Studies Research Paper No. 22–01–03, available at SSRN: *https://ssrn.com/abstract=4020460* (questioning the extent of due diligence performed by financial advisors in direct listings); Horton, Brent J., Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure?, 72 SMU L. Rev. 177 (2019). In the NYSE 2020 Order, the Commission stated that ''financial advisors to issuers in Primary Direct Floor Listings have incentives to engage in robust due diligence, given their reputational interests and potential liability, including as statutory underwriters under the broad definition of that term.'' NYSE 2020 Order, *supra* note 81, 85 FR at 85815.

advisors in a direct listing where the offering can price outside of the disclosed price range be necessary for investors to determine how much reliance to place on issuer disclosures?

Would any tracing concerns be exacerbated, thus raising investor protection concerns, in the context of direct listings where the offering can price outside of the disclosed price range? [94] What are the implications if the expansion of Direct Listings with a Capital Raise, as proposed by the Exchange, resulted in fewer investor protections in a direct listing? If under the proposal to modify the Pricing Range Limitation there is continued uncertainty as to whether a financial advisor would be liable as a statutory underwriter, is the liability of any other gatekeepers in the offering sufficient to protect investors?

The Commission also has concerns about the potential effect of the proposed rules on the usefulness of price range disclosure provided to investors in Securities Act registration statements.[95] Given the possibility under the proposed rules that the offering might price far outside the disclosed price range, would issuers be less likely to update their disclosed price ranges, compared to firm commitment underwritten initial public offerings? [96] Similarly, would disclosed price ranges for direct listings be less reliable as indicators of management's perceived valuation of the issuer? How would the ability to ultimately conduct the auction up to 20% below or anywhere above the disclosed price range affect issuer decisions as to what price range to disclose in the registration statement? Would this impact the usefulness of price range disclosure to potential investors or market analysts? If so, this raises concerns about the consistency of the proposal with investor protection and the public interest under Section 6(b)(5) of the Exchange Act.

Finally, it is not clear whether the proposed changes would result in the Exchange using the minimum price at which the opening auction could occur as the per share price for purposes of evaluating whether the issuer satisfies the applicable market value of publicly held shares requirement and other applicable bid price and market capitalization requirements. The Exchange proposes to amend Nasdaq Listing Rule IM–5315–2 to provide that the Exchange would calculate the market value of unrestricted publicly held shares, as well as applicable bid price and market capitalization requirements, using a price per share equal to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement.[97] The Exchange also proposes to specify in Nasdaq Rule 4120(c)(9)(B) that ''[t]he 20% threshold below the Price Range will be calculated based on the maximum offering price set forth in the registration fee table, consistent with the Instruction to paragraph (a) of Securities Act Rule 430A.'' [98] Further, the Exchange states its belief that the proposed change to Nasdaq Listing Rule IM–5315–2 for calculating the market value of unrestricted publicly held shares, bid price, and market capitalization conforms these rules to the modifications of the Pricing Range Limitation and ''is the minimum price at which the company could sell its shares in the Direct Listing with a Capital Raise transaction and so assure that the company will satisfy these requirements at any price at which the auction successfully executes.'' [99] Is further clarification needed as to the precise manner of computing the 20% threshold under proposed Nasdaq Rule 4120(c)(9)(B) and whether that computation would lead to the same minimum price contemplated by the proposed revisions to Nasdaq Listing Rule IM–5315–2? Similarly, there are questions about whether the proposed change to the fourth-tie breaker in a Direct Listing with a Capital Raise that proposes to use ''the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective statement'' to ''conform these rules to the modifications to the Pricing Range Limitation'' [100] would also result in using the minimum price at which the opening auction could occur given the proposed changes described above in Nasdaq Rule 4120(c)(9)(B) for calculating the price that is 20% below the lowest price of the Price Range.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [101] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[102] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[103]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [104] to determine whether the proposal should be approved or disapproved.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[105]

[94] *See* notes 89 and 90, *supra,* and accompanying text. The Commission disapproved a prior proposal of Nasdaq to expand the direct listing price range. *See* Securities Exchange Act Release No. 94311 (February 24, 2022). 87 FR 11780 (March 2, 2022) (''Disapproval Order''). In the Disapproval Order, the Commission stated that the Exchange did not respond to one commenter's concerns, among others, that investors in direct listings, including direct listings with a capital raise, are likely to continue to have fewer legal rights than investors in a traditional public offering and concerns relating to ''tracing'' share purchases for purposes of Section 11 claims. *See* Disapproval Order, 87 FR at 11785 n.82.

[95] Under the proposed rule change, to execute at a price outside of the disclosed price range, the company must certify to Nasdaq and publicly disclose that the company does not expect that such price would materially change the company's previous disclosure in its effective registration statement and that the company's registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering were less than or exceeded the amount assumed in such price range.

[96] The Exchange has stated that its proposal to permit more flexibility as to pricing would allow Direct Listings with a Capital Raise to be treated similarly to other initial public offerings. *See* Notice, *supra* note 6, 87 FR at 33563, 33565.

[97] *See* Notice, *supra* note 6, 87 FR at 33562.

[98] *See id.* at 33560.

[99] *See id.* at 33562.

[100] *Id.* at 33563.

[101] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[102] *See id.*

[103] *See id.*

[104] 15 U.S.C. 78s(b)(2)(B).

[105] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of

Continued

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by August 3, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 17, 2022.

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–2022–027 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–2022–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–027 and should be submitted on or before August 3, 2022. Rebuttal comments should be submitted by August 17, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[106]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14887 Filed 7–12–22; 8:45 am]

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1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95207; File No. SR–LCH SA–2022–004]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Clearing of Markit iTraxx® Australia Indices and the Associated Single Name Constituents and Remediation of WWR Margin Instability

July 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder [2] notice is hereby given that on June 30, 2022, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by LCH SA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) LCH SA is proposing to amend its CDSClear Risk methodology and its CDS Clearing Supplement (the ''Clearing Supplement'') to allow LCH SA to enhance and expand its clearing services as follows: LCH SA intends to (i) permit the clearing of Markit iTraxx® Australia indices and the associated single name constituents, (the ''iTraxx Change'') and (ii) provide a remediation to one independent model validation recommendation regarding the Wrong Way Risk (WWR) margin instability (the ''WWR Change'') (all together the ''Proposed Rule Change'').

The text of the Proposed Rule Change is in Exhibit 5.[3]

The implementation of the Proposed Rule Change will be contingent on LCH SA's receipt of all necessary regulatory approvals.

(b) Not applicable.

(c) Not applicable.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the Proposed Rule Change is to revise LCH SA's rules, procedures and supplement to (1) permit the clearing of Markit iTraxx® Australia indices and the associated single name constituents and (2) provide the remediation to the WWR margin instability.

(1) Proposed Amendments To Permit the Clearing of Markit iTraxx® Australia Indices

(a) Amendments to the Clearing Supplement

The Clearing Supplement has been amended in order to include the relevant provisions to allow the clearing of the new Markit iTraxx® Australia indices.

In Part B of the Clearing Supplement, Section 1.2 (*Terms defined in the CDS Clearing Supplement*) has been amended to include a new sub-paragraph (a) to the definition of an ''Index Cleared Transaction Confirmation'' in order to make a reference to the form of confirmation which incorporates the iTraxx® Asia/Pacific Untranched Standard Terms Supplement. As a consequence, the sub-paragraphs (a), (b), (c), and (d) have been re-lettered as (b), (c), (d), (e), respectively.

Section 2.2 (*Index Cleared Transaction Confirmation*) of Part B of the Clearing Supplement has been also amended to make appropriate references

[106] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All capitalized terms not defined herein have the same definition as in the CDS Clearing Rule Book, Supplement or Procedures, as applicable.

to any Index Cleared Transaction that is a Markit iTraxx® Australia Index in paragraphs (a)(i), (b)(i), (c)(i) and (f)(i).

(b) Proposed Amendments to the CDSClear Risk Framework

LCH SA is proposing to amend its Methodology Services Reference Guide: CDS Margin Framework (''CDSClear Risk Methodology'') under Section 2.1.1.1 (*Interest Rate Curve*) to proceed with the removal of the interest rate curve name used with the International Swaps and Derivatives Association, Inc. (ISDA) standard model pricer (used as a converter between upfront cash and quoted spread in basis points, as described on *www.cdsmodel.com*) that does not need to be clearly specified in such risk documentation. The objective now is to refer to the original website when the market moves to the new Risk Free Rates, so that the CDSClear Risk Methodology always automatically refers to the latest state in the market without risking becoming outdated.

For clarity purposes only, LCH SA is proposing to remove ''through a CDS index'' under the provisions of Section 3.2 (*Self-referencing margin risk*) as the Self-Referencing Margin would apply as soon as the clearing member sells protection on itself whatever the financial instrument used.

The other proposed change specified under Section 3.4.5 (*Portfolio Margining*) is intended to add iTraxx® Australia to the list of indices on which index basis packages can be cleared.

As there are financial single name constituents in the iTraxx® Australia index family, positions on this index will be subject to the Wrong Way Risk margin, a margin that aims at capturing the potential contagion effect off the default of a clearing member (that is a financial institution) on instruments with open positions in the defaulter's portfolio. Here, it would be the risk that Australian financials credit spreads may widen following the default of a clearing member, to an extent that goes beyond the spread move already covered by the spread margin. This requirement, coupled with the need to address a recommendation raised by the independent risk model validation on the instability of the Wrong Way Risk margin component, result in LCH SA also proposing to amend the provisions under Section 3.8 of the CDSClear Risk Methodology about the Wrong Way Risk margin to introduce the following updates:

—the introduction of the shocks applied to Australian entities in Section 3.8.1.1 (*Spread parallel moves*), alongside the shocks applied to existing products.

—a generalisation of the calculation to all indices under Section 3.8.1.4 (*Index Shocks*) instead of just referring to Senior Financial or its parent index Main as it was previously in Section 3.8.1.3.

—a description of the way the shocks on indices are defined in Section 3.8.1.4 (*Index Shocks*), being derived directly from the shocks applied on constituents as a spread and CS01 weighted average. This would apply to iTraxx® Australia as well as other indices containing financial names, although no financial impact is expected since index shocks are currently already calibrated as the average shock of their constituents.

—As required to address the recommendation raised by the Independent Model Validation, a specification that the contribution to the spread margin used to derive the spread_SM under Sections 3.8.1.5 (*Wrong-Way/Right-Way P&L*) and 3.8.1.6 (*Instrument level Expected Shortfall*) would now consider the contribution of a single tenor, instead of the joint contribution of all tenors on a given product, to address the WWR margin instability observed with curve trades.

—the introduction of iTraxx® Australia alongside other regions under Section 3.8.1.8 (*Trigger*) when aggregating Wrong way and Right way across regions.

—Some of the existing provisions under Sections 3.8.2 (Offsets inter-region) and 3.8.3 (Final WWR Margin) have been moved to the general Section 3.8.1 explaining the overall WWR calculation. The shocks defined when extending to CDX products are now part of the table inside Section 3.8.1.1 (Spread parallel moves) and the relevant provision has been moved at the end of this same section. The provision about Sub Financials has been moved to the Section 3.8.1.2 (Sub Financials) as a subsection of 3.8.1 (WWR: Parallel Move).

Further, the provisions of Section 4 on Additional Margin are proposed to be updated for the Liquidity and Concentration Risk Margin under paragraphs 4.1.2 (*Macro Hedging Phase*) and 4.1.4.1 (*Diversification Ratio*) to specify that iTraxx® Australia index would be used for hedging and would define an additional sub-portfolio when considering liquidation costs.

Finally, LCH SA is also taking this opportunity to propose changes for consistency purposes by removing from its CDSClear Risk methodology documentation any reference to IBOR curves in Section 2.1.1.1, and refer instead to the *cdsmodel.com* website which details the pricer used by all market participants to convert from quoted spreads to upfronts in parallel to the cessation of IBOR and the transition to Risk Free Rates, and also clarify in Section 1, Introduction that the short charge can cover 1 or 2 credit events, as the CDX.HY component does cover 2 defaults and was not correctly reflected in the introduction.

(b) Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Act[4] and regulations thereunder applicable to it, including Commission Rule 17Ad–22(e).[5] In particular, Section 17A(b)(3)(F) of the Act requires, *inter alia,* that the rules of a clearing agency be designed to ''promote the prompt and accurate clearance and settlement of . . . derivatives agreements, contracts, and transactions''.[6] By proposing to amend its CDS Clearing Supplement to authorize the acceptance of the new iTraxx® Australia transactions, on the terms and conditions set out in the Proposed Rule Change, LCH SA considers that this would encourage Clearing Members to clear additional indices and single name CDS through its CDSClear service, which, in turn, should promote the prompt and accurate clearance and settlement of those instruments within the meaning of Section 17A(b)(3)(F) of the Act.[7]

By improving the stability of the WWR margin in order for LCH SA CDSClear to collect the appropriate level of margin amount required for any clearing member portfolio, the proposed WWR Change is also consistent with the SEC requirement for accurate clearance and settlement of transactions cleared by LCH SA.

Further, from the perspective of financial risk management and margin requirements, the clearing of the proposed new iTraxx® Australia index and the associated single name constituents would not require changes to LCH SA's existing margin methodology, default management policies and procedures and operational process, as the proposed products do not include any new risk factor compared to the Corporates and Financials indices or single names already cleared by the LCH SA CDSClear service. The iTraxx® Australia transactions would be cleared pursuant to LCH SA's existing clearing

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

arrangements and related financial safeguards, protections and risk management procedures which are consistent with Exchange Act Rule 17Ad–22(e)(17),[8] requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

Adopting rules to facilitate the clearing of the iTraxx® Australia transactions would also be consistent with other relevant requirements of Rule 17Ad–22(e),[9] as set forth in the following discussion.

Margin Requirements. Rule 17Ad–22(e)(4) [10] requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, among other requirements. In terms of financial resources, LCH SA would apply its existing margin methodology—including its Wrong Way Risk margin framework—to the new iTraxx® Australia Index, which are similar to the European indices currently cleared by LCH SA. LCH SA believes that the proposed rules that would apply this risk model to the new iTraxx® Australia Index will provide sufficient margin requirements to cover its credit exposure to its clearing members from clearing such contracts, consistent with the requirements of Rule 17Ad–22(e)(4).[11]

Financial Resources. Rule 17Ad–22(e)(4)(i) [12] requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. To the extent not already maintained pursuant to paragraph (e)(4)(i), Rule 17Ad–22(e)(4)(ii) [13] requires LCH SA's policies and procedures be reasonably designed to maintain additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. As explained in the above paragraph on Margin Requirements, LCH SA also believes its Default Fund, under its existing methodology, will, together with the required margin, provide sufficient financial resources to support the clearing of the new iTraxx® Australia Index contracts, consistent with the requirements of Rules 17Ad22(e)(4)(i) and (ii).

Operational Resources. Rule 17Ad–22(e)(3) [14] requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency. LCH SA believes that its existing operational and risk management resources will be sufficient for clearing of the iTraxx Australia transactions, consistent with the requirements of Rule 17Ad–22(e)(3),[15] as this new index contract is substantially the same from an operational and risk management perspective as the existing index contracts.

LCH SA will also apply its existing default management policies and procedures for the iTraxx® Australia transactions. As with current CDSClear products with similar risk profile, LCH SA believes that these procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults in respect of the additional single names, in accordance with Rule 17Ad–22(e)(3).[16]

Exchange Act Rule 17Ad–22(e)(1) [17] requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As described above, the proposed iTraxx Change is also modifying the CDSClear framework for indices and single names CDS to take into account the new product iTraxx® Australia indices and the associated single name constituents and provide for a clear and transparent legal basis for LCH SA's CDS Clearing rules consistent with the requirements of Exchange Act Rule 17Ad–22(e)(1).[18]

Following the recommendation raised by the LCH SA CDSClear Risk model validation, the proposed WWR Change is improving the stability and accuracy of the WWR margin so that LCH SA can determine and duly collect the full margin amount required for the level of risk exposure of any clearing member portfolio. Therefore LCH SA believes it is consistent with Rule 17Ad–22(e)(6)(i),[19] requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.

Credit default swap (CDS) is an over-the-counter (OTC) market on which participants can be active at any time in the context of market stress. The LCH SA CDSClear risk model is considering 5–d moves of unhedged portfolios and the back testing results confirmed that the margins were sufficient to cover the exposure in the interval between the last margin collection and the close out of the portfolio a defaulting cleating member which is consistent with the requirements of SEC Rule 17Ad–22(e)(6)(iii).[20]

For all these reasons, LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Act and the regulations thereunder, including the standards under Rule 17Ad–22 [21] as discussed above.

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[22]

LCH SA does not believe that its proposed clearing of Markit iTraxx® Australia indices and the associated single name constituents will adversely

[8] 17 CFR 240.17Ad–22(e)(17).

[9] 17 CFR 240.17Ad–22(e).

[10] 17 CFR 240.17Ad–22(e)(4).

[11] 17 CFR 240.17Ad–22(e)4.

[12] 17 CFR 240.17Ad–22(e)(4)(i).

[13] 17 CFR 240.17Ad–22(e)(4)(ii).

[14] 17 CFR 240.17Ad–22(e)(3).

[15] 17 CFR 240.17Ad–22(e)(3).

[16] 17 CFR 240.17Ad–22(e)(3).

[17] 17 CFR 240.17Ad–22(e)(1).

[18] 17 CFR 240.17Ad–22(e)(1).

[19] 17 CFR 240. 17Ad–22(e)(6).

[20] 17 CFR 240. 17Ad–22(e)(6)(iii).

[21] 17 CFR 240.17Ad–22.

[22] 15 U.S.C. 78q–1(b)(3)(I).

affect competition in the trading market for those contracts or CDS generally. By allowing LCH SA to clear Markit iTraxx® Australia indices and the associated single name constituents, market participants will have additional choices on where to clear and which products to use for risk management purposes, which, in turn, will promote competition and further the development of CDS for risk management.

In addition, LCH SA will continue to apply its existing fair and open access criteria to the clearing of these additional products and will apply the same criteria to every clearing member or client who proposes to enter into this clearing activity.

Further, as explained above, the WWR Change is proposed to improve the stability and accuracy of the WWR margin so that LCH SA can collect the full margin amount as duly and equally required for any CDSClear market participant.

Accordingly, LCH SA does not believe that the Proposed Rule Change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–LCH SA–2022–004 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–LCH SA–2022–004. 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 LCH SA and on LCH SA's website at: *https://www.lch.com/resources/rulebooks/proposed-rule-changes.* 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–LCH SA–2022–004 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14879 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95206; File No. SR–NYSENAT–2022–09]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.31

July 7, 2022.

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 June 23, 2022, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7.31 to (1) permit certain non-routable order types to be designated to cancel if they would be displayed at a price other than their limit price; (2) allow ALO Orders to be designated as non-displayed; (3) permit ALO Orders to be entered in any size; (4) modify the operation of the Non-Display Remove Modifier and eliminate its use with MPL–ALO Orders; and (5) make MPL Orders eligible to trade at their limit price and eliminate the ''No Midpoint Execution'' Modifier. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31 to (1) permit certain non-routable order types to be designated to cancel if they would be displayed at a price other than their limit price; (2) allow ALO Orders to be designated as non-displayed; (3) permit ALO Orders to be entered in any size; (4) modify the handling of orders designated with the Non-Display Remove Modifier and eliminate the use of the Non-Display Remove Modifier for MPL–ALO Orders; and (5) allow MPL Orders to trade at either the midpoint or their limit price and eliminate the ''No Midpoint Execution'' Modifier.

Designation To Cancel

The Exchange proposes to modify Rules 7.31(e)(1), 7.31(e)(2), and 7.31(e)(3)(D) to permit Non-Routable Limit Orders, displayed ALO Orders,[4] and Day ISO ALO Orders to be designated to cancel if they would be displayed at a price other than their limit price for any reason.

As proposed, Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders would be eligible to be designated to cancel at the ETP Holder's instruction, thereby providing ETP Holders with increased flexibility with respect to order handling and the ability to have greater determinism regarding order processing when such orders would be repriced to display at a price other than their limit price. The Exchange notes that this designation would be optional, and if not designated to cancel, Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders would continue to function as set forth in current Exchange rules (except as proposed in this filing with respect to the function of the Non-Display Remove Modifier and odd lots). The Exchange further notes that providing ETP Holders with the ability to designate orders to cancel if they would be repriced is not novel, and other cash equity exchanges currently offer their members a similar option.[5]

To effect this change, the Exchange proposes the following modifications to Rules 7.31(e)(1), 7.31(e)(2), and 7.31(e)(3)(D):

• Rule 7.31(e)(1)—Non-Routable Limit Orders

As defined in Rule 7.31(e)(1), a Non-Routable Limit Order is a Limit Order that does not route. Currently, a Non-Routable Limit Order to buy (sell) will trade with orders to sell (buy) on the Exchange Book that are priced at or below (above) the PBO (PBB) and will be repriced based on updates to the Away Market PBO (PBB) as set forth in current Rules 7.31(e)(1)(A)(i) through (iv).

The Exchange proposes to delete the current text of Rule 7.31(e)(1)(A) and add new text to provide that a Non-Routable Limit Order would not be displayed at a price that would lock or cross the PBO (PBB) of an Away Market, and such order to buy (sell) would trade with orders on the Exchange Book that are priced equal to or below (above) the PBO (PBB) of an Away Market. These proposed changes would merely rephrase and clarify the existing behavior of a Non-Routable Limit Order as already set forth in Rule 7.31(e)(1)(A), without substantive changes.

The Exchange further proposes to modify Rule 7.31(e)(1)(A)(i) to delete the current text and add new text providing for the option to designate a Non-Routable Limit Order to be cancelled, as described above.

The Exchange also proposes to modify Rule 7.31(e)(1)(A)(ii) and add new subparagraphs thereunder to describe how any untraded quantity of a Non-Routable Limit Order would be processed if not designated to cancel. New subparagraph (a) would contain the rule text previously set forth in Rule 7.31(e)(1)(A)(i), without substantive changes, and provide that, if the limit price of a Non-Routable Limit Order to buy (sell) locks or crosses the PBO (PBB) of an Away Market, it would have a working price equal to the PBO (PBB) of the Away Market and a display price one MPV below (above) the PBO (PBB) of the Away Market. Proposed new subparagraph (b) would contain rule text currently set forth in Rule 7.31(e)(1)(A)(ii) describing how a Non-Routable Limit Order would be processed when the PBO (PBB) of an Away Market reprices higher (lower), without substantive changes. Finally, the Exchange proposes to renumber current Rules 7.31(e)(1)(A)(iii) and (iv) as Rules 7.31(e)(1)(A)(ii)(c) and (d), respectively, with no changes to the rule text.

• Rule 7.31(e)(2)—ALO Orders

Rule 7.31(e)(2) and the subparagraphs thereunder define the ALO Order, which is a Non-Routable Limit Order that will trade with contra-side interest if its limit price crosses the working price of any displayed or non-displayed orders to sell (buy) on the Exchange Book priced equal to or below (above) the PBO (PBB) of an Away Market. In other words, an ALO Order will not remove liquidity from the Exchange Book unless it receives price improvement. Accordingly, the Exchange proposes to modify Rule 7.31(e)(2) to simplify the definition of an ALO Order, without any substantive changes, and state that ALO Orders are Non-Routable Limit Orders that would not remove liquidity from the Exchange Book unless they receive price improvement. The Exchange also proposes to add new text to Rule 7.31(e)(2)[6] to effect the change described above, permitting an ALO Order to be designated to cancel if it would be displayed at a price other than its limit price for any reason.

The Exchange next proposes to reorganize Rules 7.31(e)(2)(A) through (C) to describe the operation of the ALO Order in a more logical flow, but without any substantive changes to the operation of the order type. Specifically, the Exchange proposes to reorganize Rules 7.31(e)(2)(A) through (C) to first describe when an ALO Order would trade, then describe how any untraded quantity of an ALO Order not designated to cancel would be processed, and then describe the handling of any untraded quantity of an ALO Order that locks non-displayed interest.

[4] As noted above, the Exchange also proposes in this filing to permit ALO Orders to be designated as non-displayed, and discussion of the proposed modification of Rule 7.31(e)(2) to effect that change appears in the ''Non-Displayed ALO'' section below. The proposed new designation to cancel would be inapplicable to Non-Displayed ALO Orders, as proposed, because such orders are not eligible to be displayed.

[5] *See, e.g.,* Members Exchange (''MEMX'') Rules 11.6(a) (defining the Cancel Back instruction, which a User may attach to an order to instruct that such order be cancelled if it cannot be posted to the MEMX Book at its limit price) and 11.6(l)(2) (defining the Post Only instruction; an order with such instruction functions similarly to the ALO Order and may be designated to be cancelled by the User); Cboe BZX Exchange, Inc. (''BZX'') Rules 11.9(c)(6) and 11.9(g)(d) (defining the BZX Post Only Order, which functions similarly to the ALO Order and may be designated to be cancelled at the User's instruction); Cboe BYX Exchange, Inc. (''BYX'') Rule 11.9(c)(6) and 11.9(g)(d) (defining the BYX Post Only Order, which functions similarly to the ALO Order and may be designated to be cancelled at the User's instruction); Nasdaq Stock Exchange LLC (''Nasdaq'') Rule 4702(b)(4)(A) (defining the Post-Only Order, which functions similarly to the ALO Order and may be designated to be cancelled back to the Participant at the Participant's election).

[6] As noted above, the Exchange also proposes in this filing to permit ALO Orders to be designated as non-displayed and to permit ALO Orders to be entered in odd lots, and discussion of the proposed modification of Rule 7.31(e)(2) to effect those changes appears in the ''Non-Displayed ALO'' and ''ALO Odd Lots'' sections below.

First, the Exchange proposes to delete the current text of Rule 7.31(e)(2)(A), which states only that an ALO Order will be assigned a working price and display price pursuant to Rule 7.31(e)(2)(B) and is thus redundant of the substantive rule text in Rule 7.31(e)(2)(B) and its subparagraphs. The Exchange proposes to add new rule text in Rule 7.31(e)(2)(A) providing that an Aggressing ALO Order to buy (sell) would trade if its limit price crosses the working price of any displayed or non-displayed orders to sell (buy) on the Exchange Book priced equal to or below (above) the PBO (PBB) of an Away Market, in which case, the ALO Order would trade as the liquidity taker with such orders. The Exchange notes that this change is not intended to propose any modification to the current operation of the ALO Order and merely restates text that currently appears in Rule 7.31(e)(2)(B)(ii) describing when an ALO Order may trade, with no substantive changes. The Exchange believes that this proposed reorganization would improve the clarity of Rule 7.31(e)(2) by describing how an ALO Order would trade before progressing on to describe how any untraded quantity of an ALO Order would be handled if it is not designated to cancel upon repricing.

The Exchange next proposes to delete the current text of Rule 7.31(e)(2)(B) and reorganize Rule 7.31(e)(2)(B) and the subparagraphs thereunder. Rule 7.31(e)(2)(B) and the subparagraphs that follow would, as proposed, specify how untraded quantities of an ALO Order would be processed if such order has not been designated to cancel. To effect this change, the Exchange proposes that Rule 7.31(e)(2)(B) would now provide that, if an ALO Order is not designated to cancel, any untraded quantity of such order would trade as described in subparagraphs (i) and (ii).

In subparagraph (i), the Exchange proposes to delete the existing rule text and modify subparagraph (i) to provide that, if the limit price of an ALO Order locks the display price of any order to sell (buy) ranked Priority 2—Display Orders on the Exchange Book, it would have a working price and display price (if it has been designated to display) one MPV below (above) the price of the displayed order on the Exchange Book. The Exchange notes that the content of Rule 7.31(e)(2)(B)(i) would be incorporated into Rule 7.31(e)(2)(B)(ii) (as proposed below) and that this proposed change merely moves rule text from where it is currently located in Rule 7.31(e)(2)(B)(iii) and does not reflect any proposed change to the operation of the ALO Order when the limit price of any untraded quantity of such order locks displayed interest on the Exchange Book.

The Exchange next proposes to delete the current text of Rule 7.31(e)(2)(B)(ii) and replace it with text that would provide that, if the limit price of an ALO Order locks or crosses the PBO (PBB) of an Away Market, it would have a working price equal to the PBO (PBB) of the Away Market and a display price (if designated to display) one MPV below (above) the PBO (PBB) of the Away Market. The Exchange notes that proposed Rule 7.31(e)(2)(B)(ii) rephrases text currently set forth in Rules 7.31(e)(2)(B)(i) and (iv) and is not intended to propose any change to the operation of the ALO Order when the limit price of any untraded quantity of such order locks or crosses the PBBO of an Away Market. The Exchange also notes that the current text of Rule 7.31(e)(2)(B)(ii) was, as described above, incorporated into revised Rule 7.31(e)(2)(A).

The Exchange further proposes to delete current Rules 7.31(e)(2)(B)(iii) and (iv) (including subparagraph (a) under Rule 7.31(e)(2)(B)(iv)), as the content of such Rules has been covered by the proposed Rules described above and would be incorporated into proposed Rule 7.31(e)(2)(C) (as discussed below), without changes to the current operation of the ALO Order. Specifically, Rule 7.31(e)(2)(B)(iii) has been incorporated into proposed Rule 7.31(e)(2)(B)(i), the content of Rule 7.31(e)(2)(B)(iv) would be clarified by proposed Rules 7.31(e)(2)(B)(ii) and 7.31(e)(2)(C), and the content of Rule 7.31(e)(2)(B)(iv)(a) would be covered by proposed Rule 7.31(e)(2)(B)(i). The Exchange also proposes to delete subparagraph (b) under 7.31(e)(2)(B)(iv), which currently describes how ALO Orders would interact with resting Non-Displayed Limit Orders and Non-Routable Limit Orders designated with the Non-Displayed Remove Modifier, as repetitive of rule text in Rule 7.31(d)(2)(B) with respect to Non-Displayed Limit Orders and in Rule 7.31(e)(1)(C) with respect to Non-Routable Limit Orders.

Proposed Rule 7.31(e)(2)(C) would next provide that if any untraded quantity of an ALO Order to buy (sell), whether designated to cancel or not, locks non-displayed interest on the Exchange Book, it would have a working price and display price (if designated to display) equal to its limit price. The Exchange notes that this rule text reflects the current behavior of ALO Orders when their limit price locks non-displayed interest on the Exchange Book, which would not change based on whether an ALO Order has been designated to cancel, as proposed.

The Exchange next proposes to rename current Rule 7.31(e)(2)(B)(v) as Rule 7.31(e)(2)(D) and current Rule 7.31(e)(2)(C) as Rule 7.31(e)(2)(E). The Exchange also proposes changes to subparagraphs (i) and (ii) of proposed Rule 7.31(e)(2)(E). In subparagraphs (i) and (ii), the Exchange proposes to add clarity to its Rules by specifying that the reference to the PBO (PBB) is of an Away Market and proposes to update the paragraph references to reflect the reorganization of the Rule as described above. Specifically, the Exchange proposes to update subparagraph (i) to refer to paragraphs (e)(2)(A) (which now describes when an Aggressing ALO Order is eligible to trade), (e)(2)(B)(i)–(ii) (which now describe the processing of any untraded quantity of an ALO Order that is not designated to cancel), and (e)(2)(C) of the Rule (which now describes the processing of any untraded quantity of an ALO Order that locks non-displayed interest). The Exchange further proposes to update subparagraph (ii) to refer to paragraphs (e)(1)(A)(ii)(c) and (d) of the Rule, which simply updates the paragraph references consistent with the changes described above to renumber paragraphs (e)(1)(A)(iii) and (iv) as paragraphs (e)(1)(A)(ii)(c) and (d).[7]

The Exchange also proposes to rename current Rule 7.31(e)(2)(D) as Rule 7.31(e)(2)(F) and modify new Rule 7.31(e)(2)(F) to provide that an ALO Order would not trigger a contra-side MPL Order that is resting at the midpoint to trade, except as specified in Rule 7.31(d)(3)(F). Rule 7.31(d)(3)(F), in relevant part and as modified in this filing, would provide that an MPL Order designated with the Non-Display Remove Modifier would trade as the liquidity-taking order with an Aggressing ALO Order or MPL–ALO Order that has a working price equal to the working price of the MPL Order.[8]

The Exchange notes that the proposed changes described above are intended only to implement the addition of the option to designate an ALO Order to cancel and, in connection with such proposal, to improve the clarity and organization of Rule 7.31(e)(2). The proposed changes set forth above

[7] In addition, to effect the proposed change to permit ALO Orders to be designated as non-displayed, the Exchange proposes an additional revision to Rule 7.31(e)(2)(E)(ii) discussed below in the ''Non-Displayed ALO'' section.

[8] Changes to Rule 7.31(d)(3)(F) to effect the proposed modification of the Non-Display Remove Modifier's operation with respect to MPL–ALO Orders are discussed further in the ''Non-Display Remove Modifier'' section below.

otherwise reflect how an ALO Order currently behaves and are not intended to propose any other changes to the operation of the order type.[9]

• Rule 7.31(e)(3)(D)—Day ISO ALO Orders

Rule 7.31(e)(3) provides that an Intermarket Sweep Order (''ISO'') is a Limit Order that does not route and meets the requirements of Rule 600(b)(30) of Regulation NMS. Rule 7.31(e)(3)(C) provides that an ISO designated Day (''Day ISO''), if marketable on arrival, will be immediately traded with contra-side interest in the Exchange Book up to its full size and limit price, and that any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. Rule 7.31(e)(3)(D) provides that a Day ISO ALO is a Day ISO that has been designated with an ALO Modifier and, on arrival, may trade through or lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO ALO.

In order to effect the change described above to permit a Day ISO ALO Order to be designated to cancel if it would be displayed at a price other than its limit price for any reason, the Exchange proposes to modify and reorganize Rule 7.31(e)(3)(D) and the paragraphs thereunder similar to its proposal with respect to Rule 7.31(e)(2) for ALO Orders. As in proposed Rule 7.31(e)(2), the Exchange proposes to reorganize Rule 7.31(e)(3)(D) to describe when a Day ISO ALO Order would trade, how any untraded quantity of a Day ISO ALO Order not designated to cancel would be processed, and the handling of any untraded quantity of a Day ISO ALO Order that locks non-displayed interest, in that logical order.

First, the Exchange proposes to modify Rule 7.31(e)(3)(D) to add text providing that a Day ISO ALO can be designated to cancel. The Exchange does not propose any changes to the first sentence of current Rule 7.31(e)(3)(D)(i), which describes when a Day ISO ALO Order may trade, but proposes to combine the second sentence of current Rule 7.31(e)(3)(D)(i) with Rule 7.31(e)(3)(D)(ii). Rule 7.31(e)(3)(D)(ii) would now specify that, if not designated to cancel, any untraded quantity of a Day ISO ALO Order to buy (sell) would be assigned a working price and display price one MPV below (above) the price of the displayed order on the Exchange Book when the limit price of the Day ISO ALO Order locks the display price of a displayed order on the Exchange Book.

The Exchange next proposes to delete the current text of Rule 7.31(e)(3)(D)(iii) and the subparagraphs thereunder and add new rule text specifying that any untraded quantity of a Day ISO ALO Order that locks non-displayed interest on the Exchange Book would have a working price and display price equal to its limit price. The Exchange notes that this proposed change merely rephrases current Rule 7.31(e)(3)(D)(iii) and eliminates redundant rule text (thereby simplifying Exchange rules) and is not intended to change the meaning or operation of such rules. The Exchange notes that current Rule 7.31(e)(3)(D)(iii)(a) would be covered by Rule 7.31(e)(3)(D)(ii), as proposed, and that it proposes to delete Rule 7.31(e)(3)(D)(iii)(b) because, like Rule 7.31(e)(2)(B)(iv), it is redundant of rule text describing the behavior of the Non-Displayed Remove Modifier in Rule 7.31(d)(2)(B) with respect to Non-Displayed Limit Orders and in Rule 7.31(e)(1)(C) with respect to Non-Routable Limit Orders.

Finally, the Exchange proposes to make clarifying changes to Rule 7.31(e)(3)(D)(iv). First, the Exchange proposes to replace ''After being displayed'' with ''Once resting on the Exchange Book'' to align the rule text with existing rule text in current Rule 7.31(e)(2)(C), which similarly describes how ALO Orders would be processed once resting on the Exchange Book. The Exchange further proposes to clarify that the PBO (PBB) referenced in this subparagraph is of an Away Market. The Exchange also proposes to update the reference to paragraphs (e)(2)(C)(i) and (ii) of Rule 7.31 to paragraphs (e)(2)(E)(i) and (ii) to reflect the proposed reorganization of Rule 7.31(e)(2) as described above.

The Exchange notes that the proposed changes described above are not intended to impact the operation of the Day ISO ALO Order other than to implement the new optional designation to cancel and, in connection with that proposed change, to improve the clarity and organization of Rule 7.31(e)(3)(D).[10] The proposed changes set forth above otherwise reflect how a Day ISO ALO Order currently behaves and are not intended to propose any other changes to the operation of the order type.

Non-Displayed ALO Order

As noted above, the Exchange proposes to permit ALO Orders to be designated as non-displayed, and to effect this change, proposes to modify Rule 7.31(e)(2) to add text specifying that ALO Orders may be designated as non-displayed orders. The Exchange proposes that a non-displayed ALO Order would function in the same way as an ALO Order currently behaves except that it would not have a display price (and thus would not be eligible to be designated to cancel, as such proposed option is described above) and would be repriced when crossed by the PBO (PBB) of an Away Market.

The Exchange also proposes to add text to Rule 7.31(e)(2)(E)(ii) (as renumbered above) to provide that, if the PBO (PBB) of an Away Market reprices lower (higher) than the working price of a non-displayed ALO Order to buy (sell), the non-displayed ALO Order would have a working price equal to the PBO (PBB) of the Away Market. This proposed rule text would indicate, as noted above, a difference in behavior between a non-displayed ALO Order, as proposed, and a displayed ALO Order.

The Exchange believes that permitting an ALO Order to be non-displayed would provide ETP Holders with greater flexibility with respect to the operation of an existing order type and would provide ETP Holders with the option to designate ALO Orders to be non-displayed in accordance with their desired trading strategy.

The Exchange notes that displayed ALO Orders would continue to be available for use by ETP Holders, and designating an ALO Order to be non-displayed would be at the ETP Holder's option. The Exchange also believes that other cash equity exchanges similarly permit order types analogous to the ALO Order to be non-displayed and that this proposed change thus does not raise any novel issues.[11]

ALO Odd Lots

Currently, Rules 7.31(e)(2) and 7.31(e)(3)(D) provide that ALO Orders and Day ISO ALO Orders, respectively, must be entered with a minimum of one displayed round lot. The Exchange proposes to permit ALO Orders and Day

[9] The Exchange notes that its proposed changes to provide for a non-displayed ALO Order, to permit ALO Orders to be entered in odd lots, and to modify the operation of the Non-Display Remove Modifier are discussed below.

[10] The Exchange notes that it also proposes a modification to Rule 7.31(e)(3)(D) in connection with its proposal to permit Day ISO ALO Orders to be entered in odd lots, which is described below in the ''ALO Odd Lots'' section.

[11] *See, e.g.,* MEMX Rules 11.8(b)(3) and (7) (providing that a Limit Order may be non-displayed and designated with a Post Only instruction). The Exchange also notes that BZX Rule 11.9(g)(1)(D) and BYX Rule 11.9(g)(1)(D) refer to ''display-eligible'' BZX Post Only Orders and BYX Post Only Orders, respectively, suggesting that such orders could also be designated as non-displayed.

ISO ALO Orders to be entered in any size, and thus proposes to delete the round lot requirement from Rules 7.31(e)(2) and 7.31(e)(3)(D). The Exchange believes that requiring ALO Orders and Day ISO ALO Orders to be entered in round lots is unnecessary, particularly since the Exchange already permits odd lot residual quantities for ALO Orders and Day ISO ALO Orders. The Exchange also believes that permitting ALO Orders and Day ISO ALO Orders to be entered in odd lots could increase liquidity and enhance opportunities for order execution on the Exchange. The Exchange notes that permitting odd lot order quantities, including for ALO Orders, is not novel on the Exchange or other cash equity exchanges and thus believes that this proposed change would align the Exchange's treatment of ALO Orders and Day ISO ALO Orders with features available on other cash equity exchanges.[12]

Non-Display Remove Modifier

The Exchange proposes to modify the handling of orders designated with the Non-Display Remove Modifier (''NDR Modifier''). Currently, Exchange rules provide that Non-Displayed Limit Orders, Non-Routable Limit Orders (when not displayed), MPL Orders, and MPL–ALO Orders are eligible to be designated with the NDR Modifier.[13] When so designated, Non-Displayed Limit Orders and Non-Routable Limit Orders would trade as the liquidity-taking order with an incoming ALO Order with a working price equal to the working price of such order. MPL Orders and MPL–ALO Orders designated with the NDR Modifier will, on arrival, trade with resting MPL Orders at the midpoint of the PBBO and be the liquidity taker; a resting MPL Order or MPL–ALO Order with the NDR Modifier will be the liquidity taker when trading with arriving MPL Orders and MPL–ALO Orders that do not include the NDR Modifier.

The Exchange proposes to modify the operation of the NDR Modifier to provide that any resting order with the NDR Modifier would remove liquidity when it is locked by any ALO Order. The Exchange believes that this proposed change would expand the circumstances under which an order with the NDR Modifier would be eligible to trade, thereby increasing opportunities for order execution to the benefit of all market participants. Non-Displayed Limit Orders, Non-Routable Limit Orders (when not displayed), and MPL Orders would continue to be eligible to be designated with the NDR Modifier, but the Exchange proposes to provide that MPL–ALO Orders may no longer be designated with the NDR Modifier. The Exchange proposes to eliminate use of the NDR Modifier with MPL–ALO Orders because designating such order with an NDR Modifier is inconsistent with the purpose of the order type (as an MPL–ALO Order is not intended to remove liquidity at the midpoint). Moreover, because ETP Holders have not used the NDR Modifier with MPL–ALO Orders, the Exchange believes that eliminating this order type-modifier combination will simplify its Rules.

To effect the proposed modification to the operation of the NDR Modifier, the Exchange proposes the following changes:

- The Exchange proposes to modify Rule 7.31(d)(2)(B) to provide that, when a Non-Displayed Limit Order is designated with the NDR Modifier, it would trade as the liquidity-taking order with an Aggressing ALO Order or MPL–ALO Order when the working price of such order locks the working price of the Non-Displayed Limit Order.
- The Exchange proposes to modify Rule 7.31(d)(3)(F) to delete the reference to MPL–ALO Orders, as it proposes that such orders may no longer be designated with the NDR Modifier. The Exchange also proposes to modify Rule 7.31(d)(3)(F) to provide that an MPL Order designated with the NDR Modifier would trade as the liquidity-taking order with an Aggressing ALO Order or MPL–ALO Order that has a working price equal to the working price of the MPL Order.
- The Exchange proposes to modify Rule 7.31(e)(1)(C) to provide that, when a Non-Routable Limit Order is designated with the NDR Modifier and has a working price (but not display price) equal to the working price of an Aggressing ALO Order or MPL–ALO Order, the Non-Routable Limit Order would trade as the liquidity taker against the ALO Order or MPL–ALO Order.
- The Exchange also proposes to add new subparagraph (d)(3)(E)(iii) to Rule 7.31 to provide that an MPL–ALO Order may not be designated with a NDR Modifier.

The Exchange believes that the operation of the NDR Modifier, as proposed, would not be novel and that the modifier would function similarly to modifiers offered by other cash equity exchanges.[14]

MPL Orders

A Mid-Point Liquidity Order or MPL Order is currently defined in Rule 7.31(d)(3) as a non-displayed, non-routable Limit Order with a working price of the midpoint of the PBBO. The Exchange proposes to modify the definition of an MPL Order to provide that an MPL Order to buy (sell) would have a working price of the lower (higher) of the midpoint of the PBBO or its limit price. In other words, the Exchange proposes that an MPL Order would be eligible to trade at the less aggressive of the midpoint of the PBBO or its limit price. The Exchange believes that permitting MPL Orders to trade at the less aggressive of the midpoint of the PBBO or their limit price would provide ETP Holders with increased opportunities for order execution, thereby enhancing market quality for all market participants. The Exchange notes that permitting MPL Orders to trade at the less aggressive of the midpoint of the PBBO or at their limit price is not novel and that comparable order types on other cash equity exchanges currently behave in this manner.[15]

To effect this change, the Exchange proposes to modify the following portions of Rule 7.31(d)(3):

- Rule 7.31(d)(3) currently provides that an MPL Order has a working price of the midpoint of the PBBO. The Exchange proposes to modify this Rule to provide that an MPL Order to buy (sell) would have a working price at the lower (higher) of the midpoint of the PBBO or its limit price.

[12] *See, e.g.,* MEMX Rules 11.8(b)(2) and (7) (providing that a Limit Order may be of odd lot size and designated with the Post Only instruction). The Exchange also notes that the rules of Nasdaq, BZX, and BYX do not appear to prohibit entry of their order types analogous to the ALO Order in odd lots.

[13] *See* Rules 7.31(d)(2)(B); 7.31(e)(1)(C); 7.31(d)(3)(F).

[14] *See, e.g.,* BYX Rule 11.9(c)(12) (providing for the Non-Displayed Swap or ''NDS'' Order, which is an instruction on an order resting on the BYX book that, when locked by an incoming BYX Post Only Order that does not remove liquidity, causes such order to be converted to an executable order that removes liquidity against such incoming order); BZX Rule 11.9(c)(12) (providing for the Non-Displayed Swap or ''NDS'' Order, which is an instruction on an order resting on the BZX book that, when locked by an incoming BZX Post Only Order that does not remove liquidity, causes such order to be converted to an executable order that removes liquidity against such incoming order).

[15] *See, e.g.,* MEMX Rule 11.6(h)(2) (providing that a Pegged Order with a Midpoint Peg instruction may execute at its limit price or better when its limit price is less aggressive than the midpoint of the NBBO); Cboe EDGA Exchange, Inc. Rule 11.8(d) (describing the MidPoint Peg Order, which is a non-displayed Market Order or Limit Order with an instruction to execute at the midpoint of the NBBO, but that may execute at its limit price or better when its limit price is less aggressive than the midpoint of the NBBO); Cboe EDGX Exchange, Inc. Rule 11.8(d) (same); Nasdaq Rule 4702(b)(5)(A) (describing the Midpoint Peg Post-Only Order, which will be priced at the midpoint between the NBBO or at its limit price when the midpoint is higher than (lower than) the limit price of such order).

• Rule 7.31(d)(3)(A) currently provides that an MPL Order to buy (sell) is eligible to trade only if the midpoint of the PBBO is at or below (above) the limit price of the MPL Order. The Exchange proposes to modify this Rule to provide that an MPL Order would be eligible to trade at the working price of the order (which, as described above, would be defined to be the less aggressive of the midpoint of the PBBO or the limit price of the MPL Order).

• Rule 7.31(d)(3)(C) currently provides that an Aggressing MPL Order to buy (sell) will trade with resting orders to sell (buy) with a working price at or below (above) the midpoint of the PBBO at the working price of the resting orders. The Exchange proposes to modify this Rule to provide that an Aggressing MPL Order would trade with a resting order, at the working price of such order, when the resting order has a working price at or below (above) the working price of the MPL Order. Rule 7.31(d)(3)(C) also currently states that resting MPL Orders to buy (sell) will trade at the midpoint of the PBBO against all Aggressing Orders to sell (buy) priced at or below (above) the midpoint of the PBBO. The Exchange proposes to instead provide that resting MPL Orders would trade against Aggressing Orders priced at or below (above) the working price of the MPL Order, consistent with the proposed changes described above to permit MPL Orders to trade at the less aggressive of the midpoint of the PBBO or their limit price.

• Rule 7.31(d)(3)(E) currently provides that an MPL–ALO Order is an MPL Order that has been designated with an ALO Modifier. The Exchange proposes to revise subparagraphs (i) and (ii) thereunder to make changes consistent with those described above with respect to MPL Orders. Specifically, the Exchange proposes to modify Rule 7.31(d)(3)(E)(i) to be similar to Rule 7.31(d)(3)(C) but with modified phrasing specific to the behavior of MPL–ALO Orders. Accordingly, Rule 7.31(d)(3)(E)(i), as proposed, would provide that an Aggressing MPL–ALO Order to buy (sell) would trade with a resting order, at the working price of such order, when the resting order has a working price below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order. In addition, to reflect the operation of the ALO Modifier, the Exchange further proposes to modify Rule 7.31(d)(3)(E)(i) to specify that an MPL–ALO Order would not trade with resting orders priced equal to the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order.[16] The Exchange believes that these proposed changes would provide additional clarity with respect to the particular behavior of MPL–ALO Orders, as such orders (unlike MPL Orders) would not take liquidity at the less aggressive of the midpoint of the PBBO or their limit price.

In addition, because the Exchange proposes to allow MPL Orders—including MPL–ALO Orders—to trade at the less aggressive of the midpoint of the PBBO or their limit price, the Exchange proposes to modify Rule 7.31(d)(3)(E)(ii) to replace the reference to the ''midpoint'' with the ''working price of the MPL–ALO Order'' (consistent with the revised definition of MPL Order proposed above).

To effect the proposed change to eliminate the ''No Midpoint Execution'' Modifier, the Exchange proposes to modify Rule 7.31(d)(3)(C) to delete text providing that an incoming Limit Order may be designated with a ''No Midpoint Execution'' Modifier and that orders so designated would not trade with resting MPL Orders and may trade through MPL Orders.

The Exchange believes that the elimination of the ''No Midpoint Execution'' Modifier would simplify order processing on the Exchange and, in conjunction with the proposed changes to MPL Orders described above, encourage the use of MPL Orders and provide increased opportunities for order execution.

Finally, the Exchange proposes a modification to Rule 7.11, which sets forth rules pertaining to the Limit Up-Limit Down (''LULD'') Plan. The proposed change would modify the handling of MPL Orders relative to the Upper and Lower Price Bands, consistent with the proposed changes described above with respect to the behavior of MPL Orders. Specifically, the Exchange proposes to modify Rule 7.11(a)(5), which describes the repricing or cancellation of orders to buy (sell) that are priced or could be traded above (below) the Upper (Lower) Price Band. Rule 7.11(a)(5)(F) currently provides that, if the midpoint of the PBBO is above (below) the Upper (Lower) Price Band, an MPL Order will not be repriced or rejected and will not be eligible to trade unless the ETP Holder enters an instruction to cancel or reject such MPL Order.

The Exchange proposes to delete the text of Rule 7.11(a)(5)(F) and designate the Rule as Reserved. The Exchange believes Rule 7.11(a)(5)(F) is no longer necessary because MPL Orders, as proposed, would be permitted to reprice and trade relative to LULD Price Bands. The Exchange believes that this change is consistent with the proposed change to permit MPL Orders to trade at prices other than the midpoint of the PBBO and would similarly increase execution opportunities for MPL Orders within the bounds of the LULD Price Bands in effect. The Exchange notes that MPL Orders would behave in the same way as other Limit Orders with respect to LULD Price Bands and would thus be processed as set forth in current Rule 7.11(a)(5)(B).

Reserve Orders

Rule 7.31(d)(1) provides for Reserve Orders, which are Limit or Inside Limit Orders with a quantity of the size displayed and with a reserve quantity that is not displayed. Rule 7.31(d)(1)(C) provides that a Reserve Order must be designated Day and may only be combined with a Non-Routable Limit Order or a Primary Pegged Order.

The Exchange proposes to modify Rule 7.31(d)(1)(C) to clarify that a Reserve Order may not be designated as an ALO Order. Rule 7.31(d)(1)(C) currently provides that a Reserve Order may be combined with a Non-Routable Limit Order. However, although an ALO Order is a Non-Routable Limit Order, the Exchange currently does not permit Reserve Orders to be designated as ALO Orders and thus proposes a clarifying change to Rule 7.31(d)(1)(C) to specify accordingly. The Exchange notes that this change is intended only to clarify and reflect current behavior and does not propose any changes to the current operation of Reserve Orders or ALO Orders.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be in the third quarter of 2022.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5),[18] 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

[16] The proposed changes to Rule 7.31(d)(3)(E)(i) relating to the operation of the NDR Modifier are described above in the ''Non-Display Remove Modifier'' section.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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.

With respect to the proposed changes to permit Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders to be designated to cancel, the Exchange believes that the proposed changes would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would offer ETP Holders the option to cancel such orders when they would be displayed at a price other than their limit price. The Exchange believes that providing ETP Holders with this option would afford them increased flexibility with respect to order handling for existing order types, as well as the ability to have greater determinism regarding order processing in times when such orders would be repriced to display at a price other than their limit price. The Exchange notes that this designation would be optional for ETP Holders, and if not designated to cancel, Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders would continue to function as set forth in current Exchange rules (except as otherwise proposed in this filing). The Exchange also notes that providing ETP Holders with the option to designate orders to cancel if they would be repriced is not novel, and would align the Exchange's rules with those of other cash equity exchanges that currently offer their members similar functionality.[19] The Exchange also believes that the proposed changes described above to reorganize and rephrase rule text that describes the current operation of Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders are designed 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 because they do not propose any functional changes other than to add the option to cancel instead of repricing and would improve the clarity of Exchange rules governing such orders in connection with the proposed addition of the option to designate such orders to cancel.

With respect to the proposed change to permit ALO Orders to be designated as non-displayed, the Exchange believes that the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and protect investors and the public interest because it would offer ETP Holders greater flexibility with respect to the entry of ALO Orders and could offer ETP Holders increased opportunities for order execution. The Exchange believes that permitting an ALO Order to be non-displayed would simply provide ETP Holders with increased options with respect to an existing order type, and ETP Holders are free to designate ALO Orders to be non-displayed or to continue using displayed ALO Orders as provided under current Exchange rules. The Exchange further believes that permitting ALO Orders to be designated as non-displayed is not novel and that this proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system by aligning Exchange rules with the rules of other cash equity exchanges.[20]

With respect to the proposed change to permit ALO Orders and Day ISO ALO Orders to be entered in any size, the Exchange also believes that the proposed change would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest. Specifically, the Exchange believes that the proposed change would provide ETP Holders with the flexibility and optionality to enter ALO Orders and Day ISO ALO Orders in odd lot sized orders, which could increase liquidity and enhance opportunities for order execution on the Exchange, to the benefit of all market participants. The Exchange also believes that the proposed change would align Exchange rules with the treatment of post-only orders on other cash equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.[21]

The Exchange also believes that the proposed change to modify the operation of the NDR Modifier would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and protect investors and the public interest. Specifically, the Exchange believes that this proposed change, which would provide that any resting order with the NDR Modifier would remove liquidity when it is locked by any ALO Order, would expand the circumstances under which an order with the NDR Modifier would be eligible to trade, thereby increasing opportunities for order execution to the benefit of all market participants. The Exchange also believes that eliminating the use of the NDR Modifier with MPL–ALO Orders would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because the order type-modifier combination is inconsistent with the purpose of an MPL–ALO Order (and has not been used by ETP Holders), and the elimination of the NDR Modifier in this context would simplify the Exchange's rules. The Exchange further believes that the operation of the NDR Modifier, as modified, would not be novel and that the proposed change would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system because the NDR Modifier would function similarly to analogous modifiers offered by other cash equity exchanges.[22]

The Exchange also believes that the proposed changes to make an MPL Order eligible to trade at the less aggressive of the midpoint of the PBBO or its limit price and to permit an MPL Order to reprice and trade relative to LULD Price Bands would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system because MPL Orders could have more opportunities to trade with contra-side interest, thereby providing ETP Holders with increased opportunities for order execution and enhancing market quality for all market participants. The Exchange also believes that this proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because permitting MPL Orders to trade at the less aggressive of the midpoint of the PBBO or at their limit price is not novel and that comparable order types on other cash equity exchanges currently behave in this manner.[23] The Exchange further believes that the proposed change to eliminate the ''No Midpoint Execution'' Modifier would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because the proposed change, along with the proposed changes to MPL Orders, could result in greater opportunities for order execution, thereby enhancing market quality on the Exchange.

[19] *See* note 5, *supra.*

[20] *See* note 11, *supra.*

[21] *See* note 12, *supra.*

[22] *See* note 14, *supra.*

[23] *See* note 15, *supra.*

Finally, the Exchange believes that its proposed change to specify that Reserve Orders may not be designated as an ALO Order would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and protect investors and the public interest because it is not intended to effect any functional change but would instead add clarity to Exchange rules regarding the current behavior of Reserve Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange believes the proposed rule changes would generally align order handling on the Exchange with behavior on other cash equity exchanges [24] and thus would promote competition among exchanges by offering ETP Holders similar functionality and order handling options available on other cash equity exchanges. The Exchange also believes that, to the extent the proposed changes would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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 [25] and Rule 19b–4(f)(6) thereunder.[26]

[24] *See* notes 5, 11, 12, 14, 15, *supra.*

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 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.

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–NYSENAT–2022–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2022–09. 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–NYSENAT–2022–09 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14874 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95217; File No. SR–BOX–2022–08]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 12140 (Imposition of Fines for Minor Rule Violations), To Expand the List of Violations Eligible for Disposition Under the Exchange's Minor Rule Violation Plan and To Update the Fine Schedule Applicable to Minor Violations of Certain Rules

July 7, 2022.

I. Introduction

On March 31, 2022, BOX Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 12140 (Imposition of Fines for Minor Rule Violations), to expand the list of violations eligible for disposition under the Exchange's Minor Rule Violation Plan (''MRVP'') and update the fine schedule applicable to minor rule violations related to certain rule violations. The proposed rule change was published for comment in the **Federal Register** on April 21, 2022.[4] On June 3, 2022, the Commission extended

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 94729 (April 15, 2022), 87 FR 23893.

the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On June 10, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[6] The Commission received one comment on the proposed rule change.[7] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Rule 12140 (Imposition of Fines for Minor Rule Violations), which governs the Exchange's MRVP, in connection with certain minor rule violations, applicable fines, as well as other clarifying and non-substantive changes to improve the consistency of the Exchange's MRVP with the MRVPs at other options exchanges. Specifically, the proposed rule change amends Rule 12140 by: (1) adding certain rule violations that the Exchange believes to be minor in nature and consistent with violations at other options exchanges; (2) updating the fine schedule applicable to minor rule violations related to certain rule violations; and (3) making other clarifying and non-substantive changes.

The MRVP provides that in lieu of commencing a disciplinary proceeding, the Exchange may, subject to the certain requirements set forth in the Rule, impose a fine, not to exceed $5,000, on any Options Participant, or person associated with or employed by an Options Participant, with respect to any Rule violation listed in Rule 12140(d) or (e) discussed below. Any fine imposed pursuant to this Rule that (i) does not exceed $2,500 and (ii) is not contested, shall be reported on a periodic basis, except as may otherwise be required by Rule 19d–1 under the Act or by any other regulatory authority. Further, the Rule provides that any person against whom a fine is imposed under the Rule shall be served with a written statement setting forth: (i) the Rule(s) allegedly violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine must be paid or contested, which date shall be not less than twenty-five (25) calendar days after the date of service of such written statement. Rule 12140 (d) and (e) set forth the list of specific Exchange Rules under which an Options Participant or person associated with or employed by an Options Participant may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange. As with all the violations incorporated into its MRVP, the Exchange will proceed under this Rule only for violations that are minor in nature. Any other violation will be addressed pursuant to Rules 12030 (Letters of Consent) or 12040 (Charges).

As stated above, the Exchange is proposing to make clarifying and non-substantive changes to the MRVP. The Exchange is proposing to update language within the MRVP to remove the term ''occurrence'' and replace it with ''violation'' when the term is being used to represent a singular instance and ''offense'' when the term may be used to represent multiple violations aggregated together. The Exchange is proposing these changes to improve the consistency of the use of these terms within the MVRP. The Exchange is also proposing to update any use of the term ''running'' to ''rolling'' within the MRVP fine schedules. There is no substantive difference in the Exchange's interpretation of the term ''running'' and ''rolling.'' The purpose of these changes is to provide greater clarity within the Exchange's MRVP by using more consistent terminology throughout. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed changes are intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges.

Exercise Limits

First, the Exchange proposes to amend 12140(d)(1), Position Limits to include violations of Exercise limits pursuant to Rule 3140.[8] The Exchange believes that amending Rule 12140(d)(1), Position Limits, to include violations of Exercise Limits pursuant to BOX Rule 3140 is appropriate because it will allow the Exchange to carry out its regulatory responsibility more efficiently and in a manner that is consistent with the way it handles violations of position limits. Violations of position and exercise limits on the Exchange generally occur together, so adding exercise limits to the existing position limits minor rule violation will allow the Exchange to address these related violations more effectively. The Exchange proposes that the fine levels for exercise limit violations match the current fine levels for position limits. The Exchange is also proposing to update the language in the heading of the fine schedule to change ''violations'' to ''offenses''. The Exchange believes this change is reasonable as it adds detail and clarity to the fine schedules by clarifying the Exchange's use of these terms as used within the fine schedules. The Exchange believes this change may help reduce Participant confusion over the Exchange's application of the fines within BOX Rule 12140(d)(1).

Under this rule, any Participant who violates Rule 3120 or Rule 3140 regarding position or exercise limits shall be subject to the fines listed below. The Exchange notes that this proposal is consistent with the MRVPs in place at

[5] *See* Securities Exchange Act Release No. 95037, 87 FR 35273 (June 9, 2022) (extending the time period to July 20, 2022).

[6] In Amendment No. 1, the Exchange revised the proposed rule change to: (1) provide additional detail and clarification regarding the Exchange's usage of the terms ''violation'' and ''offense'' within Rule 12140; and (2) clarify the application of fines under Rule 12140(d)(6). Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-box-2022-08/srbox202208.htm*.

[7] The Commission has received one comment on the proposal which does not relate to the substance of the proposed rule change. The comment letter is available at *https://www.sec.gov/comments/sr-box-2022-08/srbox202208.htm*.

[8] The Exchange notes that BOX Rule 3140 establishes a limit on the number of option contracts of a single class that an Options Participant can exercise within any five consecutive business days. Exercise limits are fixed by the Exchange pursuant to Rule 3140 and vary by class of options. *See* BOX Rule 3140.

Cboe Exchange, Inc. (''Cboe Options''), NYSE American, LLC (''NYSE American'') and NYSE Arca, Inc. (''NYSE Arca'').[9]

Number of cumulative offenses within any rolling twenty-four month period	Sanction
First Offense	$500
Second Offense	1,000
Third Offense	2,500
Fourth and Each Subsequent Offense	5,000

Requests for Trade Data

As stated above, the Exchange is proposing to make clarifying and non-substantive changes. As such, the Exchange is proposing to amend Rule 12140(d)(3) Requests for Trade Data pursuant to Rule 10040, to change ''offense'' to ''violation'' within the fine schedule. The Exchange is proposing this change to clarify the distinction between offense and violation by updating the terminology to only use the term ''offense'' when the listed fines are meant to cover multiple violations. The purpose of these changes is to provide greater clarity within the Exchange's MRVP by using more consistent terminology throughout. As such, the Exchange is proposing to amend Rule 12140(d)(3) Requests for Trade Data pursuant to Rule 10040, to change ''offense'' to ''violation'' within the fine schedule. The Exchange believes this proposed clarifying and non-substantive change is appropriate because it will help clarify this distinction between offense and violation by updating the terminology to only use the term ''offense'' when the listed fines are meant to cover multiple violations. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges. The Exchange is not proposing to amend the sanctions under this Rule 12140(d)(3). The Exchange proposes to update the fine schedule as follows:

Number of violations within one calendar year	Sanction
2nd Violation	$500.
3rd Violation	$1,000.
4th Violation	$2,500.
Subsequent Violations	Formal Disciplinary Action.

Quotation Parameters

The Exchange is also proposing to amend Rule 12140(d)(5) Quotation Parameters to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these sanctions will allow the Exchange to provide more appropriate punishments and more effectively deter violations of this nature. The Exchange believes that removing the lesser penalty (Letter of Caution) for the first, second, and third offenses in order to provide fines for the first, second, and third offenses and, ultimately, formal disciplinary proceedings for the fourth offense and thereafter during one calendar year is appropriate. The Exchange believes this fine structure may serve to deter repeat-offenders more effectively. The Exchange notes this proposed change will bring the sanctions for violations regarding spread parameters or market maker quotations in line with the sanctions imposed by NYSE Arca.[10]

Rule 12140(d)(5) currently permits the Exchange to issue a Letter of Caution for the first, second, and third occurrence within a one calendar year running basis. For the fourth, fifth, sixth occurrences during a one-year running period, the fine schedule currently permits the Exchange to issue a fine of $250, $500, and $1,000, respectively. The fine schedule also provides that for the seventh occurrence and thereafter, during a one-year running period, the sanction is discretionary with the Hearing Committee. The proposed rule change updates the fine schedule to provide that, on a one-year rolling basis, the Exchange may apply a fine of $1,000 for a first offense, may apply a fine of $2,500 for a second offense, may apply a fine of $3,500 for a third offense, and may proceed with formal disciplinary action for a fourth offense and thereafter.

As described above, the Exchange is proposing to update the language to use ''offense'' or ''violation'' instead of ''occurrence'' and ''rolling'' instead of ''running'' within the fine schedule for consistency within the MRVP and to clarify the Exchange's usage of such terms. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges. Under this proposed amendment, any Participant who violates Rule 8040(a)(7) regarding spread parameters or market maker quotations shall be subject to the fines listed below.

[9] *See* Cboe Options Rule 13.15(g)(1). *See also* NYSE American Rule 9217(iii)(17). *See also* NYSE Arca Rule 10.12(k)(i)(21).

[10] *See* NYSE Arca Rule 10.12(k)(i)(41).

Fine schedule (implemented on a one-year rolling basis)	Sanction
1st Offense	$1,000.
2nd Offense	$2,500.
3rd Offense	$3,500.
4th Offense and Thereafter	Formal Disciplinary Action.

Lead Market Maker Continuous Quoting

Next the Exchange proposes to amend Rule 12140(d)(6), Continuous Quotes to include continuous quoting violations by Lead Marker Makers pursuant to BOX Rule 8050(e) and Rule 8055(c)(1). The Exchange believes that amending Rule 12140(d)(6), Continuous Quotes to include continuous quoting violations by Lead Marker Makers pursuant to BOX Rule 8055(c)(1) is appropriate because it will allow the Exchange to carry out its regulatory responsibility quickly and efficiently in a manner that is consistent with the way it handles continuous quoting violations for all types of Market Makers.[11]

The Exchange is also proposing to increase and strengthen the sanctions imposed under this section, which the Exchange believes will more effectively deter violative conduct. The Exchange notes that this proposed change will bring the sanctions for violations of continuous quoting obligations in line with the sanctions imposed by Cboe Options.[12] Rule 12140(d)(6) currently permits the Exchange to give a Letter of Caution for the first violation within one calendar year. For subsequent violations during the same period, the fine schedule permits the Exchange to issue a fine of $300 per day. The Exchange proposes to update the fine schedule as follows:

Violations within one calendar year	Sanction
1st Violation	Letter of Caution.
2nd Violation	$1,500.
3rd Violation	$3,000.
Subsequent Violations	Formal Disciplinary Action.

The proposed rule change updates the fine schedule to provide that, during one calendar year, the Exchange may give a Letter of Caution for a first violation, may apply a fine of $1,500 for a second violation, may apply a fine of $3,000 for a third violation, and may proceed with formal disciplinary action for subsequent violations.[13] As described above, and as is the case for all rule violations covered under Rule 12140(d) and (e), the Exchange may determine that a violation of Market-Maker quoting obligations is intentional, egregious, or otherwise not minor in nature and choose to proceed under the Exchange's formal disciplinary rules rather than its MRVP. The Exchange believes that maintaining the lesser penalty (Letter of Caution) for a first violation and then providing higher fines for second and third violations and, ultimately, formal disciplinary proceedings for any subsequent violations during one calendar year is appropriate. This will allow the Exchange to levy progressively larger fines and greater penalties against repeat-offenders (as opposed to a smaller fine range for any violations that may come after a first violation). The Exchange believes this fine structure may serve to deter repeat-offenders while providing reasonable warning for a first violation within one calendar year.

Under this proposed amendment, any Participant who violates Rule 8050(e) or Rule 8055(c)(1) regarding Market Maker or Lead Market Maker continuous quotes shall be subject to the fines listed above. In calculating fine thresholds for each Market Maker or Lead Market Maker, all violations occurring within the Surveillance Review Period as defined within the Exchange Surveillance Procedures in any of that Market Maker or Lead Market Maker's appointed classes are to be added together.[14]

The Exchange is also proposing to remove language from Rule 12140(d)(6) that states ''Violations of Rule 8050(e) or Rule 8055(c)(1) that continue over consecutive trading days will be subject to a separate fine, pursuant to this paragraph (6), for each day during which the violation occurs and is continuing up to a limit of fifteen consecutive trading days.'' With the proposed updates to the fine schedule replacing the fine of $300 per day with a fine of $1,500, this language is no longer necessary. This language was originally included to allow the Exchange to fine a Participant $300 per day for each consecutive trading day during which a violation occurs. The Exchange is proposing to reformat the fine schedule and remove the listed fine of $300 per day. The Exchange is now proposing a fine of $1,500 for a second violation, a fine of $3,000 for a third violation, and formal disciplinary action for any subsequent violations. Under the new format, the language allowing consecutive trading day violations for up to fifteen days to be fined separately is no longer consistent or feasible. Under the MRVP, a Participant may only be fined a maximum of $5,000 and with the greater fines being proposed the previous fine structure no longer applies. The Exchange believes that removing this language will clarify the proposed updates to the fine schedule and may help reduce Participant confusion over the Exchange's application of the fines within BOX Rule 12140(d)(6). The Exchange notes that Cboe Options, and NYSE Arca have similar rule provisions in their MRVPs addressing Market Maker and Lead

[11] The Exchange adopted Rule 7135 (Execution and Pro Rata Priority) to establish and govern pro rate execution on BOX and Rule 8055 (Lead Market Makers) which details the designation and obligations of Lead Market Makers on BOX. Rule 7350(c)(2) details Lead Market Maker Priority and Lead Market Makers may be assigned by the Exchange in each options class in accordance with Rule 8055. The Exchange now proposes to include Lead Market Maker Continuous Quoting in its MRVP. *See* Securities Exchange Act Release No. 91897 (May 14, 2021), 86 FR 27490 (May 20, 2021) (SR–BOX–2021–11).

[12] *See* Cboe Options Rule 13.15(g)(9).

[13] The Exchange notes that Cboe Options has identical sanctions in place. *See* Cboe Options Rule 13.15(g)(9).

[14] The referenced Surveillance Review Period is a quarterly review period that is specified within the Exchange Surveillance Procedures, which are utilized by FINRA's options surveillance group. As specified within the referenced Exchange Surveillance Procedures, staff will determine the total number of days throughout the quarter in which the market maker quoted less than 60% of the aggregate quotable time of all its appointed classes after each series was opened.

Market Maker continuous quoting obligations.[15]

Mandatory Systems Testing

The Exchange is also proposing to make clarifying and non-substantive changes to amend the language within the fine schedules to use the terms ''and thereafter'' and ''subsequent'' instead of ''or more'' when detailing the number of violations. There is no substantive difference in the Exchange's interpretation between ''or more'' and ''subsequent'' or ''and thereafter''. The purpose of the change is to provide greater clarity within the Exchange's own MRVP by using more consistent terminology. The Exchange proposes to amend 12140(d)(7), Mandatory Systems Testing pursuant to BOX Rule 3180, to change ''or more'' to ''and thereafter'' within the fine schedule. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges. Under this rule, any Participant who violates Rule 3180 regarding the failure to conduct or participate in the testing of computer systems, or failure to provide required reports or maintain required documentation, shall be subject to the fines listed below.

Violations within one calendar year	Sanction
First Violation	$250.
Second Violation	$500.
Third Violation	$1,000.
Fourth Violation	$2,000.
Fifth Violation and Thereafter	Formal Disciplinary Action.

Maintenance, Retention and Furnishing of Books, Records and Other Information

Next, the Exchange proposes to adopt 12140(d)(10), Maintenance, Retention and Furnishing of Books, Records and Other Information pursuant to BOX Rule 10000. Under this rule, any Participant who violates Rule 10000 regarding the failure to make, keep current, and preserve such books and records as required, or failure to furnish such books and records in a timely manner upon request by the Exchange shall be subject to the fines listed below.

Number of violations within any twenty-four month rolling period	Sanction
Initial Violation	$500.
Second Violation	$1,000.
Third Violation	$2,500.
Fourth Violation and Thereafter	$5,000 or Formal Disciplinary Action.

The Exchange believes the adoption of Rule 12140(d)(10) into the MRVP is appropriate because it will allow the Exchange to carry out its regulatory responsibility more efficiently and help deter BOX Participants from failing to make, keep current, and preserve such books and records as required, or failure to furnish such books and records in a timely manner upon request by the Exchange. The Exchange notes that adding this provision will help ensure consistency within the MRVP's of the various options exchanges. NYSE American and NYSE Arca have rule provisions within their respective minor rule violation plans that addresses similar recordkeeping violations.[16] Further, the proposed fine schedule for these types of violations is similar to the recordkeeping sanctions imposed by NYSE American and NYSE Arca.[17]

Anti-Money Laundering Compliance Program

The Exchange also proposes to adopt 12140(d)(11), Anti-Money Laundering Compliance Program pursuant to BOX Rule 10070. Under this Rule any Participant who violates Rule 10070 regarding the failure to satisfy the anti-money laundering compliance program requirements shall be subject to the fines listed below. The Exchange believes the adoption of Rule 12140(d)(11), is appropriate because it will help deter BOX Participants from failing to satisfy the requirements of the anti-money laundering compliance program. The Exchange believes that adding this rule to the MRVP will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently with respect to violations of BOX Rule 10070. The Exchange notes that this proposed addition is consistent with the minor rule violations relating to anti-money laundering program failure with the MRVPs at NYSE American and NYSE Arca.[18] Additionally, Cboe Options has a rule provision in its MRVP that addresses violations related to anti-money laundering implementation relating to the failure to designate a person responsible for implementing and monitoring the anti-money laundering compliance program.[19] The proposed fine schedule provides that, within any twenty-four-month rolling period, the Exchange may apply a fine of $1,000 for an initial violation and $2,500 for

[15] *See* Cboe Options Rule 13.15(g)(9). *See also* NYSE American Rule 9217(iii)(17). *See also* NYSE Arca Rule 10.12(k)(i)(39).

[16] NYSE American and NYSE Arca have subsections within their MRVPs listing numerous specific recordkeeping violations. NYSE American Rule 9217 and NYSE Arca Rule 10.12 contain minor rule violations regarding failures to comply with the books and records requirements of Rule 324 and failures to furnish in a timely manner books, records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions. See NYSE American Rule 9217(ii). See also NYSE Arca Rule 10.12(k)(iii).

[17] The NYSE American and NYSE Arca MRVPs contain numerous recordkeeping minor rule violations with fines ranging from $500 to $5,000 depending on the specific violation and the fine level. *See* NYSE American Rule 9217 (ii). *See also* NYSE Arca Rule 10.12(k)(iii).

[18] *See* NYSE American Rule 9217(ii)(12). *See also* NYSE Arca Rule 10.12(k)(iii)(12).

[19] *See* Cboe Options Rule 13.15(g)(13).

subsequent violations. The Exchange believes that the proposed sanctions are appropriate, as they will provide sufficient warning to first time offenders, while deterring repeat offenders. These sanctions are identical to the sanctions applied by Cboe Options and similar to the sanctions applied by NYSE American and NYSE Arca for minor rule violations relating to anti-money laundering compliance program violations.[20]

Number of violations within any twenty-four month rolling period	Sanction
Initial Violation	$1,000
Subsequent Violations	2,500

Locked and Crossed Market Violations

The Exchange is proposing to amend current Rule 12140(d)(10)[21] Locked and Crossed Market Violations to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions for violations relating to locked and crossed markets is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these sanctions will allow the Exchange to provide more appropriate punishments and more effectively deter violations of this nature. The Exchange notes this proposed change will bring the sanctions for violations regarding procedures to be followed in the instance of a Locked Market or a Crossed Market more in line with the sanctions imposed by Cboe Options.[22] Rule 12140(d)(10) currently permits the Exchange to issue a Letter of Caution for an initial violation within a twelve-month rolling period. The current fine schedule also permits the Exchange to apply a fine of $250 for a second violation, $500 for a third violation, and formal disciplinary action for the fourth violation or more within a twelve-month rolling period. The proposed rule change updates the fine schedule to provide that, within any twelve-month rolling period, the Exchange may apply a fine of $500 for an initial violation, may apply a fine of $2,500 for a second violation, and may apply a fine of $5,000 or proceed with formal disciplinary action for subsequent violations. Under this proposed amendment, any Participant who violates Rule 15020 regarding procedures to be followed in the instance of a Locked or Crossed Market shall be subject to the fines listed below.

Number of violations within any twelve-month rolling period	Sanction
Initial Violation	$500.
Second Violation	$2,500.
Subsequent Violations	$5,000 or Formal Disciplinary Action.

Market Maker Assigned Activity Violations

As stated above, the Exchange is proposing to make clarifying and non-substantive changes to amend the language within the fine schedules to use the terms ''and thereafter'' and ''subsequent'' instead of ''or more'' when detailing the number of violations. There is no substantive difference in the Exchange's interpretation between ''or more'' and ''subsequent'' or ''and thereafter''. The purpose of the change is to provide greater clarity within the Exchange's MRVP by using more consistent terminology. The Exchange proposes to amend current Rule 12140(d)(11),[23] Market Maker Assigned Activity Violations pursuant to BOX Rule 8030(e), to change ''or more'' to ''and thereafter'' within the fine schedule. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges. Under this rule, any Participant who violates Rule 8030(e) regarding the failure of Market Makers to limit their execution in options classes outside of their appointed classes to twenty-five percent (25%) of the total number of contracts executed during a quarter by such Market Maker, is subject to the fines listed below.

Number of violations within any twelve-month rolling period	Sanction
Initial Violation	Letter of Caution.
Second Violation	$500.
Third Violation	$1,000.
Fourth Violation	$2,500.
Fifth Violation and Thereafter	Formal Disciplinary Action.

[20] Cboe Options applies sanctions of $1,000 for a first offense and $2,500 for subsequent offenses, while NYSE American and NYSE Arca have sanctions of $2,000 for 1st level, $4,000 for 2nd level, and $5,000 for third level. *See* Cboe Options Rule 13.15(g)(13). *See also* NYSE American Rule 9217(ii)(12). *See also* NYSE Arca Rule 10.12(k)(iii)(12).

[21] As discussed above, this proposed rule change subsequently renumbers current Rule 12140 (d)(10) to (d)(12) as a result of the proposed addition of Rules 12140(d)(10), and (d)(11).

[22] Cboe Option's MRVP provides for sanctions of $500–1,000 for a first offense, $1,000–2,500 for a second offenses, and $2,500–5,000 and a Staff Interview for subsequent offenses. *See* Cboe Options Rule 13.15(g)(8).

[23] As discussed above, this proposed rule change subsequently renumbers Rule 12140 (d)(11) to (d)(13) as a result of the proposed addition of Rules 12140(d)(10), and (d)(11).

Request for Quote Violations

As detailed above, the Exchange is proposing to make clarifying and non-substantive changes to amend the language within the fine schedules to use the terms ''and thereafter'' and ''subsequent'' instead of ''or more'' when detailing the number of violations. There is no substantive difference in the Exchange's interpretation between ''or more'' and ''subsequent'' or ''and thereafter''. The purpose of the change is to provide greater clarity within the Exchange's MRVP by using more consistent terminology. The Exchange proposes to amend current Rule 12140(d)(12),[24] Request for Quote Violations pursuant to BOX Rule 8050(c)(2)–(c)(4), to change ''or more'' to ''and thereafter'' within the fine schedule. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges. Under this rule, any Participant who violates Rule 8050(c)(2)–(c)(4) regarding the failure of a Market Maker to respond to a Request for Quote (''RFQ'') on BOX, is subject to the fines listed below.

Number of violations within any twelve-month rolling period	Sanction
Initial Violation	Letter of Caution.
Second Violation	$250.
Third Violation	$500.
Fourth Violation and Thereafter	Formal Disciplinary Action.

Trade Through Violations

As stated above, the Exchange is proposing to make clarifying and non-substantive changes to amend the language within the fine schedules to use the terms ''and thereafter'' and ''subsequent'' instead of ''or more'' when detailing the number of violations. There is no substantive difference in the Exchange's interpretation between ''or more'' and ''subsequent'' or ''and thereafter''. The purpose of the change is to provide greater clarity within the Exchange's MRVP by using more consistent terminology. The Exchange proposes to amend current Rule 12140(d)(13),[25] Trade Through Violations pursuant to BOX Rule 15010, to change ''or more'' to ''and thereafter'' within the fine schedule. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges. Under this rule, any Participant who violates Rule 15010(a) regarding trade throughs is subject to the fines listed below.

Number of violations within any twenty-four month rolling period	Sanction
Initial Violation	$500.
Second Violation	$1,000.
Third Violation	$2,500.
Fourth Violation and Thereafter	$5,000 or Formal Disciplinary Action.

Trading Floor Violations Fine Schedules

The Exchange is proposing to update the fine schedules applicable to minor rule violations related to certain Trading Floor violations listed in Rule 12140(e) to increase and strengthen the sanctions. The Exchange adopted the minor rule violations and corresponding fines under Rule 12140(e) in 2017 following the establishment of the BOX Trading Floor.[26] In adopting its current trading floor minor rule violations, the Exchange believed it appropriate to adopt a lower fine amount than in place at NYSE Arca as the new trading floor was established and to be more consistent with the other fines within the Exchange's own MRVP. However, the Exchange's Trading Floor is now well-established, with a greater number of Participants, and the Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change will bring the sanctions more in line with the fine schedules in place at NYSE Arca.[27]

The Exchange is also proposing to update the language within each minor rule violation listed within Rule 12140(e) to use the term ''violation'' instead of ''occurrence'' when detailing the number of violations within the fine schedules to provide consistency in the terminology used within the Exchange's MRVP. Within the MRVP, the Exchange interprets violation to mean one instance, while multiple violations may be deemed to constitute one offense. As noted above, the Exchange believes that changing ''occurrence'' to ''violation'' in BOX Rule 12140(e)(1)–(12) is appropriate to provide consistency within the terms used and the Exchange's interpretation of the terms.

[24] As discussed above, this proposed rule change subsequently renumbers Rule 12140 (d)(12) to (d)(14) as a result of the proposed addition of Rules 12140(d)(10), and (d)(11).

[25] As discussed above, this proposed rule change subsequently renumbers Rule 12140 (d)(13) to (d)(15) as a result of the proposed addition of Rules 12140(d)(10), and (d)(11).

[26] *See* Securities Exchange Act Release No. 81398 (August 15, 2017), 82 FR 39630 (August 21, 2017) (SR–BOX–2017–26).

[27] *See* NYSE Arca Rule 10.12.

The Exchange is proposing to remove the term ''occurrence'' from the MRVP and proposes to replace ''occurrence'' with ''violation'' for a singular violation and ''offense'' when the listed fines are meant to cover multiple violations. The Exchange is proposing these changes to improve consistency within the usage of these terms and to conform the fine schedules to the Exchange's new understanding that a violation covers a singular rule violation, while multiple violations may be aggregated to constitute an offense. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges.

General Responsibilities of Floor Brokers. The Exchange is proposing to amend Rule 12140(e)(1), General Responsibilities of Floor Brokers pursuant to BOX Rule 7570, to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change will bring the sanctions in line with the sanctions imposed by NYSE Arca.[28] Rule 12140(e)(1) currently permits the Exchange to apply a fine of $500 for the first occurrence, $1,000 for a second occurrence, $2,000 for a third occurrence, and formal disciplinary action for subsequent occurrences within any rolling twenty-four-month period. The proposed rule change updates the fine schedule to provide that, within any twenty-four-month rolling period, the Exchange may apply a fine of $1,000 for the first violation, $2,500 for a second violation, $5,000 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Broker who violates Rule 7580(e) regarding the failure to use due diligence when handling an order, to cause the order to be executed at the best price or prices available to him in accordance with the Rules of the Exchange shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$1,000.
Second Violation	$2,500.
Third Violation	$5,000.
Subsequent Violations	Formal Disciplinary Action.

Failure to Properly Record Orders. The Exchange is also proposing to amend Rule 12140(e)(2) Failure to Properly Record Orders pursuant to BOX Rule 7580(e), to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change brings these sanctions in line with the sanctions imposed by NYSE Arca.[29] Rule 12140(e)(2) currently permits the Exchange to apply a fine of $500 for the first occurrence, $1,000 for a second occurrence, $2,000 for a third occurrence, and formal disciplinary action for subsequent occurrences within any twenty-four-month rolling period. The proposed rule change updates the fine schedule to provide that, within any twenty-four-month rolling period, the Exchange may apply a fine of $500 for the first violation, $1,000 for a second violation, $2,500 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Participant who violates Rule 7580(e) regarding the failure to comply with the order format and system entry requirements on the Trading Floor shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$500.
Second Violation	$1,000.
Third Violation	$2,500.
Subsequent Violations	Formal Disciplinary Action.

Failure to Properly Execute a QOO Order. As stated above, the Exchange is proposing to make clarifying and non-substantive changes. As such, the Exchange is proposing to amend Rule 12140(e)(3) Failure to Properly Execute a QOO Order pursuant to Rule 7600, to change ''occurrence to ''violation'' within the fine schedule. The Exchange is proposing this change to update the language within the MRVP to remove the term ''occurrence'' and replace it with ''violation'' when the term is being used to represent a singular instance and ''offense'' when the term may be used to represent multiple violations aggregated together. The Exchange is proposing these changes to improve the consistency of the use of these terms within the MVRP. The Exchange believes these proposed technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the

[28] *See* NYSE Arca Rule 10.12 (k)(i)(1).

[29] *See* NYSE Arca Rule 10.12 (k)(i)(2).

administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges. The Exchange is not proposing to amend the sanctions under this Rule 12140(e)(3). The Exchange proposes to update the fine schedule as follows:

Number of violations within any rolling 24-month period	Sanction
First Violation	$500.
Second Violation	$1,000.
Third Violation	$2,000.
Subsequent Violations	Formal Disciplinary Action.

Trading Conduct and Order & Decorum on the Trading Floor. The Exchange is also proposing to amend Rule 12140(e)(4) Trading Conduct and Order & Decorum on the Trading Floor pursuant to BOX Rule 2120(b)-(d), to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change brings these sanctions in line with the sanctions imposed by NYSE Arca.[30] Rule 12140(e)(4) currently permits the Exchange to apply a fine of $250 for the first occurrence, $500 for a second occurrence, $1,000 for a third occurrence, and formal disciplinary action for subsequent occurrences within any twenty-four-month rolling period. The proposed rule change updates the fine schedule to provide that, within any twenty-four-month rolling period, the Exchange may apply a fine of $1,000 for the first violation, $2,000 for a second violation, $3,500 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Participant who violates Rule 2120(b)-(d) regarding Trading Floor Conduct and decorum shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$1,000.
Second Violation	$2,000.
Third Violation	$3,500.
Subsequent Violations	Formal Disciplinary Action.

Discretionary Transactions. As stated above, the Exchange is proposing to make clarifying and non-substantive changes. As such, the Exchange is proposing to amend Rule 12140(e)(5) Discretionary Transactions pursuant to Rule 7590, to change ''occurrence'' to ''violation'' within the fine schedule. The Exchange is proposing this change to update the language within the MRVP to remove the term ''occurrence'' and replace it with ''violation'' when the term is being used to represent a singular instance and ''offense'' when the term may be used to represent multiple violations aggregated together. The Exchange is proposing these changes to improve the consistency of the use of these terms within the MVRP. The Exchange believes these proposed technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges. The Exchange is not proposing to amend the sanctions under this Rule 12140(e)(5). The Exchange proposes to update the fine schedule as follows:

Number of violations within any rolling 24-month period	Sanction
First Violation	$250.
Second Violation	$500.
Third Violation	$1,000.
Subsequent Violations	Formal Disciplinary Action.

Floor Participant Not Available to Reconcile an Uncompared Trade. The Exchange is proposing to amend Rule 12140(e)(6) Floor Participant Not Available to Reconcile an Uncompared Trade pursuant to BOX Rule 8530, to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change brings these sanctions in line with the sanctions imposed by NYSE Arca.[31] Rule 12140(e)(6) currently permits the Exchange to apply a fine of $500 for the first occurrence, $1,000 for a second occurrence, $2,000 for a third occurrence, and formal disciplinary action for subsequent occurrences

[30] *See* NYSE Arca Rule 10.12 (k)(i)(16).

[31] *See* NYSE Arca Rule 10.12(k)(i)(9).

within any twenty-four-month rolling period. The proposed rule change updates the fine schedule to provide that the Exchange may apply a fine of $500 for the first violation, $1,000 for a second violation, $2,500 for a third violation, and may proceed with formal disciplinary action for any subsequent violations within any rolling twenty-four-month period. Under this proposed amendment, any Floor Participant who violates Rule 8530 regarding the resolution of uncompared trades shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$500.
Second Violation	$1,000.
Third Violation	$2,500.
Subsequent Violations	Formal Disciplinary Action.

Floor Participant Communications and Equipment. The Exchange is also proposing to amend Rule 12140(e)(7) Floor Participant Communications and Equipment pursuant to BOX Rule 7660, to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change brings these sanctions in line with the sanctions imposed by NYSE Arca.[32] Rule 12140(e)(7) currently permits the Exchange to apply a fine of $250 for the first occurrence, $500 for a second occurrence, $1,000 for a third occurrence, and formal disciplinary action for subsequent occurrences within any twenty-four-month rolling period. The proposed rule change updates the fine schedule to provide that, within any twenty-four-month rolling period, the Exchange may apply a fine of $1,000 for the first violation, $2,500 for a second violation, and $3,500 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Participant who violates Rule 7660 regarding Floor Participant Communications and Equipment shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$1,000.
Second Violation	$2,500.
Third Violation	$3,500.
Subsequent Violations	Formal Disciplinary Action.

Improper Vocalization of a Trade. The Exchange is also proposing to amend Rule 12140(e)(8) Improper Vocalization of a Trade pursuant to BOX Rule 100(b)(5), to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change will bring these sanctions in line with the sanctions imposed by NYSE Arca.[33] Rule 12140(e)(8) currently permits the Exchange to apply a fine of $250 for the first occurrence, $500 for a second occurrence, $1,000 for a third occurrence, and formal disciplinary action for subsequent occurrences within any rolling twenty-four-month period. The proposed rule change updates the fine schedule to provide that, within any rolling twenty-four-month period, the Exchange may apply a fine of $1,000 for the first violation, $2,500 for a second violation, $3,500 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Participant who violates Rule 100(b)(5) regarding the requirements for public outcry shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$1,000.
Second Violation	$2,500.
Third Violation	$3,500.
Subsequent Violations	Formal Disciplinary Action.

Floor Market Maker Failure to Comply with Quotation Requirements. The Exchange is also proposing to amend Rule 12140(e)(9) Floor Market Maker Failure to Comply with Quotation Requirements pursuant to BOX Rule 8510(c)(2), to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change will bring these sanctions in line with the sanctions

[32] *See* NYSE Arca Rule 10.12(k)(i)(12).

[33] *See* NYSE Arca Rule 10.12(k)(i)(14).

imposed by NYSE Arca.[34] Rule 12140(e)(9) currently permits the Exchange to apply a fine of $250 for the first occurrence, $500 for a second occurrence, $1,000 for a third occurrence, and formal disciplinary action for subsequent occurrences within any rolling twenty-four-month period. The proposed rule change updates the fine schedule to provide that, within any rolling twenty-four-month period, the Exchange may apply a fine of $1,000 for the first violation, $2,500 for a second violation, and $3,500 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Participant who violates Rule 8510(c)(2) regarding a Floor Market Maker's Obligation of Continuous Open Outcry Quoting shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$1,000.
Second Violation	$2,500.
Third Violation	$3,500.
Subsequent Violations	Formal Disciplinary Action.

Floor Market Maker Quote Spread Parameters. The Exchange is also proposing to amend Rule 12140(e)(10) Floor Market Maker Quote Spread Parameters pursuant to BOX Rule 8510(d)(1), to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change will bring these sanctions in line with the sanctions imposed by NYSE Arca.[35] Rule 12140(e)(10) currently permits the Exchange to give a Letter of Caution for a first occurrence, apply a fine of $250 for a second occurrence, apply a fine of $500 for a third occurrence, and proceed with formal disciplinary action for subsequent occurrences within any rolling twenty-four-month period. The proposed rule change updates the fine schedule to provide that, within any rolling twenty-four-month period, the Exchange may apply a fine of $1,000 for the first violation, $2,500 for a second violation, $3,500 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Participant who violates Rule 8510(d)(1) regarding legal bid/ask differential requirements shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$1,000.
Second Violation	$2,500.
Third Violation	$3,500/
Subsequent Violations	Formal Disciplinary Action.

Floor Broker Failure to Honor the Priority of Bids and Offers. The Exchange is also proposing to amend Rule 12140(e)(11) Floor Broker Failure to Honor the Priority of Bids and Offers pursuant to BOX Rule 7610(d), to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change will bring these sanctions in line with the sanctions imposed by NYSE Arca.[36] Rule 12140(e)(11) currently permits the Exchange to apply a fine of $500 for a first occurrence, $1,000 for a second occurrence, $2,000 for a third occurrence, and may proceed with formal disciplinary action for subsequent occurrences within any rolling twenty-four-month period. The proposed rule change updates the fine schedule to provide that, within any rolling twenty-four-month period, the Exchange may apply a fine of $1,000 for the first violation, $2,500 for a second violation, $5,000 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Participant who violates Rule 7610(d) regarding a Floor Broker's obligations in determining Time Priority Sequence shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$1,000.
Second Violation	$2,500.
Third Violation	$5,000.
Subsequent Violations	Formal Disciplinary Action.

Floor Broker Failure to Identify a Broker Dealer Order. The Exchange is also proposing to amend Rule 12140(e)(12) Floor Broker Failure to Identify a Broker Dealer Order pursuant to BOX Rule IM–7580–2 to increase and strengthen the sanctions imposed under this section. The Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The

[34] *See* NYSE Arca Rule 10.12(k)(i)(39).

[35] *See* NYSE Arca Rule 10.12(k)(i)(41).

[36] *See* NYSE Arca Rule 10.12(k)(i)(40).

Exchange believes that increasing these trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change will bring these sanctions in line with the sanctions imposed by NYSE Arca.[37] Rule 12140(e)(12) currently permits the Exchange to apply a fine of $250 for a first occurrence, $500 for a second occurrence, $1,000 for a third occurrence, and may proceed with formal disciplinary action for subsequent offenses within any rolling twenty-four-month period. The proposed rule change updates the fine schedule to provide that, within any rolling twenty-four-month period, the Exchange may apply a fine of $500 for the first violation, $1,500 for a second violation, $3,000 for a third violation, and formal disciplinary action for subsequent violations. Under this proposed amendment, any Floor Participant who violates Rule IM–7580–2 regarding a Floor Broker's responsibility to identify its orders shall be subject to the fines listed below.

Number of violations within any rolling 24-month period	Sanction
First Violation	$500.
Second Violation	$1,500.
Third Violation	$3,000.
Subsequent Violations	Formal Disciplinary Action.

The Exchange believes Exercise Limits (Rule 3140), Lead Market Maker Continuous Quoting (Rule 8050(e)), Maintenance, Retention, and Furnishing of Books, Records, and Other Information (Rule 10000), and Anti-Money Laundering Compliance Program (Rule 10070) to be minor in nature and consistent with violations at other options exchanges, and therefore proposes to add them to the list of rules in Rule 12140(d) eligible for a minor rule fine disposition. Particularly, the Exchange believes that violations of each of the rules listed above are suitable for incorporation into the MRVP because these violations are minor in nature and consistent with violations at other options exchanges. The Exchange notes that the proposed change is intended to provide for greater consistency across the Exchange's MRVP and the MRVPs of the other options exchanges. As detailed above, the Exchange is also proposing to increase and strengthen the fines for certain minor rule violations under Rule 12140. The Exchange believes that the proposed increased fines will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue greater fines and more effectively deter violative conduct.

The Exchange is also proposing to make additional technical and non-substantive changes to provide greater clarity and consistency within the Exchange's MRVP and with the MRVPs of the other options exchanges. As a result of the proposed addition of Rules 12140(d)(10) and (d)(11) above, the proposed rule change subsequently renumbers current Rules 12140(d)(10), (11), (12), (13), and (14), to Rules 12140(d)(12), (13), (14), (15), and (16), respectively. The Exchange is also proposing to amend the language within the fine schedules to use the terms ''and thereafter'' and ''subsequent'' instead of ''or more'' when detailing the number of violations. The Exchange proposes to update ''or more'' to ''and thereafter'' in Rule 12140(d)(7), (13),[38] (14),[39] and (15),[40] and ''or more'' to ''subsequent'' in Rules 12140(d)(6) and (12).[41] There is no substantive difference in the Exchange's interpretation between ''or more'' and ''subsequent'' or ''and thereafter.'' The purpose of the change is to provide greater clarity within the Exchange's MRVP by using more consistent terminology. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in the administration of the MRVP. The Exchange notes that the proposed change is intended to provide for greater consistency within the Exchange's MRVP itself and with the MRVPs of the other options exchanges.

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.[42] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[43] 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. The Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[44] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule changes to Rule 12140(d) are consistent with Section 6(b)(6) of the Act,[45] which provides that members and persons associated with members shall be appropriately disciplined for

[37] *See* NYSE Arca Rule 10.12(k)(i)(11).

[38] As noted above, this is current Rule 12140(d)(11),but the Exchange is proposing to renumber certain subsections under 12140(d) due to the proposed addition of Rule 12140(d)(10) and (11).

[39] As noted above, this is current Rule 12140(d)(12), but the Exchange is proposing to renumber certain subsections under 12140(d) due to the proposed addition of Rule 12140(d)(10) and (11).

[40] As noted above, this is current Rule 12140(d)(13), but the Exchange is proposing to renumber certain subsections under 12140(d) due to the proposed addition of Rule 12140(d)(10) and (11).

[41] As noted above, this is current Rule 12140(d)(10), but the Exchange is proposing to renumber certain subsections under 12140(d) due to the proposed addition of Rule 12140(d)(10) and (11).

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(5).

[44] *Id.*

[45] 15 U.S.C. 78f(b)(6).

violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change adds certain rules as eligible for a minor rule fine disposition under the Exchange's MRVP. The Exchange believes that violations of these proposed rules are minor in nature and will be more appropriately disciplined through the Exchange's MRVP and is proposing to amend the fine schedules applicable to these additional rules to appropriately sanctions such failures.

The Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[46] Rule 12140, currently and as amended, does not preclude a Participant or person associated with or employed by a Participant from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding. Finally, the Exchange believes that the proposed rule change will strengthen its ability to carry out its oversight responsibilities as a self-regulatory organization pursuant to the Act and reinforce its surveillance and enforcement functions.

The Exchange believes that the proposed rule change to add certain rules as eligible for a minor rule fine disposition under its MRVP, which it considers violations of such rules to be minor in nature and consistent with violations at other options exchanges, will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes violations of the above-listed rules to be minor in nature and therefore proposes to add them to the list of rules in Rule 12140(d) eligible for a minor rule fine disposition. Particularly, the Exchange believes that violations of each of the rules listed above are suitable for incorporation into the MRVP because these violations are generally minor in nature and consistent with violations at other options exchanges. Further, the Exchange will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into the MRVP.

Specifically, the Exchange believes the adoption of Rule 12140(d)(10) Maintenance, Retention and Furnishing of Books, Records and Other Information pursuant to BOX Rule 10000 is appropriate because it will help deter BOX Participants from failing to make, keep current, and preserve such books and records as required, or failure to furnish such books and records in a timely manner upon request by the Exchange. The Exchange believes that adding this rule to the MRVP will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently. The Exchange believes that the lesser penalty of $500 for an initial violation and then providing higher fines for second and third violations and the option of a fine of $5,000 or formal disciplinary proceedings for a fourth violation and thereafter during a rolling twenty-four-month period is appropriate. This will allow the Exchange to levy progressively larger fines and greater penalties against repeat-offenders. The Exchange believes this fine structure may serve to deter repeat-offenders while providing a reasonable penalty for a first offense within a rolling twenty-four-month period. The Exchange believes that adding this rule to the MRVP will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently in regard to violations of BOX Rule 10000.

The Exchange believes the adoption of Rule 12140(d)(11), Anti-Money Laundering Compliance Program pursuant to BOX Rule 10070 is appropriate because it will help deter BOX Participants from failing to satisfy the requirements of the anti-money laundering compliance program. The Exchange believes that adding this rule to the MRVP will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently in regard to violations of BOX Rule 10070. The Exchange believes that the proposed fine structure permitting the Exchange to apply a fine of $1,000 for a first violation and $2,500 for subsequent violations is appropriate as this will effectively penalize both first time and repeat offenders. The Exchange believes that the proposed fines will be sufficient to warn against and help deter potentially violative conduct. The Exchange believes that adding this rule to the MRVP will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently in regard to violations of BOX Rule 10070.

The Exchange believes that amending Rule 12140(d)(6), Continuous Quotes to include continuous quoting violations by Lead Marker Makers pursuant to BOX Rule 8055(c)(1) is appropriate because it will allow the Exchange to carry out its regulatory responsibility quickly and efficiently in a manner that is consistent with the way it handles Market Maker continuous quoting violations. The Exchange notes that Cboe Options, and NYSE Arca have rule provisions in their minor rule violation plans that address Market Maker and Lead Market Maker continuous quoting obligations.[47] Rule 12140(d)(6) currently permits the Exchange to give a Letter of Caution for the first violation within one calendar year. For subsequent violations during the same period, the fine schedule permits the Exchange to issue a fine of $300 per day. The proposed rule change increases and strengthens the fine schedule to provide that, during one calendar year, the Exchange may give a Letter of Caution for a first violation, may apply a fine of $1,500 for a second violation, may apply a fine of $3,000 for a third violation, and may proceed with formal disciplinary action for subsequent violations. The Exchange believes that maintaining the lesser penalty (Letter of Caution) for a first violation and then providing higher fines for second and third violations and, ultimately, formal disciplinary proceedings for any subsequent violations during one calendar year is appropriate. This will allow the Exchange to levy progressively larger fines and greater penalties against repeat-offenders (as opposed to a fine range for any violations that may come after a first violation). The Exchange believes this fine structure may serve to deter repeat-offenders while providing reasonable warning for a first violation within one calendar year. The Exchange believes that removing the language from Rule 12140(d)(6) that states ''Violations of Rule 8050(e) or Rule 8055(c)(1) that continue over consecutive trading days will be subject to a separate fine, pursuant to this paragraph (6), for each day during which the violation occurs and is continuing up to a limit of fifteen consecutive trading days'' is reasonable because with the proposed updates to the fine schedule replacing the fine of $300 per day with a fine of $1,500, this language is no longer necessary. This language was originally included to allow the Exchange to fine a Participant $300 per day for each consecutive trading day during which a violation occurs. The Exchange is proposing to

[46] 15 U.S.C. 78f(b)(7) and 78f(d).

[47] *See* Cboe Options Rule 13.15(g)(9). *See also* NYSE American Rule 9217(iii)(17). *See also* NYSE Arca Rule 10.12(k)(i)(39).

reformat the fine schedule and remove the listed fine of $300 per day. The Exchange is now proposing a fine of $1,500 for a second violation, a fine of $3,000 for a third violation, and formal disciplinary action for any subsequent violations. Under the new format, the language allowing consecutive trading day violations for up to fifteen days to be fined separately is no longer consistent or feasible. Under the MRVP, a Participant may only be fined a maximum of $5,000 and with the greater fines being proposed the previous fine structure no longer applies. The Exchange also believes that removing this language will clarify the proposed updates to the fine schedule and may help reduce Participant confusion over the Exchange's application of the fines within BOX Rule 12140(d)(6). The Exchange notes that Cboe Options, and NYSE Arca have similar rule provisions in their MRVPs addressing Market Maker and Lead Market Maker continuous quoting obligations.[48] The Exchange also notes that the proposed fines will bring the sanctions for violations of continuous quoting obligations in line with the sanctions currently imposed by Cboe Options.[49]

The Exchange believes that adding Lead Market Maker Continuous Quoting to Rule 12140(d)(6) within the MRVP will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently in regard to violations of BOX Rule 8055(c)(1). The Exchange notes that the proposed change will also provide for greater consistency across the Exchange's MRVP and the MRVPs of the other options exchanges. The Exchange believes violations of these rules to be minor in nature and would be more appropriately disciplined through the Exchange's MRVP. As described above, and as is the case for all rule violations covered under Rule 12140(d) and (e), the Exchange may determine that a violation of Market-Maker quoting obligations is intentional, egregious, or otherwise not minor in nature and choose to proceed under the Exchange's formal disciplinary rules rather than its MRVP.

The Exchange believes that amending Rule 12140(d)(1), Position Limits, to include violations of exercise limits pursuant to BOX Rule 3140 is appropriate because it will allow the Exchange to carry out its regulatory responsibility quickly and efficiently in a manner that is consistent with the way it handles violations of position limits. Violations of position and exercise limits on the Exchange generally occur contemporaneously, so adding exercise limits to the existing position limits minor rule violation will allow the Exchange to address these related violations more effectively. The Exchange is proposing to keep the fine levels for exercise limit violations the same as the current fine levels for position limits. The Exchange believes that updating the language in the heading of the fine schedule to change ''violations'' to ''offenses'' is reasonable as it adds detail and clarity to the fine schedules by clarifying the Exchange's use of these terms as used within the fine schedules. The Exchange believes this change may help reduce Participant confusion over the Exchange's application of the fines within BOX Rule 12140(d)(1). The Exchange notes that this proposal is consistent with the MRVPs in place at Cboe Options, NYSE American, and NYSE Arca.[50]

The Exchange believes that increasing and strengthening the sanctions in Rule 12140(d)(5) and current Rule 12140(d)(10) [51] is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing these sanctions will allow the Exchange to provide more appropriate punishments and more effectively deter violations of this nature. As such, the Exchange believes that this will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposed rule change to adopt Rules 12140(d)(10) and (11), and amend current Rules 12140(d)(1), (5), (6), (10),[52] (11),[53] (12),[54] (13),[55] and (14) [56] will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange notes that the proposed updates to the minor rule violations and subsequent sanctions will bring them more in line with the MRVPs in place at NYSE American, NYSE Arca, and Cboe Options, will promote greater consistency across the options exchanges and reduce investor confusion.

The Exchange believes that the proposed technical and clarifying changes are appropriate and benefit investors by adding clarity to the rules. The Exchange believes that the proposed rule change to renumber current Rules 12140(d)(10), (11), (12), (13), and (14), to Rules 12140(d)(12), (13), (14), (15), and (16), respectively, will benefit investors by adding clarity to the rules. The Exchange believes that updating the language to use ''offense'' or ''violation'' instead of ''occurrence'' and ''rolling'' instead of ''running'' within the fine schedule is appropriate will provide greater consistency in the terminology used within the Exchange's MRVP and with the MRVPs of the other options exchanges. The purpose of the change is to provide greater clarity within the Exchange's MRVP by using more consistent terminology throughout. The Exchange also believes that amending the language within the fine schedules to use the terms ''and thereafter'' and ''subsequent'' instead of ''or more'' when detailing the number of violations will provide more clarity and may reduce investor confusion. There is no substantive difference in the Exchange's interpretation between ''or more'' and ''subsequent'' or ''and thereafter''. The purpose of the change is to provide greater clarity within the Exchange's MRVP by using more consistent terminology. The Exchange believes these technical and non-substantive changes are reasonable and appropriate because they will increase readability of the MRVP and help prevent investor confusion. Further, these proposed changes will allow the Exchange to carry out its regulatory responsibility more quickly and efficiently by reducing confusion regarding terminology in its administration of the MRVP. The Exchange notes that the proposed change will also provide for greater consistency between the Exchange's MRVP and the MRVPs of the other options exchanges, which is designed to benefit investors by providing more consistent language among the various options exchanges.

The Exchange believes that the proposed rule change to update the fine

[48] *See* Cboe Options Rule 13.15(g)(9). *See also* NYSE American Rule 9217(iii)(17). *See also* NYSE Arca Rule 10.12(k)(i)(39).

[49] *See* Cboe Options Rule 13.15(g)(9).

[50] *See* Cboe Options Rule 13.15(g)(1). *See also* NYSE American Rule 9217(iii)(17). *See also* NYSE Arca Rule 10.12(k)(i)(21).

[51] *See supra* note 41.

[52] *Id.*

[53] *See supra* note 38.

[54] *See supra* note 39.

[55] *See supra* note 40.

[56] As noted above, this proposed rule change subsequently renumbers current Rule 12140(d)(14) to (d)(16) as a result of the proposed addition of Rules 12140(d)(10), and (d)(11).

schedule and language applicable to minor rule violations related to certain Trading Floor violations listed in Rule 12140(e) to increase the sanctions will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to 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. Particularly, the Exchange believes that updating the fine schedule applicable to minor rule violations related to certain Trading Floor violations does not directly impact trading on the Exchange, maintenance of a fair and orderly market, and/or customer protection. The Exchange adopted the minor rule violations and corresponding fines under Rule 12140(e) in 2017 following the establishment of the BOX Trading Floor.[57] In 2017, the Exchange believed it appropriate to adopt lower fine amounts as the new trading floor was established and to be more consistent with the other fines listed within the Exchange's MRVP. However, the Exchange's Trading Floor is now well-established, and the Exchange believes that increasing and strengthening these sanctions is appropriate as the proposed more robust fine schedules may help deter violative conduct on BOX. The Exchange believes that increasing certain trading floor related sanctions to be more consistent with the other options exchanges will allow the Exchange to more effectively deter trading floor violations. The Exchange notes that this proposed change will bring the sanctions more in line with the fine schedules at NYSE Arca.[58] As such, the proposed rule change is also designed to benefit investors by providing more consistent penalties across the MRVPs of the Exchange and another exchange.

The Exchange believes that updating the language within certain minor rule violations listed within Rule 12140 to use the term ''violation'' instead of ''occurrence'' when detailing the number of violations within the fine schedules will provide greater clarity and consistency in the terminology used within the Exchange's MRVP. Within the MRVP, the Exchange interprets a violation to mean a singular rule violation, while and multiple violations may be deemed to constitute one offense. The Exchange believes that changing ''offense'' to ''violation'' in Rule 12140(d)(3), ''occurrence'' to ''offense'' in Rule 12140(d)(5), and ''occurrence'' to ''violation'' in Rule 12140(e)(1)–(12) is appropriate because it will help clarify this distinction between offense and violation by updating the language in the MRVP to only use the term offense when the listed fines cover multiple violations grouped together. The Exchange also believes that the proposed technical changes to renumber and update the language in certain minor rule violations would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency, thereby reducing potential confusion.

In requesting the proposed additions to BOX Rule 12140(d), the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through a Letter of Consent if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations relating to the Anti-Money Laundering Compliance Program (Rule 10070), Lead Market Maker Continuous Quoting (Rule 8055), Exercise Limits (Rule 3140), and Maintenance, Retention and Furnishing of Books, Records and Other Information (Rule 10000) where a more formal disciplinary action may not be warranted or appropriate.

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 proposed rule change is not intended to address competitive issues but rather is concerned solely with updating its MRVP in connection with rules eligible for a minor rule fine disposition. The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct. The Exchange notes that the proposed additional violations are similar to minor rule violations designated in the MRVPs on other options exchanges.[59]

The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct. Further, the proposal relates to the Exchange's role and responsibilities as a self-regulatory organization and the manner in which it disciplines its Participants and associated persons for violations of its rules. As such, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[60] In particular, the

[57] *See supra* note 26.

[58] *See* NYSE Arca Rule 10.12.

[59] Cboe Options, NYSE American, and NYSE Arca have rule provisions in their minor rule violation plans that address exercise limits and market maker continuous quoting obligations. NYSE Arca and Cboe Options have rule provisions in their MRVPs that address failures related to AML Program Implementation. Additionally, NYSE Arca has rule provisions in its MRVP that address various recordkeeping violations. *See* Cboe Options Rule 13.15(g). *See also* NYSE American Rule 9217. *See also* NYSE Arca Rule 10.12.

[60] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[61] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 Commission also believes that the proposal, as modified by Amendment No. 1, is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[62] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[63] which governs minor rule violation plans.

As stated above, the Exchange proposes to amend Rule 12140 by: (1) adding certain rule violations that the Exchange believes to be minor in nature and consistent with violations at other options exchanges; (2) updating the fine schedule applicable to minor rule violations related to certain rule violations; and (3) making other clarifying and non-substantive changes.

The Commission believes that Rule 12140 is an effective way to discipline a member for a minor violation of a rule. More specifically, the Commission finds that the Exchange's proposal, as modified by Amendment No. 1, of adding certain rules to the Exchange's list of current minor rule violations provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission also finds that amending the associated fine schedule is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities by levying appropriate fines for minor violations of the rules included in Rule 12140. Lastly, the Commission also believes that the Exchange's proposal to make clarifying and non-substantive changes to Rule 12140 is consistent with the Act because such changes will add clarity to the Exchange's rules.

In approving the propose rule change, as modified by Amendment No. 1, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rule 12140. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rule 12140 provides a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rule 12140 or whether a violation requires formal disciplinary action.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 1 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–BOX–2022–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2022–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–BOX–2022–08 and should be submitted on or before August 3, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange revised the proposed rule change to: (1) provide additional detail and clarification regarding the Exchange's usage of the terms ''violation'' and ''offense'' within Rule 12140; and (2) clarify the application of fines under Rule 12140(d)(6). The Commission believes that Amendment No. 1 provides additional accuracy and clarity to the proposed rule change and does not raise any novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[64] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[65] that the proposed rule change (SR–BOX–2022–08), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14883 Filed 7–12–22; 8:45 am]

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[61] 15 U.S.C. 78f(b)(5).

[62] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[63] 17 CFR 240.19d–1(c)(2).

[64] 15 U.S.C. 78s(b)(2).

[65] *Id.*

[66] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95219; File No. SR–Phlx–2022–28]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's General 3 Membership Rules

July 7, 2022.

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 June 27, 2022, 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 delete the Exchange's membership rules currently under Phlx General 3 (Membership and Access), and incorporate by reference The Nasdaq Stock Market LLC's (''Nasdaq'') rules in the General 3 Rule 1000 Series, and make other related changes. The Exchange also proposes to relocate some rules currently within Phlx General 3 to General 2, Organization and Administration, Sections 10, 11, 23 and 24; Equity 2, Market Participants, Section 3; and Options 2, Options Market Participants, Section 2.

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

General 3 of Phlx's General Equity and Option Rules and Nasdaq's General 3, Rules 1000 Series prescribe the qualifications and procedures for applying for membership, respectively, on Phlx and Nasdaq. Phlx proposes to delete in their entirety the rules under its General 3 title, entitled ''Membership and Access,'' and incorporate by reference the Nasdaq General 3, Rules 1000 Series (the ''Nasdaq Rule 1000 Series'' or ''Nasdaq Membership Rules'') as described below.[3]

The Exchange also proposes to relocate some rules currently within Phlx General 3 to General 2, Organization and Administration, Sections 10, 11, 23 and 24; Equity 2, Market Participants, Section 3; and Options 2, Options Market Participants, Section 2. This proposal is part of the Exchange's plan to harmonize its membership rules with the membership rules of Nasdaq, Nasdaq BX, Inc. (''BX''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX''), and Nasdaq ISE, LLC (''ISE'') exchanges (collectively the ''Affiliated Exchanges''). The Exchange notes that the Affiliated Exchanges have made amendments to their membership rules that made their rules substantially similar to those of Nasdaq.[4] To account for any differences that may exist between Phlx's General 3 Rules and Nasdaq's General 3 Rules, the proposed introductory paragraph lists instances in which cross references in the Nasdaq Series 1000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. Specifically, references to defined terms ''Exchange'' or ''Nasdaq'' shall be read to refer to the Phlx Exchange; ''Rule'' or ''Exchange Rule'' shall be read to refer to the Exchange Rules; the defined term ''Applicant'' in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant of the Phlx Exchange; the defined terms ''Board'' or ''Exchange Board'' in the Nasdaq Rule 1000 Series shall be read to refer to the Phlx Board of Directors; the defined term ''Director'' in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Phlx Exchange; the defined term ''Exchange Review Council'' in the Nasdaq Rule 1000 Series shall be read to refer to the Phlx Exchange Review Council; the defined term ''Subcommittee'' in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Phlx Exchange Review Council; the defined term ''Interested Staff'' in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Phlx; the defined term ''Member'' in the Nasdaq Rule 1000 Series shall be read to refer to a Phlx member (as defined under Phlx General 1, Section 1(16)) or member organization (as defined under Phlx General 1, Section 1(17)); the defined terms ''Lead Market Maker'' or ''Market Maker'' shall be read to refer to a Nasdaq Phlx Associated Person; the defined term ''Associated Person'' shall be read to refer to a Phlx Associated Person or Person Associated with a member organization (as defined under Phlx General 1, Section 1(2)); the defined terms ''Exchange Membership Department'' or ''Membership Department'' shall be read to refer to the Phlx Membership Department; and the defined term ''Exchange Regulation Department'' shall be read to refer to the Phlx Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to ''General 1 and Equity 1'' shall be read as references to Phlx General 1, Section 1; cross references in the Nasdaq Rule 1000 Series to ''General 9, Section 20'' shall be read as references to Phlx General 9, Section 20 and Phlx Supplementary Material .01 of Options 10, Section 5; cross references in the Nasdaq Rule 1000 Series to ''General 9, Section 37'' shall be read as references to Phlx General 9, Section 37; and cross references to the ''General 4, Rule 1200 Series'' shall be read as references to Phlx General 4, Section 1.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to General 3 to the extent such changes are affected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange's proposed rule change will not become effective unless and until the Commission approves this exemption request.

[4] The Affiliated Exchanges' membership rules were previously amended to incorporate by reference Nasdaq's membership rules. *See* Securities Exchange Act Release Nos. 86425 (July 22, 2019), 84 FR 36139 (July 26, 2019) (SR–BX–2019–022); 90903 (January 12, 2021), 86 FR 5284 (January 19, 2021) (SR–ISE–2020–43); 91672 (April 26, 2021), 86 FR 23001 (April 30, 2021) (SR–GEMX–2021–02); and 91674 (April 26, 2021), 86 FR 23013 (April 30, 2021) (SR–MRX–2021–03).

[5] The Exchange notes that its General 4 title (entitled ''Registration Requirements'') currently incorporates by reference the rules contained in Nasdaq's General 4 title. *See* Securities Exchange Act Release No. 85761 (May 2, 2019), 84 FR 20176 (May 8, 2019) (SR–Phlx–2019–18) (Notice of Filing and Immediate Effectiveness of Proposed Rule

As compared to the Exchange's existing General 3, by virtue of incorporating by reference the Nasdaq Membership Rules into the Exchange's rulebook, the Exchange's membership rules will be organized in a more logical order. The incorporated rules will eliminate unnecessary or vague provisions that exist under the current General 3 title, eliminate unnecessary complexity in the membership process, and otherwise streamline the Exchange's existing membership rules and their associated procedures.

Summary of Proposed Changes

A comparison between the Exchange's existing General 3 and the Nasdaq Membership Rules is summarized below. As a general matter, in comparison to the Exchange's existing membership rules, the Nasdaq Membership Rules provide for more specific membership procedures and due process. Moreover, as described below, some of the Nasdaq Rule 1000 Series rules have no analogue in the existing Exchange rules.

The Exchange notes that Nasdaq's General 4, Registration Requirements were previously streamlined across the Affiliated Exchanges. Phlx's General 4 Rules are incorporated by reference to Nasdaq General 4.

Proposed General 3, Rule 1001 (Phlx Regulatory Contract With FINRA) [6]

Nasdaq General 3, Rule 1001 states that Nasdaq and the Financial Industry Regulatory Authority (''FINRA'') are parties to a Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Nasdaq General 3, Rule 1000 Series and the Nasdaq General 4, Rule 1200 Series on behalf of Nasdaq.[7] Moreover, Nasdaq General 3, Rule 1001 provides that Nasdaq rules that refer to Nasdaq's Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Nasdaq General 3, Rule 1001 also provides that, notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions. In addition, the rule informs that Nasdaq has incorporated by reference certain FINRA rules and that Nasdaq members shall comply with those rules and interpretations as if such rules and interpretations were part of Nasdaq's Rules.

Nasdaq General 3, Rule 1001 currently has no analogue rule under Phlx's membership rules. Current Phlx General 2, Section 5 does permit the Phlx Board to authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act.[8] Similar to Nasdaq, Phlx has entered into a Regulatory Services Agreement with FINRA. FINRA performs substantially similar services for Nasdaq pursuant to its Regulatory Services Agreement with FINRA as it performs for Phlx pursuant to Phlx's Regulatory Services Agreement with FINRA.[9] Therefore, the language of proposed General 3, Rule 1001 is applicable to the Exchange, as the Exchange is, similarly, a signatory of a Regulatory Contract with FINRA, pursuant to which FINRA has agreed to perform certain membership functions on its behalf, and the Exchange also retains the ultimate legal responsibility for the performance of said functions. The Exchange believes that the incorporation by reference of Nasdaq General 3, Rule 1001 is not a substantive amendment to the Exchange rules.

Proposed General 3, Rule 1002 (Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction)

Nasdaq General 3, Rule 1002, which will be incorporated by reference under the Exchange's General 3 title, describes the qualifications of members, member organizations and Associated Persons, the registration of branch offices, and the designation of a member's or member organization's office of supervisory jurisdiction. The Exchange will adopt by incorporation the provisions of Nasdaq General 3, Rule 1002 and delete those under current Phlx General 3, Section 1. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1002(a) provides that any registered broker or dealer shall be eligible for membership in Nasdaq (except for those excluded under paragraph (b) of the rule); additionally, paragraph (a) provides that any person shall be eligible to become an Associated Person of a member organization (except for those excluded under General 3, Rule 1002(b)). Proposed General 3, Rule 1002(a) is similar to current Phlx General 3, Sections 1(b) [10] and (f)(1)(i) [11] to the extent that it describes that brokers or dealers may become member organizations or an Associated Person of a member organization.[12] The Exchange

Change To Delete and Relocate the Exchange's Current Registration, Qualification and Continuing Education Rules).

[6] For purposes of this rule change, references to proposed Phlx General 3 Rules shall mean the Nasdaq General 3 Rules which Phlx proposes to incorporate by reference.

[7] Nasdaq's General 4, Section 1 (Registration, Qualification and Continuing Education) is currently incorporated by reference into the Exchange's General 4 title. *See supra* note 5.

[8] Phlx General 2, Section 5, Regulatory Services Agreements, provides, ''The Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.''

[9] For example, Phlx may act as a designated examining authority, while Nasdaq does not act as a designated examining authority. Therefore, FINRA performs certain regulatory functions for Phlx as the designated examining authority that would not be performed under the Nasdaq RSA.

[10] Phlx General 3, Sections 1(b) states, ''Only an organization whose principal purpose is the transaction of business as a broker or dealer in securities may be qualified as a member organization.''

[11] Phlx General 3, Sections 1(f)(1)(i) states, ''To obtain and maintain the status of a member organization, an organization shall: (i) be a broker or dealer duly registered under the Exchange Act. . .''.

[12] The term ''member'' means a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A member is a natural person and must be a person associated with a member organization. Any references in the rules of the Exchange to the rights or obligations of an associated person or person associated with a member organization also includes a member. *See* Phlx General 1, Section 1(16). The term ''member organization'' means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6–4 of the By-Laws. References herein to

Continued

believes that incorporating by reference Nasdaq General 3, Rule 1002(a) expands upon current Phlx General 3, Sections 1(b) and (f)(1)(i) by explicitly referencing an associated person of a member organization (''Associated Person'').[13] Today, persons may be ineligible to be associated with a Phlx member organization under certain circumstances (*e.g.* statutory disqualification) notwithstanding the absence of specific language.

The Exchange believes the remaining provisions of current Phlx General 3, Section 1 are unnecessary or incorporated by reference in other sections of the Nasdaq Rule. Current Phlx General 3, Section 1(a) provides that the Exchange's Board of Directors may permit a member of the Exchange to qualify an entity as a member organization, subject to such terms and conditions as may from time to time be prescribed by rule or may be imposed by the Board of Directors. Phlx's Membership Department reviews and approves all applicants for membership. The Exchange proposes to delete current Phlx General 3, Section 1(a). Instead, the Exchange would require all applications to be approved pursuant to the prescribed process detailed within the proposed General 3 Rules. Today, Nasdaq's General 3 Rules apply to all Affiliated Exchanges, except Phlx.[14]

Current Phlx General 3, Section 1(c) provides that a member organization shall be organized under the laws of a jurisdiction approved by the Membership Department. The Exchange has not restricted any broker dealer from becoming a member organization of the Exchange, provided the broker dealer meets all the membership requirements specified in Phlx's General 3 rules, notwithstanding the jurisdiction under which the member organization determines to be organized. The Exchange proposes to remove this rule as unnecessary. Additionally, no other Affiliated Exchange has a similar rule.

Additionally, current Phlx General 3, Section 1(d) states that if it appears to the Membership Department that the business form of a member organization is being used to evade financial responsibility, such organization shall not be registered as a member organization. The Exchange believes that the membership qualifications described in current Phlx General 3, Section 1(d) are consistent with the eligibility criteria described in proposed General 3, Rule 1014(b)[15] discussed below, with the exception of General 3, Rule 1014(b)(3) as discussed later in this section. The Exchange proposes to delete current Phlx General 3, Section 1(d) as that provision will be accounted for within proposed General 3, Rule 1014.

Moreover, current Phlx General 3, Section 1(e) states that no bank and no investment trust may be qualified or registered as a member organization. Today, a bank or an investment trust would need to be registered as a broker dealer in order to apply to be a member organization of the Exchange. This is similar to the membership requirements of proposed General 3, Rule 1002(a)[16] which also provides that registered broker or dealers are eligible for membership. The Exchange proposes to delete current Phlx General 3, Section 1(e) since the requirement to be a broker or dealer is clearly stated and a bank or an investment trust would be subject to the same requirements as all other applicants.

Current Phlx General 3, Section 1(f)(1) states,

> To obtain and maintain the status of a member organization, an organization shall: (i) be a broker or dealer duly registered under the Exchange Act; (ii) be duly qualified by a permit holder who is primarily affiliated with such organization for purposes of nominating as provided in the By-Laws; (iii) have submitted to the Membership Department an application for such status in the form approved by the Membership Department and any other information and materials requested by the Membership Department; (iv) have had such application approved by the Membership Department; and (v) meet such other requirements as are set forth in these By-Laws or the Rules of the Exchange.

As stated above, the Exchange believes that the membership qualifications described in current Phlx General 3, Section 1(f)(1)(i) are consistent with the eligibility criteria described in proposed General 3, Rule 1002(a).[17] The membership qualifications described in current Phlx General 3, Section 1(f)(1)(ii) are specific to Phlx in that in order to obtain and maintain the status of a Phlx member organization, an organization shall be duly qualified by a permit holder who is primarily affiliated with such organization for purposes of nominating as provided in the By-Laws. The Exchange proposes to retain this requirement by adding rule text within Phlx General 3 which states, ''In order to obtain and maintain the status of a Phlx member organization, an organization shall be duly qualified by a permit holder who is primarily affiliated with such organization for purposes of nominating as provided in the By-Laws.'' This proposed rule text will allow Phlx to retain this unique requirement while also incorporating by

officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization. *See* Phlx General 1, Section 1(17).

[14] Today, all Affiliated Exchange General 3 Rules, except Phlx, incorporate by reference Nasdaq General 3.

[15] Nasdaq General 3, Rule 1014(b), titled ''Bases for Approval Conditional Approval, or Denial'' states, ''After considering the completed application, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall approve an application under Rules 1013 or 1017 by an Applicant that is not, and is not required to become, a FINRA member unless the Department determines that such information or documents provide a basis for denial of membership: (1) The Department may deny (or condition) approval of an Applicant for the same reasons that the Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act; (2) Without limiting the generality of the foregoing, the Department may deny (or condition) approval of an Applicant when the Applicant directly or indirectly: (A) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Exchange and Commission policies, rules, and regulations, including, without limitation, those concerning recordkeeping, reporting, finance, and trading procedures; (B) has previously violated, and there is a reasonable likelihood such Applicant will again engage in acts or practices violative of, any applicable Exchange or Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those rules of other self-regulatory organizations of which such Applicant is or was a member; (C) has engaged, and there is a reasonable likelihood such Applicant will again engage, in acts or practices inconsistent with just and equitable principles of trade; (D) is not in compliance with the Commission's net capital rule (17 CFR 240.15c3–1), or has financial difficulties involving an amount that is more than 5% of the Applicant's net worth; (E) has been itself, or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years; (F) has engaged in an established pattern of failure to pay just debts; (G) does not have such licenses and registrations as are required by governmental authorities and self-regulatory organizations; or (H) is unable satisfactorily to demonstrate reasonably adequate systems capacity and capability. (3) The Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Securities Exchange Act of 1934. An Applicant that will transact business with the public must be a member of FINRA.

[16] Nasdaq General 3, Rule 1002(a), titled ''Persons Eligible to Become Members and Associated Persons,'' states, ''(1) Any registered broker or dealer shall be eligible for membership in the Exchange, except such registered brokers or dealers as are excluded under paragraph (b). (2) Any person shall be eligible to become an Associated Person of a Member, except such persons as are excluded under paragraph (b).''

[17] The Exchange notes that while Phlx General 3, Section 1(f)(1) mentions a ''permit holder,'' that term is encompassed within the definition of ''member'' as defined within Phlx General 1, Section 1(16). The proposed General 3 rule notes the difference in the term ''member'' between Nasdaq's and Phlx's definitions.

reference Nasdaq's General 3 rules. The Exchange believes that the membership qualifications described in current Phlx General 3, Section 1(f)(1)(iii) are consistent with the eligibility criteria described further below in proposed General 3, Rule 1014. Further, approval by the Membership Department as described within current Phlx General 3, Section 1(f)(1)(iv) is inherent within the proposed General 3 membership rules and compliance with the By-Laws and Rules of the Exchange within current Phlx General 3, Section 1(f)(1)(v) is a catch-all provision which requires an applicant to meet other requirements set forth in the by-laws and rules of the Exchange. Today, every Phlx member and member organization is required to comply with the requirements set forth in the by-laws and rules of the Exchange and, therefore, this provision is unnecessary. Additionally, no other Affiliated Exchange has a similar rule, although all members of Affiliated Exchanges are required to meet other requirements set forth in the by-laws and rules of the exchange. Accordingly, the Exchange proposes to delete current Phlx General 3, Section 1(f)(1) as those provisions not covered by proposed General 3, Rule 1002(a) are covered within proposed General 3, Rule 1014, with the exception of General 3, Section 1(f)(1)(ii) which will be preserved in Phlx General 3's rule text as described above.

With respect to current Phlx General 3, Section 1(f)(2),[18] the Exchange proposes to remove this rule text because it is otherwise superseded by proposed General 3, Rule 1017(a)(5)(B) which provides that a member or member organization is required to file an application for approval if a material change in business operations occurs, which includes, ''acting as a dealer or market maker for the first time.'' Current Section 1(f)(2) provides that to obtain and maintain Market Maker status on PSX, a member organization whose market making has not previously been approved by FINRA, Nasdaq under General 3, or Nasdaq BX under General 3 shall submit an application and any other requested information and material to, and have it approved by, the Membership Department and meet such other requirements as are set forth in the By-Laws or Rules of the Exchange.[19] The information to be provided shall include a business plan, an organizational chart, written supervisory procedures reflecting the change, and such other information as the Membership Department may request. Proposed General 3, Rule 1017 expands on current Phlx General 3, Section 1(f)(2) by explaining the process in more detail and requiring additional material such as pro forma financials.

Generally speaking, current Phlx General 3, Section 1(f)(3) describes the expedited process for membership applications. Today, Phlx accepts Nasdaq's and BX's membership process as a basis for membership on Phlx. Incorporating Nasdaq's rule would further support this reciprocity as an applicant would be subject to the same process for both Nasdaq and Phlx membership. Also, as discussed further below, proposed General 3, Rule 1013(b)(2) [20] is substantially similar to the provisions in current Phlx General 3, Section 1(f)(3).

Current Phlx General 3, Section 1(g) allows the Board to terminate the registration of a member organization by the affirmative vote of a majority of the Board if the member organization is found to have violated the terms and conditions, or fails to meet the requirements, of its registration. The Exchange believes that this rule is substantially similar to General 5, Rule 8310 [21] of the Exchange's disciplinary rules and is therefore not necessary to be retained within the Membership Rules.

Current Phlx General 3, Section 1(h) allows for a member organization or an Exchange member who has qualified a member organization to apply for termination of the registration of the member organization.[22] The Exchange believes that proposed General 3, Rule 1018,[23] discussed further below, is similar to, and consistent with the requirements of current Phlx General 3, Section 1(h) with respect the ability to voluntarily terminate membership. Additionally, both rules (proposed General 3, Rule 1018 and Phlx General 3, Section 1(h)) provide that the effectiveness of the termination is contingent on all indebtedness to the Exchange has been paid. Phlx General 3, Section 1(h) also requires that commitments and liabilities have been discharged to its members and member organizations. This rule is a holdover from a time when members leased seats on Phlx prior to demutualization. The Exchange has not had occasion to enforce this rule in the recent past and believes this portion of the rule is unnecessary. The last provision in the Phlx rule, pertaining to death or incapacity of the member who has qualified the member organization is not necessary to be described within the membership rules. The proposed rules would not prohibit a legal representative from being used under such circumstances. Also, a member organization could make other legal arrangements to obtain proper consent, within the bounds of the law and their governing documents, to effect the termination without violating the proposed rules. This would be the case in the event any officer of any member died or became incapacitated.

Lastly, current Phlx General 3, Section 1(i) provides, ''During the unavoidable absence or disability of an officer (or person in a similar position) of a member organization who is a member of the Exchange, any officer or director (or person in a similar position) of such member organization shall have the privilege of effecting transactions on the Exchange in the name of the

[18] Current Phlx General 3, Section 1(f)(2) provides, ''To obtain and maintain the status of a Market Maker on PSX, a member organization whose market making has not previously been approved by FINRA under the NASD Rule 1000 Series (or such successor FINRA Rules as may be adopted by FINRA), Nasdaq under General 3, or Nasdaq BX under General 3 shall: (i) have submitted to the Membership Department an application for such status in the form approved by the Membership Department and any other information and material requested by the Membership Department; (ii) have had such application approved by the Membership Department; and (iii) meet such other requirements as are set forth in the By-Laws or Rules of the Exchange. The information to be provided shall include a business plan, an organizational chart, written supervisory procedures reflecting the change, and such other information as the Membership Department may request.''

[19] Proposed General 3, Rule 1017(a)(5)(B) requires members and member organizations applying to become a Market Maker to seek Exchange approval and therefore would supersede Phlx Section 1(f)(2) as first time Market Makers would continue to be required to seek Exchange approval. Similar to current General 3, Section 1(f)(2), approval would not be required under proposed General 3, Rule 1017(a) if an exchange affiliated with the Exchange or a Member's Designated Examining Authority has already approved the change in accordance with its respective rules.

[20] Proposed General 3, Rule 1013(b)(2) concerns the Special Application Procedures Applicable to Applicants that are Already Members of an Affiliated Exchange.

[21] Nasdaq General 5, Rule 8310 concerns the Sanctions for Violation of the Rules.

[22] Current Phlx General 3, Section 1(h) provides, ''A member of the Exchange who has qualified a member organization or a member organization may apply to the Membership Department for termination of the registration of the member organization. Such termination shall become effective upon such date as the Membership Department may determine and in no event shall it be effective until and unless the member organization and the member have discharged all commitments and liabilities to the Exchange and to its members and member organizations, or have made provision therefor satisfactory to the Membership Department. If the member who has qualified the member organization is prevented by death or incapacity from applying for the termination of such registration, the application may be made under the same terms and conditions as herein provided by his legal representative.''

[23] Proposed General 3, Rule 1018 concerns the Resignation, Reinstatement, Termination, and Transfer of Membership.

member organization.'' This provision has never been invoked by any Phlx member or member organization. The Exchange believes that the provision is unnecessary and should be removed from Phlx's Rules.[24]

The Exchange proposes to incorporate Nasdaq General 3, Rule 1002 in its entirety.

Current Phlx General 3, Section 2(a) allows Phlx to deny a permit to, or condition the permit of, any person or bar and deny from becoming associated, or condition any association of, any person with a registered broker or dealer, or deny or condition the qualification or registration of any member organization, if any such person, registered broker or dealer or member organization is subject to a statutory disqualification, as that term is defined in the Act, as amended. This provision is similar to proposed General 3, Rule 1002(b)(1) and (2), which describe an Applicant's ineligibility of certain persons for membership or association due to statutory disqualification.

Proposed General 3, Rule 1002(b)(1) and (2) describe the ineligibility of certain persons for Membership or Association on Phlx. Proposed General 3, Rule 1002(b)(1) provides that, subject to certain exceptions, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the qualification requirements established by the Rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as the Exchange may prescribe. Further, proposed General 3, Rule 1002(b)(2) provides, subject to certain exceptions, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by the rules (Phlx General 4 rules govern registration),[25] or if such person is or becomes subject to a statutory disqualification. Also, no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person pursuant to Phlx General 3, Section 2(b).

Proposed General 3, Rule 1002(b)(2) describes a statutory disqualification,[26] which was recently adopted by Nasdaq.[27] Similar to Nasdaq, Phlx proposes to harmonize its description of statutory disqualification to align its application of statutory disqualification to FINRA and other Affiliated Exchanges. This proposal would avoid potentially different outcomes for members of both FINRA and Phlx with respect to ineligibility for membership and association. Additionally, other Affiliated Exchanges have adopted the FINRA defined term. Harmonizing the description of statutory disqualification would ensure that market participants that are members of both FINRA and Phlx, and members of another Affiliated Exchange and Phlx, are held to the same standard with respect to statutory disqualification.

Proposed General 3, Rule 1002(c)[28] establishes, as a condition to maintaining membership, that member organizations shall at all times maintain membership in a registered securities association that is not registered solely under Section 15A(k) of the Act, or another registered exchange that is not registered solely under Section 6(g) of the Act. Furthermore, the rule prescribes that members and member organizations that transact business with customers shall at all times be members of FINRA. The Exchange proposes to incorporate this rule by reference and provide within the General 3 rule text that members or member organizations may comply with proposed General 3, Rule 1002(c) if Phlx is the member organization's designated examining authority (''DEA'').[29] Because Phlx acts in the capacity of a DEA, applicants for membership who register Phlx as their DEA comply with proposed General 3, Rule 1002(c).

Current Phlx General 3, Section 2(b) allows the Exchange to deny or condition association or membership if the broker, dealer or member organization (1) is unable satisfactorily to demonstrate its present capacity to adhere to applicable provisions of (i) Sections 15 and 17 of the Act, as amended, and all rules and regulations promulgated thereunder or (ii) Exchange Rules relating to the maintenance of books and records; or (2) has previously been found to have violated and there is a reasonable likelihood the broker or dealer or member organization will again engage in acts or practices violative of (A) Sections 15 and 17 of the Act, as amended, and all rules and regulations promulgated thereunder, or (B) Rules relating to the maintenance of books and records of the Exchange or other self-regulatory organizations of which the broker or dealer or member organization is or was a member. The Exchange believes that the conditions for membership described in Phlx Section 2(b) are consistent with and are incorporated by reference into the eligibility criteria described further below in proposed General 3, Rule 1014(b)(2)(A) and (B), which the Exchange is adopting with this proposal. Further, current Phlx General 3, Section 2(c) allows the Exchange to deny or condition association or membership if the broker, dealer or member organization (1) does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for; (2) does not meet such other standards of training, experience, and competence as may be established by the Exchange; (3) cannot demonstrate a capacity to adhere to all applicable policies, rules and regulations of the Exchange or any other self-regulatory organization, the SEC, the Board of Governors of the Federal

[24] A member's or member organization's governing documents and/or business continuity plans would allow a member or member organization to appoint alternative officers in such an event.

[25] Phlx's General 4 rules are incorporated by reference to Nasdaq's General 4 rules.

[26] Proposed General 3, Rule 1002(b)(2) provides, ''For purposes of ''statutory disqualification'' as such term is defined in Section 3(a)(39) of the Exchange Act the terms ''person associated with a member'' and ''associated person'' shall mean (1) a natural person who is registered or has applied for registration under the Rules of the Exchange; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Exchange under its Rules; and (3) for purposes of Nasdaq General 5, Rule 8210, any other person listed in Schedule A of Form BD of a member.''

[27] *See* Securities Exchange Act Release No.94473 (March 18, 2022), 87 FR 16804 (March 24, 2022) (SR–NASDAQ–2022–022) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction).

[28] Proposed General 3, Rule 1002(c) provides, ''Membership in a Registered Securities Association or Another Registered Exchange. As a condition to maintaining membership in the Exchange, Members shall at all times maintain membership in a registered securities association that is not registered solely under Section 15A(k) of the Securities Exchange Act of 1934, or another registered exchange that is not registered solely under Section 6(g) of the Securities Exchange Act of 1934. Members that transact business with customers shall at all times be members of FINRA.''

[29] The Exchange proposes to add the following to the General 3 rule text: ''Phlx members and member organizations may comply with General 3, Rule 1002(c) and General 3, Rule 1014(b)(3) if Phlx is the member's or member organization's designated examining authority.''

Reserve System, the Commodity Futures Trading Commission contract market designated pursuant to Section 5 of the Commodity Exchange Act or futures association registered under Section 17 of such Act; (4) has been the subject of findings of fact rendered by any of the above mentioned entities such that the broker or dealer, person or member organization has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood the person will do so again; or (5) (i) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which remain outstanding (ii) has been or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years (iii) has been and/or remains associated as a general partner, principal, officer, director, stockholder, or registered trader for a member organization which has been subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature (iv) has engaged in a pattern of failure to pay just debts (v) would bring the Exchange into disrepute or (vi) for such other cause as the Membership Department reasonably may decide. Proposed General 3, Section 1014(b)(1) provides that ''[t]he Department may deny (or condition) approval of an Applicant for the same reasons that the Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act.'' Phlx's General 4 rules requires members and member organizations to obtain certain registrations and further proposed General 3, Section 1014(b)(2)(G) permits denial if proper licenses and registrations are not obtained. This would be the equivalent of the proficiency examination requirements within current Phlx General 3, Section 2(c)(1) as well as the standards of training, experience, and competence as may be established by the Exchange in other rules pursuant to current Phlx General 3, Section 2(c)(1).[30] Current Phlx General 3, Section 2(c)(3) requires a demonstration of a capacity to adhere to all applicable policies, rules and regulations of the Exchange or any self-regulatory organization, the Commission, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission contract market designated pursuant to Section 5 of the Commodity Exchange Act or futures association registered under Section 17 of such Act. General 3, Section 1014(b)(2)(A) is, in part, substantially similar to current Phlx General 3, Section 2(c)(3). While the provisions of Phlx General 3, Section 2(c)(3) are broader with respect to other agencies, the Exchange notes that to the extent a member or member organization is subject to the jurisdiction of other federal agencies, those same rules would apply.

Current Phlx General 3, Section 2(c)(4) concerns whether an applicant has engaged in acts or practices inconsistent with just and equitable principles of trade is substantially similar to proposed General 3, Section 1014(b)(2)(C). Current Phlx General 3, Section 2(c)(5)(i) related to unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which remain outstanding is substantially similar to proposed General 3, Section 1014(b)(2)(F). Current Phlx General 3, Section 2(c)(5)(ii) related to bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years is substantially similar to proposed General 3, Section 1014(b)(2)(E). Current Phlx General 3, Section 2(c)(5)(iii) and (iv) relating to unsatisfied liens, judgments or unsubordinated creditor claims of a material nature and failure to pay just debts is substantially similar to proposed General 3, Section 1014(b)(2)(F). Current Phlx General 3, Section 2(c)(5)(v) would allow the Exchange to deny a permit to, or condition the permit of, any person that would bring the Exchange into disrepute. Current Phlx General 3, Section 2(c)(5)(vi) would allow the Exchange to deny a permit to, or condition the permit of, any person for such other cause as the Membership Department reasonably may decide. The proposed rules would eliminate the discretion under these two provisions.

Current Phlx General 3, Section 2(d) permits the Membership Department to waive proficiency examinations in exceptional cases where good cause is shown upon written request of the applicant. The waiver described within current Phlx General 3, Section 2(d) is similar to current Supplementary Material .03 of General 4, Section 1210[31] with one exception. Today, Phlx General 3, Section 2(d) provides, ''Advanced age, physical infirmity or experience in fields ancillary to the securities business will not individually of themselves constitute sufficient grounds to waive a proficiency examination.'' This is different from the standard within Supplementary Material .03 of General 4, Section 1210 which states, ''Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination.'' Phlx has not waived proficiency examinations within the recent past on the grounds of experience in fields ancillary to the securities business. Phlx proposes to remove Phlx General 3, Section 2(d) and instead waive proficiency examinations according to Supplementary Material .03 of General 4, Section 1210. By eliminating Phlx General 3, Section 2(d), Phlx will also eliminate the conflict that exists today between Phlx and its Affiliated Exchanges, thereby harmonizing the qualification examination waiver process across Affiliated Exchanges.

Proposed General 3, Rule 1002(d) describes the requirement to register a branch office and designate an office of supervisory jurisdiction. Phlx Options 10, Section 5, Branch Office, similarly provides an obligation to register branch offices with the Exchange and requires supervision of such branch offices. Additionally, General 9, Section 20(f) requires Phlx DEA members to file a list identifying each of its branch offices. Adopting this rule would require all Phlx members to likewise register branch offices and designate supervision of those branches. The adoption of this rule would make clear the uniform requirement that all Phlx members and member organizations have to report branch offices and designate supervision of those branches to the Exchange. This would include advising the Exchange, via electronic means or such other means as the Exchange may prescribe, of the opening,

[30] *E.g.,* Phlx By-Law Sec. 7–3, Membership Qualifications; General 9, Section 20, Supervision; and Options 8, Section 39, E–15 Options Trading Floor Training.

[31] Phlx General 4 incorporates Nasdaq General 4 by reference. Supplementary Material .03 of General 4, Section 1210 states, in relevant part, ''Pursuant to the Rule 9600 Series, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination(s) and accept other standards as evidence of an applicant's qualifications for registration. Age or disability will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination. The Exchange shall only consider waiver requests submitted by a member for individuals associated with the member who are seeking registration in a representative or principal registration category. Moreover, the Exchange shall consider waivers of the SIE alone or the SIE and the applicable representative and principal examination(s) for such individuals. The Exchange shall not consider a waiver of the SIE for individuals who are not associated persons or for associated persons who are not registering with the Exchange as representatives or principals.''

closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such member organization not later than 30 days after the effective date of such change. The proposed rule provides that members and member organizations that are also FINRA members shall be deemed to have complied with this provision if they are in compliance with FINRA rules by keeping current Form BR. Finally, members and member organizations that are not FINRA members shall promptly advise the Exchange by submitting to the Exchange a Branch Office Disclosure Form.

Membership Proceedings and Proposed General 3, Rule 1011 (Definitions)

Proposed General 3, Rule 1011 contains definitions applicable to the Membership Rules. Proposed General 3, Rule 1011 has no analogue rule in the existing Exchange's General 3 title. By incorporating by reference Nasdaq Rule 1011 definitions under General 3, the Exchange believes it will further harmonize its rules with respect to the membership rules of Nasdaq and other Affiliated Exchanges. Nasdaq Rule 1011 states that terms used in the Nasdaq Rule 1000 Series and the General 4, Rule 1200 Series shall have the meaning as defined in General 1 and Equity 1. Similarly, proposed Phlx General 3 shall have the meaning as defined in General 1 and Equity 1. The terms ''Applicant,'' [32] ''Department,'' [33] ''Interested Staff,'' [34] ''Securities business,'' [35] ''Exchange Board,'' [36] ''principal place of business,'' [37] ''registered broker or dealer,'' [38] ''Representative,'' [39] ''sales practice event,'' [40] and ''Subcommittee,'' [41] have not been defined in the Exchange's rulebook. The term ''associated person'' as defined in Phlx General 1, Section 1(2) is substantially similar to the definition of associated person within Nasdaq General 3, Rule 1011(b). The term ''Director'' is substantially similar to the term ''Director'' within General 1, Section 1(9). The term ''statutory disqualification'' as defined within proposed General 3, Rule 1011(n) aligns with the Act definition. Relatedly, the term ''Proprietary Trading Firm'' as defined in proposed Nasdaq General 3, Rule 1011(o) is substantially similar to the definition of ''proprietary trading firm'' within Phlx General 1, Section 1(33). The Exchange proposes to adopt by incorporation the text of Nasdaq General 3, Rule 1011 in its entirety. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1012 (General Application Provisions)

Proposed General 3, Rule 1012 (''General Application Provisions'') provides a detailed outline of the requirements that an Applicant must follow in order to file an application for membership. In contrast, the Exchange's General 3 membership rules do not describe in detail the manner in which an application shall be submitted or how service shall be performed. The Exchange believes that adopting proposed General 3, Rule 1012 will provide a more detailed set of instructions for Applicants, members, member organizations, and Associated Persons to submit materials and the requirements for service of documents. The Exchange believes that incorporating proposed General 3, Rule 1012 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1012(a) provides that Applicants, members and member organizations may submit an application or other documents and information to the Exchange by first-class mail, overnight courier, hand delivery, or by electronic means (or facsimile if the Department and the Applicant, member, or member organization agree); this section also provides that the Exchange shall serve a notice or decision issued under the Membership Rules by first-class mail or electronic means on the Applicant, member or member organization, or its counsel, unless an Exchange rule specifies a different method of service; finally, this section also details when service by the Exchange or filing by an Applicant or member or member organization shall be deemed complete. The current Exchange membership rules contain no such provision. The Exchange believes that incorporating proposed General 3, Rule 1012(a) by reference improves its membership application process by adopting specific provisions regarding the manner of submission and service of documents.

Proposed General 3, Rule 1012(b) provides a definition of the term ''calendar day'' and describes the manner in which times under the Membership Rule shall be computed. The current Exchange membership rules contain no such provision. The Exchange believes that adopting this rule by incorporation will provide further clarity to the calculation of days under its membership rules.

Proposed General 3, Rule 1012(c) describes a(n) Applicant's, member's, member organization's and Associated Person's duty to ensure that the information they provide to the Exchange at the time of the filing is accurate, complete, and current. Moreover, this provision requires that an Applicant, member, member organization, and Associated Person ensure that membership applications and supporting materials filed with the Exchange remain accurate, complete,

[32] The term ''Applicant'' means a person that applies for membership in the Exchange under Rule 1013 or a Member that files an application for approval of a change in ownership, control, or business operations under Rule 1017. *See* proposed General 3, Rule 1011(a).

[33] The term ''Department'' means the Exchange's Membership Department located within the Exchange's Regulation Department. *See* proposed General 3, Rule 1011(c).

[34] The term ''Interested Staff'' means an employee who directly participates in a decision under Rule 1014 or 1017, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017, and the head of the Department. *See* proposed General 3, Rule 1011(e).

[35] The term ''securities business'' means the business of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others. *See* proposed General 3, Rule 1011(f).

[36] The term ''Exchange Board'' means the Board of Directors of the Exchange. *See* proposed General 3, Rule 1011(h).

[37] The term ''principal place of business'' means the executive office from which the sole proprietor or the officers, partners, or managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where: (1) the largest number of Associated Persons of the Applicant are located; or (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located. *See* proposed General 3, Rule 1011(i).

[38] The term ''registered broker or dealer'' means any broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act. *See* proposed General 3, Rule 1011(j).

[39] The term ''Representative'' shall have the meaning assigned to it in General 4, Rule 1220(b)(1). All Representatives of the Exchange Members are required to be registered with the Exchange, and Representatives that are so registered are referred to herein as ''Registered Representatives.'' *See* proposed General 3, Rule 1011(k).

[40] The term ''sales practice event'' means any customer complaint, arbitration, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to the Exchange. *See* proposed General 3, Rule 1011(l).

[41] The term ''Subcommittee'' means a subcommittee of the Exchange Review Council that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series. *See* proposed General 3, Rule 1011(m).

and current at all times by filing supplementary amendments, which must be filed within 15 business days of their learning of the facts or circumstances giving rise to the need for an amendment. Furthermore, this section requires that Applicants, members, member organizations, and Associated Persons promptly notify the Exchange, in writing, of any material adverse change in their financial condition. The current Exchange membership rules contain no such provision. The Exchange believes that incorporating proposed General 3, Rule 1012(c) by reference improves its membership rules by adopting provisions concerning a member's and member organization's duty to ensure the accuracy, completeness, and current nature of membership information.

As previously stated, the Exchange proposes to adopt by incorporation the text of proposed General 3, Rule 1012 in its entirety, as the rule's provisions provide clear instructions concerning the submission of membership applications and other materials; the requirements for service of documents; and the Applicants', members', member organizations', and Associated Persons' duty to ensure that the information filed with the Exchange is kept current.

Proposed General 3, Rule 1013 (New Member Application)

Proposed General 3, Rule 1013 sets forth the procedure for filing applications for new membership on the Exchange. The Exchange proposes to incorporate Nasdaq General 3, Rule 1013 by reference under its General 3 title. The Exchange is incorporating Nasdaq General 3, Rule 1013 as it expands upon and provides clarity to the procedure currently in place in the Exchange's rules within current General 3, Section 5, Member Applications.[42] The Exchange believes that incorporating proposed General 3, Rule 1013 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1013(a) describes in detail the membership application process. Subsection (a)(1) (''Where to File; Contents''), provides that an application shall include (A) a copy of the Applicant's current Form BD, if not otherwise available to the Exchange electronically through the Central Registration Depository (''CRD''); (B) an original Exchange-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f–2 and for whom a fingerprint card has not been filed with another self-regulatory organization (SRO), if such fingerprints are not otherwise available electronically to the Exchange through CRD; (C) payment for such fee as may be required under the Rules; (D) a description of the Applicant's proposed trading activities on the Exchange, such as the types of securities it will trade, whether it will be a market maker, or an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SROs; (E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements; (F) an organizational chart; (G) the intended location of the Applicant's principal place of business and all other branch offices, if any, and the names of the persons who will be in charge of each office; (H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security; (I) a copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person; (J) a statement indicating whether the Applicant or any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of a SRO, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act (''CEA'') or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other ''appropriate regulatory agency'' (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (K) a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of an SRO, a foreign or international securities exchange, a contract market designated pursuant to the CEA or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other ''appropriate regulatory agency'', the CFTC, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (L) a copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on the Exchange; (M) if the Applicant proposes to make markets on the Exchange, a description of the source and amount of Applicant's capital to support its market making activities on the Exchange, and the source of any additional capital that may become necessary; (N) a description of the financial controls to be employed by the Applicant with

[42] Phlx General 3, Section 5, Member Application, provides, ''(a) Every applicant for a membership or a permit and every non-member seeking admission as a member upon acquisition of an existing membership shall file an application in writing with the Membership Department of the Exchange in such form as the Membership Department may prescribe from time to time, shall appear before such department if required thereby, and shall submit such information as such department may direct. (b) All applications will be reviewed preliminarily by the staff of the Exchange. If the staff recommends that the applicant not be issued a membership or a permit the applicant shall be notified in writing of the reasons therefor and may, within fifteen (15) days of the receipt thereof, file a request with the Membership Department for its consideration of the application, together with a written statement setting forth the applicant's opinion as to why the staff recommendation is in error or insufficient to preclude the issuance of a membership or a permit. (c) The Membership Department shall review and act upon the membership application or permit application. (d) Absent a showing of good cause, an application filed pursuant to this Rule shall lapse after a 90 calendar day period if an applicant fails to provide the requisite documentation provided for in this Rule or any subsequent written request for information or documents pursuant to this Rule within such time period agreed to by the Membership Department. If such time period elapses, an applicant seeking membership to the Exchange shall be required to file a new application pursuant to this Rule. The applicant will be required to pay an additional application fee at that time. The Exchange will not refund any fees for lapsed applications.''

respect to anti-money laundering compliance rules as set forth in General 9, Section 37; (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D); (P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD numbers; (R) a copy of the Applicant's most recent ''FOCUS Report'' (Form X–17A–5) filed with the SEC pursuant to SEC Rule 17a–5; (S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the SROs of which it is a member; (T) a copy of the Exchange's Membership Agreement, duly executed by the Applicant, which includes, among other things: (1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, Exchange rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under Exchange rules; (2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to Exchange rules; and (U) such other reasonable information with respect to the Applicant as the Exchange may require.

In contrast, current Phlx General 3, Section 5(a) states simply that every applicant for a membership or a permit and every non-member seeking admission as a member upon acquisition of an existing membership shall file an application in writing with the Membership Department of the Exchange in such form as the Membership Department may prescribe from time to time, shall appear before such department if required thereby, and shall submit such information as such department may direct.

The Exchange believes that deleting current Phlx General 3, Section 5 is appropriate because the Exchange's current rule contains broad language that permits the Membership Department to apply the same standard that is set forth in proposed General 3, Rule 1013(a)(1) to processing applications today. Proposed General 3, Rule 1013(a)(1) will now be incorporated by reference. This rule lists in detail all of the supplementary application materials required for submission by an Applicant. Incorporating this provision by reference will further standardize the Exchange's membership application process.

Proposed General 3, Rule 1013(a)(2) provides that the Membership Department will deem an application to be filed on the date when it is substantially complete, which is interpreted to be the date on which the Membership Department receives from the Applicant all material documentation and information required under proposed General 3, Rule 1013. This rule also provides that the Exchange will notify the Applicant in writing when it deems the Applicant's application to be substantially complete. Phlx does not have a comparable rule.

Proposed General 3, Rule 1013(a)(3) provides the procedure concerning incomplete applications (including the conditions necessary for the refund of application fees); and the request for additional documents or supporting information. Specifically, proposed General 3, Rule 1013(a)(3)(A) (''Lapse of Applications that are not Substantially Complete'') provides that if an application that was initiated under proposed Rule 1013 is not deemed to be substantially complete by the Membership Department within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, deem the application to have lapsed without filing, and the Membership Department will take no action in furtherance of the application. If the Membership Department deems an application to have lapsed, then the Membership Department shall serve a written notice of that determination on the Applicant. If an Applicant still wishes to apply for membership on the Exchange after receiving notice of a lapse in its application, then the Applicant will be required to submit a new application pursuant to Membership Rules and pay a new application fee for doing so, if applicable. The Membership Department will refund fees that an Applicant has paid to the Exchange in connection with a lapsed application, in accordance with Exchange rules regarding fees, provided that the Exchange has not proceeded to process the application at the time it lapses. The rule also provides that, for purposes of proposed Rule 1013(a)(3)(A), the Membership Department will deem an application to be not ''substantially complete'' if the Applicant fails to submit to the Membership Department materially important information or documentation that is required or requested under these Rules.

Current Phlx General 3, Rule 5(d) provides that absent a showing of good cause, an application filed pursuant to this Rule shall lapse after a 90 calendar day period if an applicant fails to provide the requisite documentation provided for in this Rule or any subsequent written request for information or documents. The applicant would be required to file a new application and pay an additional application fee at that time. The Exchange will not refund any fees for lapsed applications. Current Phlx General 3, Rule 5(d) would be replaced by proposed General 3, Rule 1013. While the rules are substantially similar, proposed General 3, Rule 1013(a)(3)(A) provides that the Department will refund fees that an Applicant has paid to the Exchange in connection with a lapsed application, in accordance with its Rules regarding fees, provided that the Exchange has not proceeded to process the application at the time it lapses. This carve-out for permitting refunds would be a new provision as Phlx has no such carve-out today. The Exchange believes adopting the carve-out as specified within proposed General 3, Rule 1013(a)(3)(A) and otherwise removing current Phlx General 3, Rule 5(d) would serve to align Phlx's rules with that of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1013(a)(3)(B) (''Rejection of Filed Applications that Remain or Become Incomplete After Filing'') provides that if an application that was initiated under proposed General 3, Rule 1013 is substantially complete and thus is deemed to be filed with the Exchange under proposed General 3, Rule 1013(a)(2), but the application nevertheless remains or becomes incomplete with respect to any required or requested information or documentation, then the Membership Department shall serve written notice to the Applicant of such incompleteness and describe the missing information or documentation. If the Applicant fails to submit to the Exchange the missing information or documentation within a reasonable period after it receives a notice of incompleteness, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, reject the application. If the Membership Department rejects an application on the basis of incompleteness, then the Membership Department shall serve a written notice on the Applicant of the Membership Department's determination and the reasons therefor. The Exchange shall not refund the application fees that an Applicant has paid to the Exchange in connection with an application that the Exchange rejects. If the Applicant determines to continue to seek

membership on the Exchange, then the Applicant shall submit a new application and pay a new application fee in accordance with the Exchange rules.

Current Phlx General 3, Section 5(c), similar to proposed General 3, Rule 1013, provides that the Membership Department shall review and act upon the membership application or permit application. Proposed General 3, Section 1013 would obviate the need for current Phlx General 3, Section 5(c). Similarly, current Phlx General 3, Section 5(b) provides that all applications will be reviewed preliminarily by the staff of the Exchange. Proposed General 3, Rule 1014(a) implies that an application will be reviewed by the Membership Department. Further, current Phlx General 3, Section 5(b) provides that the Exchange shall notify the applicant in writing if a membership or permit will not be issued.[43] The applicant would have 15 days from the day of receipt of the notice to request a consideration of the application by providing a written statement setting forth the applicant's opinion as to why the staff recommendation is in error or insufficient to preclude the issuance of a membership or a permit. Further, pursuant to Phlx's current rules under General 3, Section 16(a)(i) within 25 days after service of a decision of an adverse action described above, an applicant may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the applicant believes that the Department's decision is inconsistent with the bases for denial set forth in General 3, Section 2, or otherwise should be set aside, and state whether a hearing is requested. The applicant simultaneously shall file by first-class mail a copy of the request with the Department. The Exchange notes that the rule text within current Phlx General 3, Section 16(a)(i) is the same as the rule text within Nasdaq General 3, Rule 1015(a). This proposal would therefore eliminate the first level of appeal by the Membership Department. Similar to Affiliated Exchanges, with the proposed rules, an applicant would have the right to review before the Exchange Review Council. Despite the elimination of the first level of review by the Membership Department, the Exchange believes the review by the Exchange Review Council provides an applicant with appropriate due process as the review is conducted by an independent panel.

The Exchange plans to replace current Phlx General 3, Section 5(d) by incorporating by reference Nasdaq General 3, Rule 1013(a)(3) which provides well-defined processes for the treatment of applications that become stale or result in the Applicant's failure to pursue membership by not responding to requests for additional information.

Proposed General 3, Rule 1013(a)(4) (''Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties'') establishes that (A) at any time before the Membership Department serves its decision as to an application for new membership in the Exchange, the Membership Department may serve a written request for additional information or documentation, from the Applicant or from a third party, if the Membership Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Membership Department may, at its discretion, request that the Applicant or the third party provide the requested information or documentation in writing or through an in-person or telephonic interview. In the written request, the Membership Department shall afford the Applicant or the third party a reasonable period of time within which to respond to the request; moreover, (B) in the event that the Membership Department obtains information or documentation about an Applicant from a third party that the Membership Department reasonably believes could adversely impact its decision on an application, then the Membership Department shall promptly inform the Applicant in writing and provide the Applicant with a description of the information or a copy of the documentation that the Membership Department obtained, where appropriate under the circumstances. Prior to rendering an application decision on the basis of information or documentation obtained from a third party source, the Membership Department shall afford the Applicant with a reasonable opportunity to discuss or to otherwise address the information or documentation that the Membership Department obtained from the third party.

The provisions under proposed General 3, Rule 1013(a)(4) are similar to the Exchange's current practice to the extent that the Membership Department has made written requests for documentation in furtherance of their review of the membership applications. Proposed General 3, Rule 1013(a)(4) specifically provides for the Exchange's authority to request additional documents or information from the Applicant, or a third party. The Exchange believes that incorporating by reference proposed Nasdaq Rule 1013(a)(4) into its membership rules will provide a greater degree of detail concerning the Exchange's discretion and authority to request additional information.

Proposed General 3, Rule 1013(b)(1)(A) sets forth the procedure that allows an Applicant who is a FINRA member to ''waive-in'' to become an Exchange member or member organization and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). This section defines the term ''waive-in'' to mean that the Membership Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Membership Department evaluates the Applicant for Exchange membership. That is, the Membership Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Membership Department is not otherwise aware of any basis set forth in proposed General 3, Rule 1014 to deny or condition approval of the application. Today, General 3, Section 1(f)(3) permits an applicant that is an approved member in good standing of Nasdaq or BX to apply to become a member of the Exchange and to register with the Exchange all associated persons of the firm whose registrations with the firm are approved with Nasdaq or BX in categories recognized by the Rules of the Exchange through an expedited process. The expedited process requires applicants to complete an Organization Membership Application and attest that the application material previously provided and reviewed as part of the Nasdaq or BX application is complete and accurate but does not require the applicant to submit duplicative documentation which was previously produced. By incorporating the Nasdaq

[43] The term ''permit'' is not necessary in the proposed new rules because the Exchange's membership rules govern membership in the same manner as the Nasdaq rules. An applicant that is approved for membership on Phlx would be entitled to the issuance of a permit pursuant to Phlx General 3, Section 11, Rights and Privileges of A–1 Permits. The Exchange proposes to retain Phlx General 3, Section 11 and relocate that rule to new Phlx General 2, Section 23, as described within this proposal. The concept of a ''permit'' will continue to separately exist within the Phlx rules and would continue to be tied to the membership process through the definition of a member. *See* General 1, Section 1(16).

General 3 rules, Phlx would be able to similarly waive-in a member of any of the other Affiliated Exchanges (ISE, GEMX or MRX). This would expand Phlx's current ability to offer a waive-in application process (similar to Phlx's ''expediated process'') to all Affiliated Exchanges, not just members of Nasdaq and BX.

Proposed General 3, Rule 1013(b)(1)(B) provides that waive-in membership that is granted to a FINRA member pursuant to this provision shall terminate in the event that the Applicant ceases to be a FINRA member and otherwise fails to comply with Rule 1002(c). Proposed General 3, Rule 1013(b)(1)(C) provides that in lieu of submitting an application as set forth in paragraph (a), an Applicant may waive-in to Exchange membership as provided in subparagraph (b)(1) by filing with the Exchange a waive-in application form and an executed Exchange Membership Agreement. Proposed General 3, Rule 1013(b)(1)(D) provides that the Membership Department will act upon a duly submitted application to waive-into Exchange membership under paragraph (b)(1) by serving upon the Applicant a written notification of its decision within a reasonable time frame not to exceed 20 days of submission of the application, unless the Department and the Applicant agree that the Department may issue its decision at a later date. A failure of the Department to issue a decision within this time frame shall be subject to proposed General 3, Rule 1014(c)(3). The Department will normally grant a duly submitted application to waive-into Exchange membership, provided that the Applicant submits the required materials, the Department verifies that the Applicant is a FINRA member, and that the Department is not otherwise aware of any basis to deny or condition approval of the application, as set forth in proposed General 3, Rule 1014. A decision issued under this provision shall have the same effectiveness as set forth in proposed General 3, Rule 1014 and shall be subject to review as set forth in proposed General 3, Rules 1015 and 1016. By incorporating Nasdaq's General 3 Rules by reference, the Exchange's rules would become similar to FINRA's 1000 Series membership rules. Therefore, with this proposal, a FINRA member would be permitted to waive-in with the adoption of General 3, Rule 1013 as is the case today for Nasdaq and BX and would be the case for all other Affiliated Exchanges (ISE, GEMX, and MRX) upon adoption of this proposal. Today, Phlx's membership rules differ from FINRA's membership rules.

The second special application process, which is set forth in proposed General 3, Rule 1013(b)(2)(A), permits Applicants for membership that are already approved members or member organizations of one or more of the Affiliated Exchanges to waive-into the Exchange. In this context, ''waive-in'' means that the Membership Department will rely substantially upon an Affiliated Exchange's prior determination to approve the Applicant for membership. The procedures in proposed General 3, Rule 1013(b)(2) for an Applicant to submit a waive-in application under this provision and for the Membership Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into the Exchange membership. Applicants who meet the criteria for this waive-in review process have already demonstrated their ability to meet membership standards on one or more of the Affiliated Exchanges which eliminates the need for a full review. Proposed General 3, Rule 1013(b)(2)(B) provides that in lieu of submitting an application as set forth in paragraph (a), an Applicant may waive-into Exchange membership as provided in subparagraph (b)(2) by filing with the Department a waive-in application form. As part of this form, the Applicant must attest to the fact that it has made no unapproved material changes to its broker-dealer business subsequent to its approval as a member of an affiliated exchange. Finally, proposed General 3, Rule 1013(b)(2)(C) provides that the Department will act upon a duly submitted application to waive-into Exchange membership under paragraph (b)(2) by serving upon the Applicant a written notification of its decision within a reasonable time frame not to exceed 20 days of submission of the application, unless the Department and the Applicant agree that the Department may issue its decision at a later date. A failure of the Department to issue a decision within this time frame shall be subject to General 3, Rule 1014(c)(3). The Department will normally grant a duly submitted application to waive-into Exchange membership, provided that the Applicant submits the required materials, the Department verifies that the Applicant is a member of an exchange affiliated with the Exchange, and that the Department is not otherwise aware of any basis to deny or condition approval of the application, as set forth in General 3, Rule 1014. A decision issued under this provision shall have the same effectiveness as set forth in General 3, Rule 1014 and shall be subject to review as set forth in General 3, Rules 1015 and 1016. As noted above, an applicant that is an approved member in good standing of Nasdaq or BX to apply may become a member of the Exchange and register with the Exchange all associated persons of the firm whose registrations with the firm are approved with Nasdaq or BX in categories recognized by the Rules of the Exchange through an expedited process. The process to approve members in good standing of Nasdaq and BX that is described in current Phlx General 3, Section 1(f)(3) is not detailed. Proposed General 3, Rule 1013(b)(2) will provide Phlx a more detailed process to continue to allow it to accept members of Nasdaq and BX and also permit it to accept members of other Affiliated Exchanges similar to the process that occurs today on Nasdaq and other Affiliated Exchanges with respect to Phlx members and member organizations.

Nasdaq General 3, Rule 1013(b) (''Special Application Procedures'') was adopted by Nasdaq to expedite the membership application process of Applicants who were already members of FINRA or members of one of the Affiliated Exchanges. The Exchange proposes to adopt by incorporation these same provisions to facilitate Applicants who meet the rule requirements. The adoption of this rule will offer members of FINRA, Nasdaq, and other Affiliated Exchanges the option to apply for membership on the Exchange through an expedited membership application process.

As noted above, current Phlx General 3, Section 1(f)(3) permits an applicant that is an approved member in good standing of Nasdaq or Nasdaq BX, Inc. to have the option to apply to become a member of Phlx through an expedited process. The adoption of proposed General 3, Rule 1013(b) would expand the scope of markets by which an applicant could utilize an expedited process. The Exchange believes that incorporating by reference the waive-in provisions within proposed General 3, Rule 1013(b) will further the Exchange's objective to provide uniformity and clarity to its rules by aligning its membership application process with Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1014 (Department Decision)

Proposed General 3, Rule 1014 (''Department Decision'') describes the Membership Department's process for the issuance of a decision. The

Exchange proposes to incorporate by reference proposed General 3, Rule 1014 in its entirety as it provides a more organized, detailed, and logical description of the procedure currently described in current Phlx General 3, Sections 2 and 5. Incorporating proposed General 3, Rule 1014 by reference in the Exchange's rules will improve the membership application and decision making process by better defining the Membership Department's authority and obligations, describing the basis for approval, conditional approval or denial of an application. Further, the Exchange believes that this proposed change provides consistency in the treatment of Exchange Applicants.

Proposed General 3, Rule 1014(a) describes the Membership Department's authority to act on an application by approving it, denying it, or approving it subject to restrictions: (1) that are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investor protection, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an Affiliated Exchange.

Proposed General 3, Rule 1014(b), entitled ''Bases for Approval, Conditional Approval, or Denial,'' provides that the Membership Department will approve, grant conditional approval, or deny a membership application filed under proposed General 3, Rules 1013 and 1017 by an Applicant that is not, and is not required to become, a FINRA member. Proposed General 3, Rule 1014(b)(1) indicates that the Membership Department may deny or condition membership approval for the same reasons that the Commission may deny or revoke a broker or dealer's registration; this Rule parallels current Phlx General 3, Section 2(a) and (b), which describes the Exchange's authority to deny an application for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act.

Proposed General 3, Rule 1014(b)(2) enumerates the reasons for denial or conditional approval of a membership application in the cases when the Applicant (A) is unable to satisfactorily demonstrate its capacity to adhere to the Exchange and Commission rules; (B) has previously violated, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (C) has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (D) is not in compliance with the Commission's net capital rule or has financial difficulties greater than 5% of their net worth; (E) has been itself, or is the successor to an entity subject to a bankruptcy, proceeding, receivership, or arrangement for the benefit of creditors within the past 3 years; (F) has engaged in an established pattern of failure to pay just debts; (G) does not hold required licenses or registrations; or (H) is unable to satisfactorily demonstrate reasonably adequate systems capacity and capability.

The Exchange notes that the basis for denial listed under current Phlx General 3, Section 2, includes statutory disqualification at Section 2(a), violations of Section 15 and 17 of the Act and books and records violations at Section 2(b), and the following list of reasons under Section 2(c): (i) failure to complete proficiency examinations or meet other standards of competence; and (ii) failure to adhere to applicable policies, rules and regulations of the Exchange or any other self-regulatory organization, the SEC, the Board of Governors of the Federal Reserve System and the contract market designated pursuant to Section 5 of the Commodity Exchange Act or futures association registered under Section 17 of such Act; (iii) unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which remain outstanding; subject to any bankruptcy proceeding, receivership or arrangement within three years; associated as a general partner, principal, officer, director, stockholder, or registered trader for a member organization which has been subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature; (iv) engaged in a pattern of failure to pay just debts; and (v) generally, for such other cause as the Membership Department reasonably may decide.

The Exchange believes that the provisions under proposed General 3, Rule 1014(b)(2) are very similar to the Exchange's current provisions for denial. While Phlx does not currently have specific provisions for net capital or adequate systems capacity and capability, it currently does have a catch-all provision within current Phlx General 3, Section 2(c) that would allow the Exchange to deny membership for those reasons.

The Exchange notes that current Phlx General 3, Section 2(a), which refers to the basis for membership denial as it relates to statutory disqualification, is substantially similar to proposed General 3, Rule 1002(b)(1) and (2), which describe an Applicant's ineligibility for membership or association due to statutory disqualification. As stated above, the Exchange proposes to incorporate proposed General 3, Rule 1002 in its entirety.

Proposed General 3, Rule 1014(b)(3) provides that the Membership Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Act. As noted herein, the Exchange acts in the capacity of a DEA and, therefore, applicants for membership may register to have Phlx as their DEA. As such, a member or member organization that registers with Phlx as its DEA may meet the requirement of proposed General 3, Rule 1014(b)(3) without the need to be a member of another registered securities exchange or association. Further, because Phlx is distinct from Nasdaq with respect to its DEA capacity, the Exchange proposes to add rule text which provides for this distinction within General 3. Proposed General 3, Rule 1014(b)(3) also provides that an Applicant that will transact business with the public must be a member of FINRA. While Phlx's rules currently do not indicate that an Applicant that transacts business with the public must be a member of FINRA, this is the case today. Proposed General 3, Rule 1014(b)(3) will make clear that an Applicant must also be a member of FINRA if an Applicant transacts business with the public.

The Exchange proposes to incorporate by reference proposed General 3, Rule 1014(c) to establish the time and content of a decision and the recourse available to an Applicant if the Membership Department fails to timely issue a decision on a membership application. Current Phlx General 3, Section 5(c), broadly states that the Membership Department shall review and act upon the membership application or permit. Proposed General 3, Rule 1014(c) outlines this process in greater detail. Proposed General 3, Rule 1014(c)(1) requires the Membership Department to serve a decision on the membership application within a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application. Additionally, the rule allows the Membership Department

and the Applicant the ability to agree to further extensions of the decision deadlines. Phlx has no comparable rule. Proposed General 3, Rule 1014(c)(2) also provides that the decision will detail the reason(s) for the denial of membership or the approval of the application subject to restrictions. This provision is similar to current Phlx General 3, Section 5(b), which provides that if Exchange staff recommends that the applicant not be issued a membership or a permit the applicant shall be notified in writing of the reasons therefor. Moreover, proposed General 3, Rule 1014(c)(3) provides that if the Membership Department fails to timely serve a decision, the rule prescribes that the Applicant may request the Exchange Board to direct the Membership Department to serve a decision. The rule further provides that the Exchange Board, within seven days, will direct the Membership Department to serve its decision or to show good cause for a time extension. If the Membership Department shows good cause, the Exchange Board may grant the Membership Department up to 45 days to issue the decision. Phlx has no comparable rule.

Proposed General 3, Rule 1014(e) prescribes that service of the Membership Department's decision shall be made pursuant to proposed General 3, Rule 1012. Further, the rule provides that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under proposed General 3, Rules 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission. Current Phlx General 3, Section 5(b) prescribes that a notice of the Exchange's decision shall be provided to the Applicant if the staff recommends not to issue a membership or a permit but is silent on providing a decision to approve membership. The Exchange believes that incorporating this rule by reference clarifies the process for serving the Membership Department's decision on applications.

Proposed General 3 Rules 1014(f) and (g), respectively, provide for the effectiveness of restrictions on an approved application and what constitutes final action in the Membership Department's decision. Proposed General 3, Rule 1014(f) establishes that a restriction imposed under proposed General 3, Rule 1014 shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless (1) it is removed or modified by a decision constituting final action of the Exchange issued under proposed General 3, Rules 1015, 1016, or 1017; or (2) stayed by the Exchange Review Council, the Exchange Board, or the Commission. Proposed General 3, Rule 1014(g) provides that unless the Applicant files a written request for a review under proposed General 3, Rule 1015, the Membership Department's decision shall constitute final action by the Exchange. Phlx has no comparable rule.

Proposed General 3, Rule 1015 (Review by Exchange Review Counsel)

The Exchange proposes to incorporate by reference Nasdaq General 3 Rule 1015 in its entirety under its General 3 title. Proposed General 3, Rule 1015, subsections (a) through (j) are substantially similar to the current provisions concerning a review by the Exchange Review Council detailed in current Phlx General 3, Section 16(a).

Phlx will no longer retain the introductory sentence within current Phlx General 3, Section 16 which provides, ''If the Membership Department takes an adverse action with respect to a membership application, permit application, or other matter for which the Membership Department has responsibility, the department will notify the applicant in writing of the specific grounds for denial and the applicant shall have a right to a hearing.'' This rule text is covered within proposed General 3, Rule 1014(g) and 1015.

The Exchange proposes to incorporate by reference Nasdaq General 3, Rules 1015(k) and (l) (respectively, ''Ex Parte Communications'' and ''Recusal or Disqualification''). Proposed General 3, Rule 1015(k) prohibits ex parte communications involving membership decisions subject to review between an Applicant, a counsel or representative of an Applicant, or an Interested Staff and certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and Directors, unless notice was provided along with an opportunity for an Applicant and Interested Staff to participate. Further, pursuant to General 3, Rule 1015(k)(3), in the instance that a Director, a member of the Exchange Review Council or a Subcommittee, or an Exchange employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding all written communications, memoranda stating the substance of all such oral communications, and all written responses and memoranda stating the substance of all oral responses to all such communications. Proposed General 3, Rule 1015(l) governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or a Director from participating in a review of a membership decision, where that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. The Exchange has no parallel provisions in its rulebook to proposed General 3, Rules 1015(k) and (l). The Exchange believes that incorporating proposed General 3, Rules 1015(k) and (l) by reference enhances the Exchange Review Council's procedures and is in line with the Exchange's goal of harmonizing its rules with those of the Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1016 (Discretionary Review by the Exchange Board)

Aside from their respective internal cross-references, the text in proposed General 3, Rule 1016 and current Phlx General 3, Section 16(b) (both entitled ''Discretionary Review by the Exchange Board'') are identical. The Exchange proposes to incorporate by reference Nasdaq General 3, Rule 1016 under its General 3 title. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1017 (Application for Approval of Change in Ownership, Control, or Material Business Operations)

Proposed General 3, Rule 1017, ''Application for Approval of Change in Ownership, Control, or Material Business Operations,'' has no analogue rule in the current Phlx General 3 title, other than current Phlx General 3, Section 1(f)(2) which discussed PSX Participants who commence market making. Incorporating Nasdaq General 3, Rule 1017 by reference in its entirety in the Exchange's rules will enhance the Exchange's ongoing regulatory oversight capabilities by clearly identifying events that would trigger the requirement for an approved member or member organization to file an application with the Exchange. As stated below, proposed General 3, Rule 1017 outlines in detail the circumstances that trigger the filing of an application pursuant to this rule. While the Exchange has no

corresponding rule, it does have a similar process in place that it administers procedurally. For example, if an existing member organization of the Exchange is seeking Market Maker status for the first time, the current Exchange process is to require that the member organization submit an amended Exchange application along with relevant supplementary material.[44] The Exchange believes that incorporating proposed General 3, Rule 1017 by reference further harmonizes its process with that of Nasdaq and other Affiliated Exchanges and improves its current practice. As stated previously, the objective is to eventually harmonize membership rules across all Affiliated Exchanges in order to advance uniformity within the membership rules and procedures.

Proposed General 3, Rule 1017(a) prescribes the events that require member organizations to file applications with the Exchange. Paragraph (a) provides that a member organization shall file an application for approval prior to effecting the following changes: (1) a merger of the member organization with another member organization; (2) a direct or indirect acquisition by the member organization of another member organization; (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the member organization's assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the member organization's earnings measured on a rolling 36 month basis; (4) a change in the equity ownership or partnership capital of the member organization that results in one person or entity directly or indirectly owning or controlling 25% or more of the equity or partnership capital; or (5) a material change in business operations, which includes, but is not limited to, (A) removing or modifying a membership restriction; (B) acting as a dealer or a market maker for the first time; (C) adding business activities that require a higher minimum net capital under SEC Rule 15c3–1; or (D) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the proposed Rule 1000 Series.

Proposed General 3, Rule 1017(b), governs the filing and content of applications filed under proposed General 3, Rule 1017. This Rule provides that the application shall be filed with the Membership Department; if the Applicant seeks approval of change of ownership or control or a material change in the member organization's business operations, the application shall (A) provide a detailed description of the proposed change, (B) provide a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the proposed change; and (C) if the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member organization.

Furthermore, proposed General 3, Rule 1017(b) provides that if the application requests the removal or modification of a membership restriction, the application also shall, (A) present facts showing that the circumstances that gave rise to the restriction have changed; and (B) state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in proposed General 3, Rules 1014 or 1017 and the articulated rationale for the imposition of the restriction. Moreover, the Rule indicates that if the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

Proposed General 3, Rule 1017(c) indicates when an application shall or may be filed. Specifically, the Rule provides that (1) an application for approval of a change in ownership or control shall be filed at least 30 days prior to such change; (2) that an application to remove or modify a membership restriction may be filed at any time (clarifying that an existing restriction shall remain in effect during the pendency of the proceeding); and that (3) an application for approval of a material change in business operations, other than the modification or removal of a restriction, may be filed at any time, but the member organization may not effect such change until the conclusion of the proceeding, unless the Membership Department and the member organization otherwise agree.

Proposed General 3, Rule 1017(d) prescribes that an application will be deemed to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under this Rule, and that the Membership Department will notify the Applicant in writing when the Membership Department deems the Applicant's application to be substantially complete.

Proposed General 3, Rule 1017(e) indicates that, pursuant to proposed General 3, Rule 1013(a)(3), the Membership Department may treat an application filed under this Rule as having lapsed or it may reject such an application, except that the Membership Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the Applicant initiates it.

Proposed General 3, Rule 1017(f) provides that the Membership Department, at any time before it serves its decision, may request additional information or documentation from the Applicant or from a third party in accordance with proposed General 3, Rule 1013(a)(4).

Proposed General 3, Rule 1017(g) establishes that a Membership Department's decision shall be issued in accordance with proposed General 3, Rule 1014, except that (1) In rendering a decision on an application submitted under the Rule that requests the modification or removal of a membership restriction, the Membership Department shall consider whether maintenance of the restriction is appropriate in light of: (A) the applicable bases for denial or standards for approval set forth in proposed General 3, Rule 1014; (B) the circumstances that gave rise to the imposition of the restriction; (C) the Applicant's operations since the restriction was imposed; (D) any change in ownership or control or supervisors and principals; and (E) any new evidence submitted in connection with the application. Furthermore, this Rule provides that the Membership Department shall serve a written decision on an application filed under this Rule in accordance with proposed General 3, Rule 1013(c). Moreover, the Rule provides that in the event that a proposed change in ownership, control, or business operations by a member organization requires such member organization to become a member of FINRA, the Membership Department shall not be required to serve a written decision under this Rule until 10 business days after the member organization becomes a FINRA member.

Proposed General 3, Rule 1017(h) provides that service of the decision on the Applicant shall be made in accordance with proposed General 3, Rule 1012. Moreover, the Rule indicates that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of

[44] See Phlx General 3, Section 1(f)(2).

the Exchange is issued under proposed General 3, Rules 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

Proposed General 3, Rule 1017(i) indicates that an Applicant may file a written request for review of the Membership Department's decision with the Exchange Review Council pursuant to proposed General 3, Rule 1015. The rule further clarifies that the procedures set forth in proposed General 3, Rule 1015 shall apply to such review, and the Exchange Review Council's decision shall be subject to discretionary review by the Exchange Board pursuant to proposed General 3, Rule 1016. If the Applicant does not file a request for a review, the Membership Department's decision shall constitute final action by the Exchange.

Proposed General 3, Rule 1017(j) prescribes that the Membership Department shall modify or remove a restriction on its own initiative if the Membership Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1) of the Rule. The Membership Department shall notify the member in writing of the Membership Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under proposed General 3, Rule 1017(a).

Proposed General 3, Rule 1018 (Resignation, Reinstatement, Termination, and Transfer of Membership)

Proposed General 3, Rule 1018, ''Resignation, Reinstatement, Termination, and Transfer of Membership,'' has no analogue rule in the Exchange's current General 3 title. The Exchange proposes to incorporate the rule by reference under its General 3 title. Proposed General 3, Rule 1018 outlines the process for resignation, reinstatement, termination, and transfers of memberships. Incorporating Nasdaq General 3, Rule 1018 by reference will eventually allow the Exchange to standardize the processing of these requests across all the Affiliated Exchanges.

Proposed General 3, Rule 1018(a) provides that membership may be voluntarily terminated only by formal resignation. Resignations of members and member organizations must be filed via electronic process or such other process as the Exchange may prescribe. Any member or member organization may resign from the Exchange at any time. Such resignation shall not take effect until all indebtedness due to the Exchange from such member or member organization shall have been paid in full and so long as any complaint or action is pending against the member or member organization under the Rules. The Exchange, however, may in its discretion declare a resignation effective at any time.

Proposed General 3, Rule 1018(b) indicates that no member organization may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a member organization shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a member organization shall terminate at death, provided that all obligations of membership under the Rules have been fulfilled. Moreover, the Rule provides that the consolidation, reorganization, merger, change of name, or similar change in any corporate member organization shall not terminate the membership of such corporate member organization, provided that the Exchange member organization or surviving corporation, if any, shall be deemed a successor to the business of the corporate member organization, and the member organization or the surviving organization shall continue in the securities business, and shall possess the qualifications for membership in the Exchange. Furthermore, the death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership member organization shall not terminate the membership of such partnership member organization, provided that the member organization or surviving organization, if any, shall be deemed a successor to the business of the partnership member organization, and the member organization or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor member organization is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor member organization shall be extended to the successor organization subject to the notice and application requirements of the Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Exchange's Rules.

Proposed General 3, Rule 1018(c) establishes that any membership or registration suspended or canceled under the Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Exchange rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Exchange.

Proposed General 3, Rule 1019 (Application to Commission for Review)

Proposed General 3, Rule 1019 (''Application to Commission for Review'') has no analogue rule in the Exchange's current General 3 title. Proposed General 3, Rule 1019 allows an aggrieved person to request the Commission to review an Exchange final action under the proposed General 3, Rule 1010 Series. Incorporating proposed General 3, Rule 1019 by reference standardizes the process by which an Applicant may dispute any final action of the Exchange.

Proposed General 3, Rule 1019 provides that a person aggrieved by the Exchange's final action under Membership Rules may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Exchange, unless the Commission otherwise orders.

Proposed General 3, Rule 1030 (Member Access to the Exchange)

Current Phlx General 3, Rule 1030 is identical to proposed General 3, Rule 1030. The Exchange intends to incorporate Nasdaq General 3, Rule 1030 in order to continue to harmonize Phlx's membership rules with Nasdaq and other Affiliated Exchanges.

Current Phlx General 3, Section 7, Registration

Current Phlx General 3, Section 7, Registration, is proposed to be deleted in part and relocated in part.

Current Phlx General 3, Section 7(a) provides that each member and member organization shall register with the Membership Department an address where notices may be served. Subsequent changes in address must be provided to the Membership Department of the Exchange before the effective date thereof. This provision is no longer necessary as the Membership Department has access to Web CRD and monitors for member organization address changes which are available to the Exchange through Web CRD. All Phlx members and member

organizations are required to register within Web CRD to fulfill their General 4 registration requirements.[45]

Current Phlx General 3, Section 7(b) provides that each member and member organization shall register with the Exchange, on such form or forms as may from time to time be required by the Membership Department. Registration forms shall include, but not be limited to, (i) the name and address of the individual member having qualified such member organization in accordance with General 3, Section 1 and (ii) the name and address of the Executive Representative designated by such member organization in accordance with General 3, Section 13(b). Finally, members and member organizations must use Web CRD to submit Form U4, Uniform Application for Securities Industry Registration or Transfer registration filings. Members and member organizations shall amend Form U4 filings not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the amendment. The Exchange proposes to delete current Phlx General 3, Section 7(b) as proposed General 3, Rule 1013 describes the content of an application that would be required to seek membership with the Exchange. Also, Phlx General 4 describes the manner in which members and member organizations must be registered and utilize Form U–4 and Web CRD.[46]

Current Phlx General 3, Section 7(c) provides that each member organization applicant that is a registered broker or dealer pursuant to Section 15 of the Act must use Web CRD to submit a Uniform Application for Broker-Dealer Registration, Form BD. Member organizations shall amend Form BD filings not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the amendment.[47] The Exchange proposes to delete this rule text as Nasdaq General 3, Rule 1013(a)(1)(A) requires an applicant to provide a copy of the Form BD and all broker-dealers are required to amend their Form BD or Uniform Application for Broker-Dealer Registration. Pursuant to Article IV, Section 1(c) of the FINRA By-Laws, a broker-dealer is required to promptly update Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason. Finally, Section 15 of the Act requires broker-dealers to use Web CRD to submit a Form BD and to amend Form BD filings not later than thirty days after the filer knew or should have known of the facts which gave rise to the amendment.

Current Phlx General 3, Section 7(d) is being relocated to General 2, Section 11 which is proposed to be titled ''Contact Information Requirements.'' The Exchange proposes to remove the sentence which provides, ''In addition to the requirements of paragraph (a) above, each member organization must comply with the contact information requirements of this paragraph (d)'' and re-letter the rule. This sentence is no longer necessary given the relocation of this rule. Nasdaq has the same rule within General 2, Section 11 of its rules.

Current Phlx General 3, Section 8, Status Verification

The Exchange proposes to delete current Phlx General 3, Section 8, Status Verification. This rule provides that upon the request of any member or member organization, the Membership Department of the Exchange shall provide such member or member organization (as applicable) with reasonable written verification of its status as a member or member organization. No member or member organization has requested verification in recent history. This rule is obsolete and unnecessary. No other Affiliated Exchanges have a similar provision. If requested, the Exchange would provide such verification as a courtesy.

Current Phlx General 3, Section 9, Administration of Rules by Membership Department

The Exchange proposes to delete current Phlx General 3, Section 9, Administration of Rules by Membership Department. This rule, which simply states that the Membership Department shall administer General 3, is unnecessary. No other Affiliated Exchanges have a similar provision.

Current Phlx General 3, Section 10, General Powers and Duties of Membership Department

The Exchange proposes to delete current Phlx General 3, Section 10, General Powers and Duties of Membership Department.

Current Phlx General 3, Section 10(a) indicates that the Membership Department shall have jurisdiction over the issuance of memberships (in respect of members and member organizations) and permits and over applications by nonmembers for admission as members. The Membership Department shall also have jurisdiction over the revocation of memberships and permits. All applications for a membership or a permit, all applications by non-members for admission as members, all applications for reinstatement of any membership or permit suspended for insolvency of its holder, and any application for readmission of a person who has been expelled from the Exchange shall be referred to the Membership Department for review and action. Proposed General 3, Rule 1013 makes clear that the Membership Department handles memberships. Proposed General 3, Rule 1018 describes the resignation, reinstatement, termination, and transfer of memberships. The Exchange proposes to delete current Phlx General 3, Section 10(a) in light of the proposed rules. No other Affiliated Exchanges have a similar provision.

Current Phlx General 3, Section 10(b) provides that all applications to qualify and register a corporation or other entity as a member organization and all applications for reinstatement of any qualification or registration of a member organization shall be referred to the Membership Department which shall investigate and act thereon. The Membership Department shall have supervision over member corporation (and similar) arrangements, and copies of the articles of incorporation, by-laws and all amendments thereto shall be filed with the Membership Department for approval. Proposed General 3, Rule 1013 makes clear that all applications for membership are handled by the Membership Department, which would include a corporation's request for membership. The Exchange proposes to delete this rule as proposed General 3, Rule 1013 would govern. Additionally, today, the Membership Department does not collect articles of incorporation, by-laws and all amendments to those documents on an on-going basis beyond a request from the Membership Department associated with the application to become a member. Any arrangements that a corporation may have in terms of ''events'' would be handled by the Membership Department pursuant to proposed General 3, Rule 1017(a). No other Affiliated Exchanges have a similar provision.

Current Phlx General 3, Section 10(c) provides for a situation where a member organization's only officer who was a member of the Exchange dies or resigns and the remaining officers may request the Membership Department to permit the corporation to have the status of a member organization for such period, not exceeding sixty (60) days from the date of such death or resignation. The Membership Department in its discretion may, at any time during such

[45] *See* Nasdaq General 4, Rule 1210. Phlx's General 4 rules incorporate by reference Nasdaq's General 4 rules.

[46] *Id.*

[47] *See* Phlx General 3, Section 7(c)(2).

period, withdraw such permission and upon such withdrawal such status shall terminate. The Exchange notes that such a request has never been made to the Membership Department in recent history and the Exchange believes that such discretion is not necessary. No other Affiliated Exchanges have a similar provision.

Current Phlx General 3, Section 11, Rights and Privileges of A–1 Permits

Current Phlx General 3, Section 11, Rights and Privileges of A–1 Permits, is proposed to be relocated to new General 2, Section 23, with one change within subparagraph (c)(ii) to update a rule citation from General 3, Section 13(a) to General 3, Rule 1002(a). The rule would retain the current title.

Current Phlx General 3, Section 12, Member and Member Organization Participation

Current Phlx General 3, Section 12, Member and Member Organization Participation, is being relocated into Equity 2, Section 3, which is currently reserved, and Options 2, Section 2, which is currently reserved. The rules would retain the same title. The Exchange proposes to amend proposed Equity 2, Section 3(a)(3) to remove references to FBMS, which is related to options, and the collective definition of ''System''. The rule is otherwise being relocated to Equity 2, Section 3, without change. Nasdaq has a similar rule within Equity 2, Section 3. Also, the Exchange proposes to amend proposed Options 2, Section 2(a)(3) to remove references to PSX, which is related to equities, and the collective definition of ''System''. The rule is otherwise being relocated to Options 2, Section 3 without change.

Current Phlx General 3, Section 13, Qualification; Designation of Executive Representative

Current Phlx General 3, Section 13, Qualification; Designation of Executive Representative, is being relocated to General 2, Section 10, which is currently reserved. This rule is being relocated without change. The current title would be retained.

Current Phlx General 3, Section 14, Transfer of Accounts

The Exchange proposes to relocate General 3, Section 14, Transfer of Accounts, to new General 2, Section 24, without change. The current title would be retained.

Current Phlx General 3, Section 15, Certificate of Incorporation

The Exchange proposes to delete current Phlx General 3, Section 15, Certificate of Incorporation. This rule requires a certificate of incorporation and by-laws of a proposed member organization to be filed with the Membership Department and approved as well as other authorization documents. Also, amendments to the certificate of incorporation and by-laws of a member organization are required to be reviewed by the Membership Department for approval. Phlx has not approved amendments to the certificate of incorporation and by-laws of a member organization. Proposed General 3, Rule 1013 includes a list of required documentation which may include a certificate of incorporation and by-laws, if requested by the Membership Department. The Exchange proposes to delete current Phlx General 3, Section 15 because it is redundant and unnecessary.

Conclusion

The amendments proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq and other Affiliated Exchanges. These amendments will provide uniform criteria across the Affiliated Exchanges for membership qualifications and a consistent process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full membership reciprocity between the Affiliated Exchanges so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Similarly, harmonized membership rules and processes will benefit Exchange Applicants, members and member organizations by establishing consistent membership requirements and processes that must be followed to apply for membership on the Exchange.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange's membership rules and processes clearer, better organized, simpler, and easier to comply with. Again, such changes will provide benefits both to the Exchange's Membership Department and to Exchange Applicants.

The proposed membership rules and processes are similar to the existing rules and process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its members, member organizations or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

As noted in footnote 3 above, the Exchange's proposed rule change will not become effective unless and until the Commission approves the exemption request. To facilitate an orderly transition from the existing rules under the General 3 title and the Nasdaq Membership Rules to be incorporated by reference, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional rulebook from its public website.

The Exchange will announce and explain this transition process in a regulatory alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[48] in general, and furthers the objectives of Section 6(b)(5) and of the Act,[49] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair

[48] 15 U.S.C. 78f(b).

[49] 15 U.S.C. 78f(b)(5).

procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange member or member organization, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a member or member organization thereof.[50]

As a general matter, the Exchange believes that its proposal to delete its existing membership rules, incorporate by reference the Nasdaq Membership Rules, and other related changes will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler, and will enhance consistency for membership procedures across all of Nasdaq's Affiliated Exchanges.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants, members and member organizations to read and understand, including by doing the following:

• Establishing a ''roadmap'' paragraph as shown in proposed General 3, Rule 1014(a) that sets forth the basic authority of the Membership Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Membership Department to apply when taking each of those actions;

• Making the titles of the rules more accurate and descriptive (*e.g.,* proposed General 3, Rule 1014(b));

• Grouping logically-related provisions together in the rules (*e.g.,* provisions governing resignation, termination, transfer, and reinstatement of membership; recusals and disqualifications);

• Clarifying when the Membership Department will deem an application to be filed (when the application is ''substantially complete,'' as set forth in proposed General 3, Rule 1013(a)(2)) and by requiring the Membership Department to notify an Applicant in writing of the filing date;

• Clarifying what the Exchange means when it states that an Applicant may ''waive-in'' to Exchange membership (as set forth in proposed General 3, Rule 1013(b)); and

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants, members and member organizations by, codifying the below practices which are not currently specified within the rules:

• Eliminating obsolete requirements to submit paper articles of incorporation and by-laws, pursuant to Phlx General 3, Section 10(b), unless requested;

• Permitting electronic filing of applications (proposed General 3, Rule 1012(a)(1));

• Allowing payment of application fees by means other than paper check (proposed General 3, Rule 1013(a)(1)(C)); and

• Harmonizing Phlx's disparate procedures under proposed General 3, Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes as compared to the Affiliated Exchanges.

Finally, the proposal will also make compliance with the membership rules simpler and less burdensome for Applicants, members and member organizations by, for example, detailing the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant's membership in any of the Affiliated Exchanges and defining procedures for processing and responding to waive-in applications (proposed General 3, Rule 1013(b)).

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, and enhance consistency with membership rules and processes of the Affiliated Exchanges, all to the benefit of Applicants, members and member organizations. Moreover, these changes will not adversely impact the rights of Applicants, members or member organizations to appeal adverse Membership Department decisions under these Rules or to request Board action to compel the Membership Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act[51] because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange member or member organization, becoming an Associated Person, and making material changes to the business operations of a member or member organization. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date.[52] Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional rulebook on the Exchange's public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq and other Affiliated Exchanges implemented during its transition to new membership rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants, members and member organizations and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant, member, or member organization. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules and enhancing consistency across all Nasdaq Affiliated Exchanges, the Exchange's membership process will be less burdensome for Applicants, members, and member organizations. Also, the proposal will improve Phlx's competitive standing relative to other exchanges by expanding its waive-in process to all Affiliated Exchanges, not just Nasdaq and BX, as well as FINRA members, thereby simplifying the process for additional market participants to become a Phlx member or member organization.

[50] 15 U.S.C. 78f(b)(7).

[51] 15 U.S.C. 78f(b)(7).

[52] *See* footnote 3 above. Additionally, the Exchange will issue a regulatory alert to provide members and member organizations notice of this rule change and the implementation date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[53] and subparagraph (f)(6) of Rule 19b–4 thereunder.[54]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2022–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–2022–28 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14885 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

[53] 15 U.S.C. 78s(b)(3)(A)(iii).

[54] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95209; File No. SR–NYSE–2022–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.31

July 7, 2022.

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 June 24, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7.31 to (1) permit certain non-routable order types to be designated to cancel if they would be displayed at a price other than their limit price; (2) allow ALO Orders to be designated as non-displayed; (3) permit ALO Orders to be entered in any size; (4) introduce the Non-Display Remove and Proactive if Locked/Crossed Modifiers; and (5) make MPL Orders eligible to trade at their limit price. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31 to (1) permit certain non-routable order types to be designated to cancel if they would be displayed at a price other than their limit price; (2) allow ALO Orders to be designated as non-displayed; (3) permit ALO Orders to be entered in any size; (4) introduce the Non-Display Remove and Proactive if Locked/Crossed Modifiers; and (5) allow MPL Orders to trade at either the midpoint or their limit price. The Exchange also proposes additional

[55] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

clarifying and conforming changes as discussed herein.

Designation to Cancel

The Exchange proposes to modify Rules 7.31(e)(1), 7.31(e)(2), and 7.31(e)(3)(D) to permit Non-Routable Limit Orders, displayed ALO Orders,[4] and Day ISO ALO Orders to be designated to cancel if they would be displayed at a price other than their limit price for any reason.

As proposed, Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders would be eligible to be designated to cancel at the member organization's instruction, thereby providing member organizations with increased flexibility with respect to order handling and the ability to have greater determinism regarding order processing when such orders would be repriced to display at a price other than their limit price. The Exchange notes that this designation would be optional, and if not designated to cancel, Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders would continue to function as set forth in current Exchange rules (except as proposed in this filing with respect to odd lots and the addition of the Non-Display Remove Modifier). The Exchange further notes that providing member organizations with the ability to designate orders to cancel if they would be repriced is not novel, and other cash equity exchanges currently offer their members a similar option.[5]

To effect this change, the Exchange proposes the following modifications to Rules 7.31(e)(1), 7.31(e)(2), and 7.31(e)(3)(D):

• Rule 7.31(e)(1)—Non-Routable Limit Orders

As defined in Rule 7.31(e)(1), a Non-Routable Limit Order is a Limit Order that does not route. Currently, a Non-Routable Limit Order to buy (sell) will trade with orders to sell (buy) on the Exchange Book that are priced at or below (above) the PBO (PBB) and will be repriced based on updates to the Away Market PBO (PBB) as set forth in current Rules 7.31(e)(1)(A)(i) through (iv).

The Exchange proposes to delete the current text of Rule 7.31(e)(1)(A) and add new text to provide that a Non-Routable Limit Order would not be displayed at a price that would lock or cross the PBO (PBB) of an Away Market, and such order to buy (sell) would trade with orders on the Exchange Book that are priced equal to or below (above) the PBO (PBB) of an Away Market. These proposed changes would merely rephrase and clarify the existing behavior of a Non-Routable Limit Order as already set forth in Rule 7.31(e)(1)(A), without substantive changes.

The Exchange further proposes to modify Rule 7.31(e)(1)(A)(i) to delete the current text and add new text providing for the option to designate a Non-Routable Limit Order to be cancelled, as described above.

The Exchange also proposes to modify Rule 7.31(e)(1)(A)(ii) and add new subparagraphs thereunder to describe how any untraded quantity of a Non-Routable Limit Order would be processed if not designated to cancel. New subparagraph (a) would contain the rule text previously set forth in Rule 7.31(e)(1)(A)(i), without substantive changes, and provide that, if the limit price of a Non-Routable Limit Order to buy (sell) locks or crosses the PBO (PBB) of an Away Market, it would have a working price equal to the PBO (PBB) of the Away Market and a display price one MPV below (above) the PBO (PBB) of the Away Market. Proposed new subparagraph (b) would contain rule text currently set forth in Rule 7.31(e)(1)(A)(ii) describing how a Non-Routable Limit Order would be processed when the PBO (PBB) of an Away Market reprices higher (lower), without substantive changes. Finally, the Exchange proposes to renumber current Rules 7.31(e)(1)(A)(iii) and (iv) as Rules 7.31(e)(1)(A)(ii)(c) and (d), respectively, with no changes to the rule text.

• Rule 7.31(e)(2)—ALO Orders

Rule 7.31(e)(2) and the subparagraphs thereunder define the ALO Order, which is a Non-Routable Limit Order that will trade with contra-side interest if its limit price crosses the working price of any displayed or non-displayed orders to sell (buy) on the Exchange Book priced equal to or below (above) the PBO (PBB) of an Away Market. In other words, an ALO Order will not remove liquidity from the Exchange Book unless it receives price improvement. Accordingly, the Exchange proposes to modify Rule 7.31(e)(2) to simplify the definition of an ALO Order, without any substantive changes, and state that ALO Orders are Non-Routable Limit Orders that would not remove liquidity from the Exchange Book unless they receive price improvement. The Exchange also proposes to add new text to Rule 7.31(e)(2)[6] to effect the change described above, permitting an ALO Order to be designated to cancel if it would be displayed at a price other than its limit price for any reason.

The Exchange next proposes to reorganize Rules 7.31(e)(2)(A) through (C) to describe the operation of the ALO Order in a more logical flow, but without any substantive changes to the operation of the order type. Specifically, the Exchange proposes to reorganize Rules 7.31(e)(2)(A) through (C) to first describe when an ALO Order would trade, then describe how any untraded quantity of an ALO Order not designated to cancel would be processed, and then describe the handling of any untraded quantity of an ALO Order that locks non-displayed interest.

First, the Exchange proposes to delete the current text of Rule 7.31(e)(2)(A), which states only that an ALO Order will be assigned a working price and display price pursuant to Rule 7.31(e)(2)(B) and is thus redundant of the substantive rule text in Rule 7.31(e)(2)(B) and its subparagraphs. The Exchange proposes to add new rule text in Rule 7.31(e)(2)(A) providing that an Aggressing ALO Order to buy (sell) would trade if its limit price crosses the working price of any displayed or non-displayed orders to sell (buy) on the Exchange Book priced equal to or below (above) the PBO (PBB) of an Away Market, in which case, the ALO Order would trade as the liquidity taker with such orders. The Exchange notes that this change is not intended to propose any modification to the current operation of the ALO Order and merely

[4] As noted above, the Exchange also proposes in this filing to permit ALO Orders to be designated as non-displayed, and discussion of the proposed modification of Rule 7.31(e)(2) to effect that change appears in the ''Non-Displayed ALO'' section below. The proposed new designation to cancel would be inapplicable to Non-Displayed ALO Orders, as proposed, because such orders are not eligible to be displayed.

[5] *See, e.g.,* Members Exchange (''MEMX'') Rules 11.6(a) (defining the Cancel Back instruction, which a User may attach to an order to instruct that such order be cancelled if it cannot be posted to the MEMX Book at its limit price) and 11.6(l)(2) (defining the Post Only instruction; an order with such instruction functions similarly to the ALO Order and may be designated to be cancelled by the User); Cboe BZX Exchange, Inc. (''BZX'') Rules 11.9(c)(6) and 11.9(g)(d) (defining the BZX Post Only Order, which functions similarly to the ALO Order and may be designated to be cancelled at the User's instruction); Cboe BYX Exchange, Inc. (''BYX'') Rule 11.9(c)(6) and 11.9(g)(d) (defining the BYX Post Only Order, which functions similarly to the ALO Order and may be designated to be cancelled at the User's instruction); Nasdaq Stock Exchange LLC (''Nasdaq'') Rule 4702(b)(4)(A) (defining the Post-Only Order, which functions similarly to the ALO Order and may be designated to be cancelled back to the Participant at the Participant's election).

[6] As noted above, the Exchange also proposes in this filing to permit ALO Orders to be designated as non-displayed and to permit ALO Orders to be entered in odd lots, and discussion of the proposed modification of Rule 7.31(e)(2) to effect those changes appears in the ''Non-Displayed ALO'' and ''ALO Odd Lots'' sections below.

restates text that currently appears in Rule 7.31(e)(2)(B)(ii) describing when an ALO Order may trade, with no substantive changes. The Exchange believes that this proposed reorganization would improve the clarity of Rule 7.31(e)(2) by describing how an ALO Order would trade before progressing on to describe how any untraded quantity of an ALO Order would be handled if it is not designated to cancel upon repricing.

The Exchange next proposes to delete the current text of Rule 7.31(e)(2)(B) and reorganize Rule 7.31(e)(2)(B) and the subparagraphs thereunder. Rule 7.31(e)(2)(B) and the subparagraphs that follow would, as proposed, specify how untraded quantities of an ALO Order would be processed if such order has not been designated to cancel. To effect this change, the Exchange proposes that Rule 7.31(e)(2)(B) would now provide that, if an ALO Order is not designated to cancel, any untraded quantity of such order would trade as described in subparagraphs (i) and (ii).

In subparagraph (i), the Exchange proposes to delete the existing rule text and modify subparagraph (i) to provide that, if the limit price of an ALO Order locks the display price of any order to sell (buy) ranked Priority 2—Display Orders on the Exchange Book, it would have a working price and display price (if it has been designated to display) one MPV below (above) the price of the displayed order on the Exchange Book. The Exchange notes that the content of Rule 7.31(e)(2)(B)(i) would be incorporated into Rule 7.31(e)(2)(B)(ii) (as proposed below) and that this proposed change merely moves rule text from where it is currently located in Rule 7.31(e)(2)(B)(iii) and does not reflect any proposed change to the operation of the ALO Order when the limit price of any untraded quantity of such order locks displayed interest on the Exchange Book.

The Exchange next proposes to delete the current text of Rule 7.31(e)(2)(B)(ii) and replace it with text that would provide that, if the limit price of an ALO Order locks or crosses the PBO (PBB) of an Away Market, it would have a working price equal to the PBO (PBB) of the Away Market and a display price (if designated to display) one MPV below (above) the PBO (PBB) of the Away Market. The Exchange notes that proposed Rule 7.31(e)(2)(B)(ii) rephrases text currently set forth in Rules 7.31(e)(2)(B)(i) and (iv) and is not intended to propose any change to the operation of the ALO Order when the limit price of any untraded quantity of such order locks or crosses the PBBO of an Away Market. The Exchange also notes that the current text of Rule 7.31(e)(2)(B)(ii) was, as described above, incorporated into revised Rule 7.31(e)(2)(A).

The Exchange further proposes to delete current Rules 7.31(e)(2)(B)(iii) and (iv) (including subparagraph (a) under Rule 7.31(e)(2)(B)(iv)), as the content of such Rules has been covered by the proposed Rules described above and would be incorporated into proposed Rule 7.31(e)(2)(C) (as discussed below), without changes to the current operation of the ALO Order. Specifically, Rule 7.31(e)(2)(B)(iii) has been incorporated into proposed Rule 7.31(e)(2)(B)(i), the content of Rule 7.31(e)(2)(B)(iv) would be clarified by proposed Rules 7.31(e)(2)(B)(ii) and 7.31(e)(2)(C), and the content of Rule 7.31(e)(2)(B)(iv)(a) would be covered by proposed Rule 7.31(e)(2)(B)(i).

Proposed Rule 7.31(e)(2)(C) would next provide that if any untraded quantity of an ALO Order to buy (sell), whether designated to cancel or not, locks non-displayed interest on the Exchange Book, it would have a working price and display price (if designated to display) equal to its limit price. The Exchange notes that this rule text reflects the current behavior of ALO Orders when their limit price locks non-displayed interest on the Exchange Book, which would not change based on whether an ALO Order has been designated to cancel, as proposed.

The Exchange next proposes to rename current Rule 7.31(e)(2)(B)(v) as Rule 7.31(e)(2)(D) and current Rule 7.31(e)(2)(C) as Rule 7.31(e)(2)(E). The Exchange also proposes changes to subparagraphs (i) and (ii) of proposed Rule 7.31(e)(2)(E). In subparagraphs (i) and (ii), the Exchange proposes to add clarity to its Rules by specifying that the reference to the PBO (PBB) is of an Away Market and proposes to update the paragraph references to reflect the reorganization of the Rule as described above. Specifically, the Exchange proposes to update subparagraph (i) to refer to paragraphs (e)(2)(A) (which now describes when an Aggressing ALO Order is eligible to trade), (e)(2)(B)(i)–(ii) (which now describe the processing of any untraded quantity of an ALO Order that is not designated to cancel), and (e)(2)(C) of the Rule (which now describes the processing of any untraded quantity of an ALO Order that locks non-displayed interest). The Exchange further proposes to update subparagraph (ii) to refer to paragraphs (e)(1)(A)(ii)(c) and (d) of the Rule, which simply updates the paragraph references consistent with the changes described above to renumber paragraphs (e)(1)(A)(iii) and (iv) as paragraphs (e)(1)(A)(ii)(c) and (d).[7]

The Exchange also proposes to rename current Rule 7.31(e)(2)(D) as Rule 7.31(e)(2)(F) and modify new Rule 7.31(e)(2)(F) to provide that an ALO Order would not trigger a contra-side MPL Order that is resting at the midpoint to trade, except as specified in proposed Rule 7.31(d)(3)(F). Rule 7.31(d)(3)(F), in relevant part and as proposed in this filing, would provide that an MPL Order designated with the Non-Display Remove Modifier would trade as the liquidity-taking order with an Aggressing ALO Order or MPL–ALO Order that has a working price equal to the working price of the MPL Order.[8]

Finally, the Exchange proposes to add new Rule 7.31(e)(2)(G), which would provide that the ALO designation would be ignored for ALO Orders that participate in an Auction. This rule text would be similar to the text that currently appears in Rule 7.31(e)(2)(A), without substantive changes.

The Exchange notes that the proposed changes described above are intended only to implement the addition of the option to designate an ALO Order to cancel and, in connection with such proposal, to improve the clarity and organization of Rule 7.31(e)(2). The proposed changes set forth above otherwise reflect how an ALO Order currently behaves and are not intended to propose any other changes to the operation of the order type.[9]

• Rule 7.31(e)(3)(D)—Day ISO ALO Orders

Rule 7.31(e)(3) provides that an Intermarket Sweep Order (''ISO'') is a Limit Order that does not route and meets the requirements of Rule 600(b)(30) of Regulation NMS. Rule 7.31(e)(3)(C) provides that an ISO designated Day (''Day ISO''), if marketable on arrival, will be immediately traded with contra-side interest in the Exchange Book up to its full size and limit price, and that any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. Rule 7.31(e)(3)(D) provides

[7] In addition, to effect the proposed change to permit ALO Orders to be designated as non-displayed, the Exchange proposes an additional revision to Rule 7.31(e)(2)(E)(ii) discussed below in the ''Non-Displayed ALO'' section.

[8] Proposed Rule 7.31(d)(3)(F) is discussed further in the ''Non-Display Remove Modifier'' section below.

[9] The Exchange notes that its proposed changes to provide for a non-displayed ALO Order, to permit ALO Orders to be entered in odd lots, and to introduce the Non-Display Remove Modifier are discussed below.

that a Day ISO ALO is a Day ISO that has been designated with an ALO Modifier and, on arrival, may trade through or lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO ALO.

In order to effect the change described above to permit a Day ISO ALO Order to be designated to cancel if it would be displayed at a price other than its limit price for any reason, the Exchange proposes to modify and reorganize Rule 7.31(e)(3)(D) and the paragraphs thereunder similar to its proposal with respect to Rule 7.31(e)(2) for ALO Orders. As in proposed Rule 7.31(e)(2), the Exchange proposes to reorganize Rule 7.31(e)(3)(D) to describe when a Day ISO ALO Order would trade, how any untraded quantity of a Day ISO ALO Order not designated to cancel would be processed, and the handling of any untraded quantity of a Day ISO ALO Order that locks non-displayed interest, in that logical order.

First, the Exchange proposes to modify Rule 7.31(e)(3)(D) to add text providing that a Day ISO ALO can be designated to cancel. The Exchange does not propose any changes to the first sentence of current Rule 7.31(e)(3)(D)(i), which describes when a Day ISO ALO Order may trade, but proposes to combine the second sentence of current Rule 7.31(e)(3)(D)(i) with Rule 7.31(e)(3)(D)(ii). Rule 7.31(e)(3)(D)(ii) would now specify that, if not designated to cancel, any untraded quantity of a Day ISO ALO Order to buy (sell) would be assigned a working price and display price one MPV below (above) the price of the displayed order on the Exchange Book when the limit price of the Day ISO ALO Order locks the display price of a displayed order on the Exchange Book.

The Exchange next proposes to delete the current text of Rule 7.31(e)(3)(D)(iii) and its subparagraph (a) and add new rule text specifying that any untraded quantity of a Day ISO ALO Order that locks non-displayed interest on the Exchange Book would have a working price and display price equal to its limit price. The Exchange notes that this proposed change merely rephrases current Rule 7.31(e)(3)(D)(iii) and eliminates redundant rule text (thereby simplifying Exchange rules) and is not intended to change the meaning or operation of such rules. The Exchange notes that current Rule 7.31(e)(3)(D)(iii)(a) would be covered by Rule 7.31(e)(3)(D)(ii), as proposed.

Finally, the Exchange proposes to make clarifying changes to Rule 7.31(e)(3)(D)(iv). First, the Exchange proposes to replace ''After being displayed'' with ''Once resting on the Exchange Book'' to align the rule text with existing rule text in current Rule 7.31(e)(2)(C), which similarly describes how ALO Orders would be processed once resting on the Exchange Book. The Exchange further proposes to clarify that the PBO (PBB) referenced in this subparagraph is of an Away Market. The Exchange also proposes to update the reference to paragraphs (e)(2)(C)(i) and (ii) of Rule 7.31 to paragraphs (e)(2)(E)(i) and (ii) to reflect the proposed reorganization of Rule 7.31(e)(2) as described above.

The Exchange notes that the proposed changes described above are not intended to impact the operation of the Day ISO ALO Order other than to implement the new optional designation to cancel and, in connection with that proposed change, to improve the clarity and organization of Rule 7.31(e)(3)(D).[10] The proposed changes set forth above otherwise reflect how a Day ISO ALO Order currently behaves and are not intended to propose any other changes to the operation of the order type.

Non-Displayed ALO Order

As noted above, the Exchange proposes to permit ALO Orders to be designated as non-displayed, and to effect this change, proposes to modify Rule 7.31(e)(2) to add text specifying that ALO Orders may be designated as non-displayed orders. The Exchange proposes that a non-displayed ALO Order would function in the same way as an ALO Order currently behaves except that it would not have a display price (and thus would not be eligible to be designated to cancel, as such proposed option is described above) and would be repriced when crossed by the PBO (PBB) of an Away Market.

The Exchange also proposes to add text to Rule 7.31(e)(2)(E)(ii) (as renumbered above) to provide that, if the PBO (PBB) of an Away Market reprices lower (higher) than the working price of a non-displayed ALO Order to buy (sell), the non-displayed ALO Order would have a working price equal to the PBO (PBB) of the Away Market. This proposed rule text would indicate, as noted above, a difference in behavior between a non-displayed ALO Order, as proposed, and a displayed ALO Order.

The Exchange believes that permitting an ALO Order to be non-displayed would provide member organizations with greater flexibility with respect to the operation of an existing order type and would provide member organizations with the option to designate ALO Orders to be non-displayed in accordance with their desired trading strategy.

The Exchange notes that displayed ALO Orders would continue to be available for use by member organizations, and designating an ALO Order to be non-displayed would be at the member organization's option. The Exchange also believes that other cash equity exchanges similarly permit order types analogous to the ALO Order to be non-displayed and that this proposed change thus does not raise any novel issues.[11]

ALO Odd Lots

Currently, Rules 7.31(e)(2) and 7.31(e)(3)(D) provide that ALO Orders and Day ISO ALO Orders, respectively, must be entered with a minimum of one displayed round lot. The Exchange proposes to permit ALO Orders and Day ISO ALO Orders to be entered in any size, and thus proposes to delete the round lot requirement from Rules 7.31(e)(2) and 7.31(e)(3)(D). The Exchange believes that requiring ALO Orders and Day ISO ALO Orders to be entered in round lots is unnecessary, particularly since the Exchange already permits odd lot residual quantities for ALO Orders and Day ISO ALO Orders. The Exchange also believes that permitting ALO Orders and Day ISO ALO Orders to be entered in odd lots could increase liquidity and enhance opportunities for order execution on the Exchange. The Exchange notes that permitting odd lot order quantities, including for ALO Orders, is not novel on the Exchange or other cash equity exchanges and thus believes that this proposed change would align the Exchange's treatment of ALO Orders and Day ISO ALO Orders with features available on other cash equity exchanges.[12]

Non-Display Remove Modifier

The Exchange proposes to introduce the Non-Display Remove Modifier (''NDR Modifier''), which is currently offered by its affiliated exchanges, NYSE American LLC (''NYSE American''),

[10] The Exchange notes that it also proposes a modification to Rule 7.31(e)(3)(D) in connection with its proposal to permit Day ISO ALO Orders to be entered in odd lots, which is described below in the ''ALO Odd Lots'' section.

[11] *See, e.g.,* MEMX Rules 11.8(b)(3) and (7) (providing that a Limit Order may be non-displayed and designated with a Post Only instruction). The Exchange also notes that BZX Rule 11.9(g)(1)(D) and BYX Rule 11.9(g)(1)(D) refer to ''display-eligible'' BZX Post Only Orders and BYX Post Only Orders, respectively, suggesting that such orders could also be designated as non-displayed.

[12] *See, e.g.,* MEMX Rules 11.8(b)(2) and (7) (providing that a Limit Order may be of odd lot size and designated with the Post Only instruction). The Exchange also notes that the rules of Nasdaq, BZX, and BYX do not appear to prohibit entry of their order types analogous to the ALO Order in odd lots.

NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'') (collectively, the ''Affiliated Exchanges'').[13]

The Exchange proposes that the NDR Modifier would be available for use with Non-Displayed Limit Orders, Non-Routable Limit Orders (when not displayed), and MPL Orders, and that any resting order with the NDR Modifier would remove liquidity when it is locked by any ALO Order, consistent with the operation of the NDR Modifier on the Affiliated Exchanges.[14]

The Exchange believes that this proposed change would offer member organizations a modifier already available on the Affiliated Exchanges and thus promote consistency between the Exchange's rules and the rules of its Affiliated Exchanges. The Exchange further believes that the availability of the NDR Modifier would afford member organizations increased flexibility with respect to order processing and could provide enhanced opportunities for order execution by allowing resting Non-Displayed Limit Orders, Non-Routable Limit Orders (when not displayed), and MPL Orders designated with the NDR Modifier to be eligible to trade when locked by an ALO Order.

To introduce the NDR Modifier, the Exchange proposes the following changes, which are based on the rules of the Affiliated Exchanges: [15]

- The Exchange proposes to introduce Rule 7.31(d)(2)(B) to provide that a Non-Displayed Limit Order may be designated with an NDR Modifier and, when so designated, it would trade as the liquidity-taking order with an Aggressing ALO Order or MPL–ALO Order when the working price of such order locks the working price of the Non-Displayed Limit Order.
- The Exchange proposes to modify Rule 7.31(d)(3)(D) to provide that an MPL–IOC Order may not be designated with an NDR Modifier. This proposed rule text is consistent with the Affiliated Exchanges' existing rules.
- The Exchange proposes new Rule 7.31(d)(3)(E)(iii), which would provide that an MPL–ALO Order cannot be designated with an NDR Modifier.
- The Exchange proposes new Rule 7.31(d)(3)(F), which would provide that an MPL Order designated Day may also be designated with an NDR Modifier, and such order would trade as the liquidity-taking order with an Aggressing ALO Order or MPL–ALO Order that has a working price equal to the working price of the MPL Order.
- The Exchange proposes to add new Rule 7.31(e)(1)(C) to provide that a Non-Routable Limit Order may be designated with an NDR Modifier and, when so designated, would trade as the liquidity taker against an Aggressing ALO Order or MPL–ALO Order when the Non-Routable Limit Order has a working price (but not display price) equal to the working price of the ALO Order or MPL–ALO Order.

Finally, the Exchange proposes to modify Rule 7.37 (Order Execution and Routing) to add new Rule 7.37(b)(10). Proposed Rule 7.37(b)(10) would address the allocation of orders designated with an NDR Modifier and would clarify that, when a resting order that has been designated with an NDR Modifier trades as the liquidity taker against an Aggressing ALO Order or MPL–ALO Order, it will trade based on its ranking as set forth in Rule 7.36(c). Rule 7.36(c) sets forth rules pertaining to order ranking and provides that all non-marketable orders are ranked and maintained in the Exchange Book according to: (1) price; (2) priority category; (3) time; and (4) ranking restrictions applicable to an order or modifier condition.

Proactive if Locked/Crossed Modifier

The Exchange proposes to modify Rule 7.31(i)(1), which is currently designated as Reserved, to introduce the Proactive if Locked/Crossed Modifier.[16] The Exchange proposes that the Proactive if Locked/Crossed Modifier would be available for use with a displayed Limit Order or Inside Limit Order that is eligible to route. An order designated with a Proactive if Locked/Crossed Modifier would route to an Away Market (based on the ranking of such order pursuant to Rule 7.36(c)) if the Away Market locks or crosses the display price of the order. In addition, if any quantity of the order is returned unexecuted, the order would be displayed on the Exchange Book. The Exchange believes that the addition of the Proactive if Locked/Crossed Modifier would offer member organizations increased optionality with respect to order routing and could provide member organizations with increased opportunities for order execution by allowing orders designated with the modifier to be routed to an Away Market when the display price of such orders is locked or crossed by the Away Market. The Exchange notes that the Proactive if Locked/Crossed Modifier is currently offered by its Affiliated Exchanges, and proposed Rule 7.31(i)(1) is based on the rules of the same number on the Affiliated Exchanges, without substantive changes.[17] Accordingly, the Exchange believes that the introduction of the Proactive if Locked/Crossed Modifier would promote consistency among the rules of the Affiliated Exchanges.

MPL Orders

A Mid-Point Liquidity Order or MPL Order is currently defined in Rule 7.31(d)(3) as a non-displayed, non-routable Limit Order with a working price of the midpoint of the PBBO. The Exchange proposes to modify the definition of an MPL Order to provide that an MPL Order to buy (sell) would have a working price of the lower (higher) of the midpoint of the PBBO or

[13] *See* NYSE American Rules 7.31E(d)(2)(B), 7.31E(d)(3)(D)–(F), 7.31E(e)(1)(C), 7.31E(e)(2)(B)(iv)(b), and 7.31E(e)(3)(D)(iii)(b); NYSE Arca Rules 7.31–E(d)(2)(B), 7.31–E(d)(3)(D)–(F), 7.31–E(e)(1)(C), 7.31–E(e)(2)(B)(iv)(b), and 7.31–E(e)(3)(D)(iii)(b); NYSE Chicago Rules 7.31(d)(2)(B), 7.31(d)(3)(D)–(F), 7.31(e)(1)(C), 7.31(e)(2)(B)(iv)(b), and 7.31(e)(3)(D)(iii)(b); NYSE National Rules 7.31(d)(2)(B), 7.31(d)(3)(D)–(F), 7.31(e)(1)(C), 7.31(e)(2)(B)(iv)(b), and 7.31(e)(3)(D)(iii)(b).

[14] The Exchange notes that NYSE National recently proposed modifications to the NDR Modifier (*see* SR–NYSENAT–2022–09, *available at: https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2022/SR-NYSENAT-2022-09.pdf*), which changes will also be proposed by the other Affiliated Exchanges in forthcoming rule filings. The proposed changes in this filing to provide for use of the NDR Modifier are consistent with the operation and availability of the NDR Modifier on the Affiliated Exchanges, pursuant to their pending and forthcoming rule filings. The Exchange further notes that the operation of the NDR Modifier, as proposed in this filing and by the Affiliated Exchanges in their respective rule filings, would offer functionality similar to modifiers offered by other cash equity exchanges. *See, e.g.,* BYX Rule 11.9(c)(12) (providing for the Non-Displayed Swap or ''NDS'' Order, which is an instruction on an order resting on the BYX book that, when locked by an incoming BYX Post Only Order that does not remove liquidity, causes such order to be converted to an executable order that removes liquidity against such incoming order); BZX Rule 11.9(c)(12) (providing for the Non-Displayed Swap or ''NDS'' Order, which is an instruction on an order resting on the BZX book that, when locked by an incoming BZX Post Only Order that does not remove liquidity, causes such order to be converted to an executable order that removes liquidity against such incoming order).

[15] *See* notes 13–14, *supra.*

[16] The Exchange also proposes a conforming change to Rule 7.16 (Short Sales) in connection with the addition of the Proactive if Locked/Crossed Modifier. The Exchange proposes to specify in new paragraph (J) under Rule 7.16(f)(5) that Proactive if Locked/Crossed Modifiers will be ignored during Short Sale Periods and proposes to modify Rule 7.16(f)(5)(A) to refer to ''paragraphs (f)(5)(B)–(J) of this Rule'' to reflect the addition of new paragraph (J). The Exchange proposes to ignore the Proactive if Locked/Crossed Modifier during Short Sale Periods because it would not route short sale orders during such times.

[17] *See* NYSE American Rule 7.31E(i)(1); NYSE Arca Rule 7.31–E(i)(1); NYSE Chicago Rule 7.31(i)(1); NYSE National Rule 7.31(i)(1).

its limit price. In other words, the Exchange proposes that an MPL Order would be eligible to trade at the less aggressive of the midpoint of the PBBO or its limit price. The Exchange believes that permitting MPL Orders to trade at the less aggressive of the midpoint of the PBBO or their limit price would provide member organizations with increased opportunities for order execution, thereby enhancing market quality for all market participants. The Exchange notes that permitting MPL Orders to trade at the less aggressive of the midpoint of the PBBO or their limit price is not novel and that comparable order types on other cash equity exchanges currently behave in this manner.[18]

To effect this change, the Exchange proposes to modify the following portions of Rule 7.31(d)(3):

- Rule 7.31(d)(3) currently provides that an MPL Order has a working price of the midpoint of the PBBO. The Exchange proposes to modify this Rule to provide that an MPL Order to buy (sell) would have a working price at the lower (higher) of the midpoint of the PBBO or its limit price.
- Rule 7.31(d)(3)(A) currently provides that an MPL Order to buy (sell) is eligible to trade only if the midpoint of the PBBO is at or below (above) the limit price of the MPL Order. The Exchange proposes to modify this Rule to provide that an MPL Order would be eligible to trade at the working price of the order (which, as described above, would be defined to be the less aggressive of the midpoint of the PBBO or the limit price of the MPL Order).
- Rule 7.31(d)(3)(C) currently provides that an Aggressing MPL Order to buy (sell) will trade with resting orders to sell (buy) with a working price at or below (above) the midpoint of the PBBO at the working price of the resting orders. The Exchange proposes to modify this Rule to provide that an Aggressing MPL Order would trade with a resting order, at the working price of such order, when the resting order has a working price at or below (above) the working price of the MPL Order. Rule 7.31(d)(3)(C) also currently states that resting MPL Orders to buy (sell) will trade at the midpoint of the PBBO against all Aggressing Orders to sell (buy) priced at or below (above) the midpoint of the PBBO. The Exchange proposes to instead provide that resting MPL Orders would trade against Aggressing Orders priced at or below (above) the working price of the MPL Order, consistent with the proposed changes described above to permit MPL Orders to trade at the less aggressive of the midpoint of the PBBO or their limit price.
- Rule 7.31(d)(3)(E) currently provides that an MPL–ALO Order is an MPL Order that has been designated with an ALO Modifier. The Exchange proposes to revise subparagraphs (i) and (ii) thereunder to make changes consistent with those described above with respect to MPL Orders. Specifically, the Exchange proposes to modify Rule 7.31(d)(3)(E)(i) to be similar to Rule 7.31(d)(3)(C) but with modified phrasing specific to the behavior of MPL–ALO Orders. Accordingly, Rule 7.31(d)(3)(E)(i), as proposed, would provide that an Aggressing MPL–ALO Order to buy (sell) would trade with a resting order, at the working price of such order, when the resting order has a working price below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order. In addition, to reflect the operation of the ALO Modifier, the Exchange further proposes to modify Rule 7.31(d)(3)(E)(i) to specify that an MPL–ALO Order would not trade with resting orders priced equal to the less aggressive of the midpoint of the PBBO or the limit price of the MPL–ALO Order.[19] The Exchange believes that these proposed changes would provide additional clarity with respect to the particular behavior of MPL–ALO Orders, as such orders (unlike MPL Orders) would not take liquidity at the less aggressive of the midpoint of the PBBO or their limit price.

In addition, because the Exchange proposes to allow MPL Orders—including MPL–ALO Orders—to trade at the less aggressive of the midpoint of the PBBO or their limit price, the Exchange proposes to modify Rule 7.31(d)(3)(E)(ii) to replace the reference to the ''midpoint'' with the ''working price of the MPL–ALO Order'' (consistent with the revised definition of MPL Order proposed above).

Finally, the Exchange proposes a modification to Rule 7.11, which sets forth rules pertaining to the Limit Up-Limit Down (''LULD'') Plan. The proposed change would modify the handling of MPL Orders relative to the Upper and Lower Price Bands, consistent with the proposed changes described above with respect to the behavior of MPL Orders. Specifically, the Exchange proposes to modify Rule 7.11(a)(5), which describes the repricing or cancellation of orders to buy (sell) that are priced or could be traded above (below) the Upper (Lower) Price Band. Rule 7.11(a)(5)(F) currently provides that, if the midpoint of the PBBO is above (below) the Upper (Lower) Price Band, an MPL Order will not be repriced or rejected and will not be eligible to trade.

The Exchange proposes to delete the text of Rule 7.11(a)(5)(F) and designate the Rule as Reserved. The Exchange believes Rule 7.11(a)(5)(F) is no longer necessary because MPL Orders, as proposed, would be permitted to reprice and trade relative to LULD Price Bands. The Exchange believes that this change is consistent with the proposed change to permit MPL Orders to trade at prices other than the midpoint of the PBBO or their limit price and would similarly increase execution opportunities for MPL Orders within the bounds of the LULD Price Bands in effect. The Exchange notes that MPL Orders would behave in the same way as other Limit Orders with respect to LULD Price Bands and would thus be processed as set forth in current Rule 7.11(a)(5)(B).

Reserve Orders

Rule 7.31(d)(1) provides for Reserve Orders, which are Limit or Inside Limit Orders with a quantity of the size displayed and with a reserve quantity that is not displayed. Rule 7.31(d)(1)(C) provides that a Reserve Order must be designated Day and may only be combined with a D Order, Non-Routable Limit Order, or a Primary Pegged Order.

The Exchange proposes to modify Rule 7.31(d)(1)(C) to clarify that a Reserve Order may not be designated as an ALO Order. Rule 7.31(d)(1)(C) currently provides that a Reserve Order may be combined with a Non-Routable Limit Order. However, although an ALO Order is a Non-Routable Limit Order, the Exchange currently does not permit Reserve Orders to be designated as ALO Orders and thus proposes a clarifying change to Rule 7.31(d)(1)(C) to specify accordingly. The Exchange notes that this change is intended only to clarify and reflect current behavior and does not propose any changes to the current

[18] *See, e.g.,* MEMX Rule 11.6(h)(2) (providing that a Pegged Order with a Midpoint Peg instruction may execute at its limit price or better when its limit price is less aggressive than the midpoint of the NBBO); Cboe EDGA Exchange, Inc. Rule 11.8(d) (describing the MidPoint Peg Order, which is a non-displayed Market Order or Limit Order with an instruction to execute at the midpoint of the NBBO, but that may execute at its limit price or better when its limit price is less aggressive than the midpoint of the NBBO); Cboe EDGX Exchange, Inc. Rule 11.8(d) (same); Nasdaq Rule 4702(b)(5)(A) (describing the Midpoint Peg Post-Only Order, which will be priced at the midpoint between the NBBO or at its limit price when the midpoint is higher than (lower than) the limit price of such order).

[19] The proposed changes to Rule 7.31(d)(3)(E)(i) relating to the operation of the NDR Modifier, as proposed, are described above in the ''Non-Display Remove Modifier'' section.

operation of Reserve Orders or ALO Orders.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be in the third quarter of 2022.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5),[21] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with 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.

With respect to the proposed changes to permit Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders to be designated to cancel, the Exchange believes that the proposed changes would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would offer member organizations the option to cancel such orders when they would be displayed at a price other than their limit price. The Exchange believes that providing member organizations with this option would afford them increased flexibility with respect to order handling for existing order types, as well as the ability to have greater determinism regarding order processing in times when such orders would be repriced to display at a price other than their limit price. The Exchange notes that this designation would be optional for member organizations, and if not designated to cancel, Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders would continue to function as set forth in current Exchange rules (except as otherwise proposed in this filing). The Exchange also notes that providing member organizations with the option to designate orders to cancel if they would be repriced is not novel, and would align the Exchange's rules with those of other cash equity exchanges that currently offer their members similar functionality.[22] The Exchange also believes that the proposed changes described above to reorganize and rephrase rule text that describes the current operation of Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders are designed 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 because they do not propose any functional changes other than to add the option to cancel instead of repricing and would improve the clarity of Exchange rules governing such orders in connection with the proposed addition of the option to designate such orders to cancel.

With respect to the proposed change to permit ALO Orders to be designated as non-displayed, the Exchange believes that the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and protect investors and the public interest because it would offer member organizations greater flexibility with respect to the entry of ALO Orders and could offer member organizations increased opportunities for order execution. The Exchange believes that permitting an ALO Order to be non-displayed would simply provide member organizations with increased options with respect to an existing order type, and member organizations are free to designate ALO Orders to be non-displayed or to continue using displayed ALO Orders as provided under current Exchange rules. The Exchange further believes that permitting ALO Orders to be designated as non-displayed is not novel and that this proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system by aligning Exchange rules with the rules of other cash equity exchanges.[23]

With respect to the proposed change to permit ALO Orders and Day ISO ALO Orders to be entered in any size, the Exchange also believes that the proposed change would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest. Specifically, the Exchange believes that the proposed change would provide member organizations with the flexibility and optionality to enter ALO Orders and Day ISO ALO Orders in odd lot sized orders, which could increase liquidity and enhance opportunities for order execution on the Exchange, to the benefit of all market participants. The Exchange also believes that the proposed change would align Exchange rules with the treatment of post-only orders on other cash equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.[24]

The Exchange also believes that its proposed addition of the NDR Modifier and Proactive if Locked/Crossed Modifier would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest by offering member organizations the use of modifiers already available on the Affiliated Exchanges, thereby harmonizing the Exchange's rules with the Affiliated Exchanges' rules. The Exchange also believes that the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system by offering member organizations the use of additional modifiers and, for orders designated with an NDR Modifier or Proactive if Locked/Crossed Modifier, expanding the circumstances under which such orders would be eligible to route or trade, thereby providing for increased opportunities for order execution. The Exchange further believes that the operation of the NDR Modifier, as proposed, would not be novel and that the proposed change would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system because the modifier would function similarly to the NDR Modifier on the Affiliated Exchanges, as well as analogous modifiers offered by other cash equity exchanges.[25]

The Exchange also believes that the proposed changes to make an MPL Order eligible to trade at the less aggressive of the midpoint of the PBBO or its limit price and to permit an MPL Order to reprice and trade relative to LULD Price Bands would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system because MPL Orders could have more opportunities to trade with contra-side

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* note 5, *supra.*

[23] *See* note 11, *supra.*

[24] *See* note 12, *supra.*

[25] *See* note 14, *supra.*

interest, thereby providing member organizations with increased opportunities for order execution and enhancing market quality for all market participants. The Exchange also believes that this proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because permitting MPL Orders to trade at the less aggressive of the midpoint of the PBBO or at their limit price is not novel and that comparable order types on other cash equity exchanges currently behave in this manner.[26]

Finally, the Exchange believes that its proposed change to specify that Reserve Orders may not be designated as an ALO Order would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and protect investors and the public interest because it is not intended to effect any functional change but would instead add clarity to Exchange rules regarding the current behavior of Reserve Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange believes the proposed rule changes would generally align order handling on the Exchange with behavior on other cash equity exchanges[27] and thus would promote competition among exchanges by offering member organizations similar functionality and order handling options available on other cash equity exchanges. The Exchange also believes that, to the extent the proposed changes would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6)(iii) thereunder.[31]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[32] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2022–25 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–2022–25. 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–NYSE–2022–25 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14873 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

[26] *See* note 18, *supra.*

[27] *See* notes 5, 11, 12, 14, 18, *supra.*

[28] 15 U.S.C. 78s(b)(3)(A)(iii).

[29] 17 CFR 240.19b–4(f)(6).

[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 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 complied with this requirement.

[32] 15 U.S.C. 78s(b)(2)(B).

[33] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95211; File No. SR–MEMX–2022–16]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

July 7, 2022.

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 June 30, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on July 1, 2022. The text of the proposed rule change is provided in Exhibit 5.

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 Fee Schedule to: (i) reduce certain rebates and modify certain required criteria under the Liquidity Provision Tiers; (ii) modify the required criteria under the Step-Up Additive Rebate; (iii) increase the fee and modify the required criteria under Liquidity Removal Tier 1; (iv) reduce the rebates and modify the required criteria under the Displayed Liquidity Incentive (''DLI'') Tiers; and (v) eliminate the DLI Additive Rebate, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading.[4] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3.5% of the overall market share.[5] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a standard rebate of $0.0020 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''). The Exchange also currently offers Liquidity Provision Tiers 1, 2, 3 and 4, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each tier. The Exchange now proposes to reduce certain of the rebates for executions of Added Displayed Volume and modify certain required criteria under the Liquidity Provision Tiers, as further described below.

First, with respect to Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of $0.00335 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving a Displayed ADAV [6] that is equal to or greater than 0.40% of the TCV.[7] The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1 to $0.0033 per share,[8] and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) a Displayed ADAV that is equal to or greater than 0.40% of the TCV; or (2) a Remove ADV [9] that is equal to or greater than 0.25% of the TCV and a Step-Up ADAV [10] from June 2022 that is equal to or greater than 0.05% of the TCV. Thus, such proposed change would keep the existing criteria intact and add an alternative criteria that includes a Remove ADV threshold and a Step-Up ADAV threshold, which are designed to encourage the submission of additional order flow to the Exchange in the forms of both liquidity-removing volume and liquidity-adding volume. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust

[3] *See* Exchange Rule 1.5(p).

[4] Market share percentage calculated as of June 30, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[5] *Id.*

[6] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and ''Displayed ADAV'' means ADAV with respect to displayed orders.

[7] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[8] The proposed pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 1'' with a Fee Code of ''B1'', ''D1'' or ''J1'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

[9] As proposed, the term ''Remove ADV'' means ADV with respect to orders that remove liquidity. As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis. The Exchange proposes to add the definition of Remove ADV under the ''Definitions'' section of the Fee Schedule.

[10] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

and well-balanced market ecosystem on the Exchange to the benefit of all Members. The Exchange notes that, as the proposed change to the required criteria under Liquidity Provision Tier 1 merely provides an alternative criteria and does not change the existing criteria, the Exchange believes that such change would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will strive to qualify for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (*i.e.,* by $0.00005 per share), which the Exchange believes is a modest reduction and remains commensurate with the required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

Second, with respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of $0.0032 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV; or (2) an ADAV that is equal to or greater than 0.15% of the TCV and a Step-Up ADAV from May 2022 that is equal to or greater than 0.05% of the TCV. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2 such that a Member would qualify for such tier only by achieving an ADAV that is equal to or greater than 0.25% of the TCV. Thus, such proposed change would keep the first of such two alternative criteria intact and eliminate the second of such criteria. The Exchange notes that no Members are presently achieving the second of such criteria, and as such, the Exchange does not believe that the proposed elimination of such criteria will have a significant impact on any Member's trading behavior on the Exchange. The Exchange therefore no longer wishes to, nor is it required to, maintain such criteria. The Exchange is not proposing to change the rebates provided under such tier.

Third, with respect to Liquidity Provision Tier 3, the Exchange currently provides an enhanced rebate of $0.0031 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV; or (2) a Step-Up ADAV from December 2021 that is equal to or greater than 0.05% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 3 to $0.0029 per share,[11] and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.12% of the TCV; or (2) a Step-Up ADAV from April 2022 that is equal to or greater than 0.04% of the TCV; or (3) a Step-Up Non-Displayed ADAV [12] from April 2022 that is equal to or greater than 2,000,000 shares. Thus, such proposed change would lower the ADAV threshold in the first of such alternative criteria, slightly lower the Step-Up ADAV threshold but reference a more recent baseline month in the second of such alternative criteria, and add a third alternative criteria that is based on a Step-Up Non-Displayed ADAV. Such changes are designed to encourage the submission of additional order flow to the Exchange, including in the form of non-displayed liquidity-adding volume. While the Exchange's overall pricing philosophy generally encourages displayed liquidity over non-displayed liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria based on a Step-Up Non-Displayed ADAV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (*i.e.,* by $0.0002 per share), which the Exchange believes remains commensurate with the proposed new required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

Fourth, with respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of $0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.05% of the TCV; or (2) a Step-Up Displayed ADAV from February 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV that is equal to or greater than 1,000,000 shares. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 4 to $0.0026 per share,[13] and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.075% of the TCV; or (2) a Step-Up Displayed ADAV from April 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV that is equal to or greater than 1,000,000 shares. Thus, such proposed change would slightly increase the ADAV threshold in the first of such alternative criteria, keep the same Step-Up Displayed ADAV threshold but reference a more recent baseline month in the second of such alternative criteria, and keep the third of such alternative criteria intact. Such changes are designed to encourage the submission of additional liquidity-adding order flow to the Exchange. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (*i.e.,* by $0.0001 per share), which the Exchange believes is a modest reduction and remains commensurate with the required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in

[11] The proposed pricing for Liquidity Provision Tier 3 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 3'' with a Fee Code of ''B3'', ''D3'' or ''J3'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[12] As proposed, the term ''Step-Up Non-Displayed ADAV'' means Non-Displayed ADAV in the relevant baseline month subtracted from current Non-Displayed ADAV. As set forth on the Fee Schedule, ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including Midpoint Peg orders). The Exchange proposes to add the definition of Step-Up Non-Displayed ADAV under the ''Definitions'' section of the Fee Schedule.

[13] The proposed pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 4'' with a Fee Code of ''B4'', ''D4'' or ''J4'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

Step-Up Additive Rebate

The Exchange currently offers the Step-Up Additive Rebate under which the Exchange provides an additive rebate of $0.0002 per share that is in addition to the otherwise applicable rebate for a qualifying Member's executions of orders that constitute Added Displayed Volume, except: (i) orders that establish the national best bid or offer (''NBBO'') if such Member qualifies for the Exchange's NBBO Setter Tier; and (ii) Retail Orders.[14] Currently, a Member qualifies for the Step-Up Additive Rebate by achieving a Step-Up ADAV (excluding Retail Orders) from April 2022 that is equal to or greater than 0.07% of the TCV. Now, the Exchange proposes to modify the required criteria under the Step-Up Additive Rebate such that a Member would now qualify for such tier by achieving: (1) a Step-Up ADAV (excluding Retail Orders) from April 2022 that is equal to or greater than 0.07% of the TCV; or (2) an ADAV≥0.70% of the TCV. Thus, such proposed change would keep the existing criteria intact and add an alternative criteria that is based on an ADAV threshold that is higher than the ADAV threshold under any other of the Exchange's pricing tiers and that no Member is currently achieving on the Exchange. The Exchange believes that this proposed alternative criteria provides an incremental incentive for Members to strive for higher ADAV on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange believes that the tier, as proposed, would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members. The Exchange notes that, as the proposed change to the required criteria under the Step-Up Additive Rebate merely provides an alternative criteria and does not change the existing criteria, the Exchange believes that such change would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will strive to qualify for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The Exchange is not proposing to change the amount of the additive rebate provided under such tier.

Liquidity Removal Tier 1

The Exchange currently charges a standard fee of $0.0030 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, ''Removed Volume''). The Exchange also currently offers Liquidity Removal Tier 1 under which qualifying Members are charged a discounted fee of $0.00285 per share for executions of Removed Volume by achieving: (1) an ADAV that is equal to or greater than 0.30% of the TCV; or (2) an ADV that is equal to or greater than 0.60% of the TCV. Now, the Exchange proposes to increase the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to $0.0029 per share,[15] and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) a Remove ADV that is equal to or greater than 0.30% of the TCV and a Step-Up ADAV from April 2022 that is equal to or greater than 0.10% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV. Thus, such proposed changes to the required criteria would replace the ADAV threshold with a Remove ADV threshold and a Step-Up ADAV threshold in the first of such alternative criteria and increase the ADV threshold in the second of such alternative criteria. Such changes are designed to encourage the submission of additional order flow to the Exchange, including in the forms of both liquidity-removing volume and liquidity-adding volume. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The purpose of increasing the fee charged for executions of Removed Volume under such tier as proposed (*i.e.,* by $0.00005 per share), which the Exchange believes is a modest increase and remains commensurate with the proposed new required criteria, is for business and competitive reasons, as the Exchange believes that increasing such fee would generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the fee charged under such tier for executions of orders in securities priced below $1.00 per share.

DLI Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which qualifying Members are provided an enhanced rebate for executions of Added Displayed Volume. The DLI Tiers are designed to encourage Members, through the provision of such enhanced rebates for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (*i.e.,* through the applicable quoting requirement[16]) in a large number of securities, generally, and in the DLI Target Securities,[17] in particular (*i.e.,* through the applicable securities requirements[18]), thereby benefitting the

[14] As set forth in Exchange Rule 11.21(a), a ''Retail Order'' means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

[15] The proposed pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Removed volume from MEMX Book, Liquidity Removal Tier 1'' with a Fee Code of ''R1'' to be provided by the Exchange on the monthly invoices provided to Members.

[16] As set forth on the Fee Schedule, the term ''quoting requirement'' means the requirement that a Member's NBBO Time be at least 25%, and the term ''NBBO Time'' means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers (''MPIDs'') has a displayed order of at least one round lot at the national best bid or the national best offer.

[17] As set forth on the Fee Schedule, the term ''DLI Target Securities'' refers to a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange's website.

[18] As set forth on the Fee Schedule, the term ''securities requirement'' means the requirement that a Member meets the quoting requirement in the applicable number of securities per day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in a specified number of any securities traded on the Exchange

Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities, including the DLI Target Securities specifically, and committing capital to support the execution of orders.[19] Now, the Exchange proposes to modify DLI Tiers 1 and 2 by modifying the required criteria and reducing the rebates for executions of Added Displayed Volume under such tiers.

Currently, a Member qualifies for DLI Tier 1 by achieving an NBBO Time of at least 25% in an average of at least 1,000 securities, at least 125 of which must be DLI Target Securities, per trading day during the month; and a Member qualifies for DLI Tier 2 by achieving an NBBO Time of at least 25% in an average of 250 securities, at least 75 of which must be DLI Target Securities, per trading day during the month. First, the Exchange proposes to modify the required criteria under DLI Tiers 1 and 2 by deleting the requirement for a Member to meet the quoting requirement in a specified number of DLI Target Securities (*i.e.,* the DLI Target Securities requirement) in each of such tiers. Thus, the Exchange is proposing to delete the DLI Target Securities requirements and the concept of DLI Target Securities altogether, and the required criteria under each of DLI Tiers 1 and 2 would now only be based on a Member meeting the quoting requirement in the applicable number of securities, which may be comprised of any securities traded on the Exchange (*i.e.,* the general securities requirement).[20] The existing DLI Target Securities requirements under DLI Tiers 1 and 2 were initially designed to incentivize additional quoting competition with respect to a designated list of securities (*i.e.,* the DLI Target Securities) in which the Exchange specifically sought to enhance market quality. Since the initial adoption of the DLI program, each of the DLI Tiers have included a DLI Target Securities requirement, and the Exchange has seen significant improvement in market quality with respect to the DLI Target Securities. The Exchange now believes the DLI Target Securities requirements are no longer needed to maintain the desired level of market quality with respect to the DLI Target Securities, and the Exchange therefore no longer wishes to, nor is it required to, maintain such requirements.

In addition to the proposed deletion of the DLI Target Securities requirements under DLI Tiers 1 and 2, the Exchange also proposes to increase the general securities requirement under DLI Tier 2 such that a Member would now qualify for DLI Tier 2 by achieving an NBBO Time of at least 25% in an average of 400 (*i.e.,* increased from 250) securities per trading day during the month. While the Exchange is proposing to delete the DLI Target Securities requirement, this proposed increase in the general securities requirement under DLI Tier 2 is designed to achieve the DLI's market quality benefits described above in a broader base of securities under such tier.

In addition to the proposed changes to the required criteria under DLI Tiers 1 and 2 described above, the Exchange is also proposing to reduce the rebates for executions of Added Displayed Volume under such tiers. Currently, the Exchange provides enhanced rebates of $0.0033 per share under DLI Tier 1 and $0.0030 per share under DLI Tier 2 for executions of Added Displayed Volume for Members that qualify for such tiers. Now, the Exchange proposes to reduce the rebate provided under DLI Tier 1 to $0.0032 per share and the rebate provided under DLI Tier 2 to $0.0029 per share.[21] The purpose of reducing the enhanced rebates for executions of Added Displayed Volume provided under DLI Tiers 1 and 2 as proposed (*i.e.,* by $0.0001 per share in each case), which the Exchange believes is a modest decrease and remains commensurate with the proposed new required criteria in each case, is for business and competitive reasons, as the Exchange believes the reduction of such rebates would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity and promoting the price discovery and market quality objectives of the DLI Tiers described above. The Exchange is not proposing to change the rebates provided under such tiers for executions of orders in securities priced below $1.00 per share.

DLI Additive Rebate

Lastly, the Exchange proposes to eliminate the DLI Additive Rebate. Currently, the Exchange offers a DLI Additive Rebate incentive that is applicable to DLI Tier 1, which provides an additive rebate of $0.0001 per share for executions of Added Displayed Volume where, for a Member that qualifies for DLI Tier 1, such Member has an ADAV that is equal to or greater than 0.30% of the TCV. The Exchange now proposes to eliminate such DLI Additive Rebate. The purpose of eliminating the DLI Additive Rebate is for business and competitive reasons, as the Exchange believes the elimination of such additive rebate would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing, which would enable the Exchange to redirect future resources and funding into other incentives and tiers intended to incentivize increased order flow. For these reasons, the Exchange no longer wishes to, nor is it required to, maintain such tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[22] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[23] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. 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,

(the ''general securities requirement'') as well as a securities requirement that must be achieved by a Member meeting the quoting requirement in a specified number of DLI Target Securities (the ''DLI Target Securities requirement'').

[19] *See* the Exchange's Fee Schedule (available at *https://info.memxtrading.com/fee-schedule/*) for additional details regarding the Exchange's DLI Tiers and the DLI Target Securities. *See also* Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR–MEMX–2021–07) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of DLI).

[20] In connection with this proposed change, the Exchange is proposing to delete the definition of ''DLI Target Securities'' from the Fee Schedule as it will no longer be used.

[21] The proposed pricing for DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, DLI Tier 1'' with a Fee Code of ''Bq1'', ''Bq1'' or ''Jq1'', as applicable, and the proposed pricing for DLI Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, DLI Tier 2'' with a Fee Code of ''Bq2'', ''Dq2'' or ''Jq2'', as applicable.

[22] 15 U.S.C. 78f.

[23] 15 U.S.C. 78f(b)(4) and (5).

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.'' [24]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including through more diverse types of orders, to the Exchange, which the Exchange believes would enhance liquidity and market quality on the Exchange to the benefit of all Members, as well as to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing, through the proposed reduced rebates and increased fees under certain pricing tiers, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tiers, the Step-Up Additive Rebate, Liquidity Removal Tier 1 and the DLI Tiers, as modified by the proposed changes to the rebates and fees, as well as the required criteria, as applicable, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would continue to provide Members with incremental incentives to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including through various forms of diverse order types, to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or a discounted fee for executions of Removed Volume, thereby deepening liquidity, promoting price discovery and contributing to a more robust and well-balanced market ecosystem to the benefit of all Members. The Exchange also believes that the proposed changes to such tiers reflect a reasonable and equitable allocation of fees and rebates because, as noted above, the Exchange believes in each case that the proposed new fee or rebate represents a modest increase or reduction, as applicable, and/or remains commensurate with the corresponding required criteria under such tier, and in each case is reasonably related to the market quality benefits that the applicable tier is designed to achieve while decreasing expenditures or generating additional revenue with respect to the Exchange's transaction pricing.

The Exchange believes that the proposed change to the delete the DLI Target Securities requirements from the required criteria under DLI Tiers 1 and 2 is reasonable because, as noted above, the Exchange believes the DLI Target Securities requirements are no longer needed to maintain the desired level of market quality with respect to the DLI Target Securities on the Exchange, and the Exchange therefore no longer wishes to, nor is it required to, maintain such requirements. The Exchange also believes that such change is equitable and not unfairly discriminatory because it will apply to all Members equally and make the required criteria under such tiers less restrictive, in that Members seeking to qualify for such tiers will no longer be required to meet the quoting requirement in a certain designated list of securities, but rather, would have the flexibility to choose which securities to quote in to meet the applicable general securities requirement under such tiers.

The Exchange also believes the proposed change to increase the general securities requirement under DLI Tier 2 from 250 securities to 400 securities is reasonable, equitable and not unfairly discriminatory because it will apply to all Members equally, in that all Members will continue to have the opportunity to achieve the required criteria under such tier, and this proposed increase is intended to enhance market quality in a broader range of securities on the Exchange to the benefit of all Members.

The Exchange believes the proposed change to eliminate the DLI Additive Rebate is reasonable because, as noted above, it would enable the Exchange to redirect the associated resources and funding into other incentives and tiers, and the Exchange is not required to maintain such incentive or provide Members any opportunities to receive additive rebates. The Exchange believes the proposal to eliminate such incentive is also equitable and not unfairly discriminatory because it applies equally to all Members, in that the incentive would no longer be available for any Member.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [25] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow, including through more diverse types of orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a

[24] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[25] 15 U.S.C. 78f(b)(4) and (5).

more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [26]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including through more diverse types of orders, to the Exchange, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the modified Liquidity Provision Tiers, Step-Up Additive Rebate, Liquidity Removal Tier 1 and DLI Tiers, and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume or pay the discounted fee for Removed Volume, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under each such tier are commensurate with the corresponding fee or rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. Additionally, as noted above, the elimination of the DLI Additive Rebate and the DLI Target Securities requirements under the DLI Tiers will apply to all Members equally, in that the DLI Additive Rebate will no longer be available for any Member, and no Member will be required to meet a DLI Target Securities requirement to qualify for either of the DLI Tiers. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume and Removed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing and to encourage additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* 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'. . . .''.[28] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [29] and Rule 19b–4(f)(2) [30] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[26] *See supra* note 24.

[27] *See supra* note 24.

[28] *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–NYSE–2006–21)).

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 240.19b–4(f)(2).

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–MEMX–2022–16 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–MEMX–2022–16. 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–MEMX–2022–16 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14877 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95208; File No. SR–MSRB–2022–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Amendments to MSRB Rule G–34 To Better Align the CUSIP Requirements for Underwriters and Municipal Advisors With Current Market Practices

July 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2022 the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rule G–34, on CUSIP numbers, new issue, and market information requirements (the ''proposed rule change''). The proposed rule change would make minor amendments to better align Rule G–34's requirements for obtaining CUSIP numbers with the process followed by market participants and facilitate compliance with MSRB Rule G–34 by streamlining the rule text.

If the Commission approves the proposed rule change, the MSRB will publish a Notice announcing the effective date of the proposed rule change no later than 10 days following Commission approval. The effective date will be no later than 30 days following Commission approval.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2022-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Among other things, MSRB Rule G–34 on CUSIP numbers, new issue, and market information requirements establishes requirements relating to CUSIP numbers for brokers, dealers and municipal securities dealers (collectively and individually ''dealers'') acting as underwriters and for municipal advisors (dealers and municipal advisors together, ''regulated entities''). In particular, Rule G–34(a)(i)(A) requires dealers acting as underwriters and municipal advisors advising the issuer with respect to a competitive sale of a new issue of municipal securities to apply for a CUSIP number or numbers based on eight specified items of information about the new issue.[3] MSRB Rule G–34(a)(i)(A)(5) addresses the obligations to update application information that has changed. The rule further stipulates details on how these regulated entities must apply for CUSIP numbers in detail that includes specific data points to be included in the application for obtaining CUSIP numbers.

In 2019, the MSRB announced priority rules to be considered as part of its ongoing retrospective rule review. The goal of the review was to help ensure that: MSRB rules and interpretive guidance are effective in their principal goal of protecting investors, issuers and the public interest; not overly burdensome; clear; harmonized with the rules of other regulators, as appropriate; and reflective of current market practices.[4] In this announcement, the MSRB listed MSRB Rule G–34 as a rule to be prioritized for

[3] These eight items are set forth in current MSRB Rule G–34(a)(i)(A)(4)(a) through (h).

[4] *See* MSRB Notice 2019–04, MSRB Identifies Priority Rules for Retrospective Rule Review (February 5, 2019).

review.[5] The MSRB sought comment in 2019 on MSRB Rule G–34, but the following year determined to maintain the obligations under the rule with respect to the responsible party for obtaining a CUSIP number in new issues.[6]

In recent years, the MSRB has heard from industry members through stakeholder engagement that MSRB Rule G–34's requirements on obtaining CUSIP numbers, in its current form, do not accurately reflect the actual process that an underwriter or municipal advisor must go through when obtaining a CUSIP number. This discrepancy further complicates efforts when a municipal advisor or underwriter creates written supervisory procedures that are mapped to the rule text but do not accurately reflect the actual or logistical process that they must undertake for appropriately obtaining a CUSIP number. After reviewing rule requirements relating to obtaining a CUSIP number, the MSRB is submitting this proposed rule change to: modernize the rule to better align with the realities of obtaining a CUSIP number; provide flexibility in the rule; and clear up areas of confusion for underwriters and municipal advisors attempting to comply with the rule.

In summary, the proposed rule change:

- specifies that CUSIP applications must be made to the Board's designee (and not the Board itself);
- removes the obligation for municipal advisors providing advice with respect to a competitive offering to apply for the CUSIP number by no later than one business day after dissemination of a notice of sale in favor of a more flexible standard that still obligates the application to be made within sufficient time to ensure timely CUSIP number assignment;
- removes language dictating the precise content of a CUSIP number application that the Board feels would more appropriately be left to the Board's designee for receiving and reviewing such applications; and
- explicitly provides that certain obligations set forth in the rule do not apply when CUSIP numbers have been preassigned.

[5] *Id.* at 3.

[6] *See* MSRB Notice 2019–08, Request for Comment on MSRB Rule G–34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales (February 27, 2019). Comments submitted in response to Regulatory Notice 2019–08 are available here: *https://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2019/2019-08?c=1.*

Designee of the Board

MSRB Rule G–34(a)(i)(A) currently requires an underwriter or municipal advisor to obtain CUSIP numbers through an application in writing to the Board or its designee. The proposed rule change amends this language by providing that underwriters and municipal advisors must apply to the Board's designee and removing the language in the rule text that makes reference to the Board in that requirement.[7] This revised language is designed to avoid the potential for confusion associated with the current rule text and to more clearly convey the MSRB's expectations with respect to the process of obtaining a CUSIP number. The Board does not currently assign CUSIP numbers to municipal securities; underwriters and municipal advisors may only obtain one by application to the only entity that provides these identifiers, CUSIP Global Services. The Board's current designee is CUSIP Global Services.[8] This designation would remain unchanged by the proposed rule change and would be reflected in new Supplementary Material .01. If CUSIP numbers become available from another source or another identifier for municipal securities becomes market practice at some point in the future, the MSRB would notify the market of a decision to modify the designee via publication of an MSRB regulatory notice.

In addition, as it is the Board's designee, and not the Board, that controls the CUSIP number application process, the Board proposes to remove the in-writing requirement for the application made for obtaining CUSIP numbers. Because the Board does not receive or review CUSIP applications, it believes that the manner in which an applicant applies for CUSIP numbers is best left to the entity that reviews applications and assigns the CUSIP number (*i.e.,* the Board's designee).

[7] The proposed rule change also makes similar amendments to Rule G–34(a)(i)(A)(5) and G–34(a)(i)(D) to remove references to the Board and make clear that the CUSIP number application discussed in those paragraphs must be made to the Board's designee.

[8] In 1983, the Board designated the CUSIP Service Bureau as its designee to assign CUSIP numbers to new issues of municipal securities. *See* MSRB Reports, Vol. 3, No. 3 at 11 (May 1983), available at *https://msrb.org/-/media/Files/MSRB-Reports/1983/May1983-Volume3—Number3.ashx.* The CUSIP Service Bureau has since changed its name to CUSIP Global Services. Pursuant to a contract between the CUSIP Service Bureau and the MSRB, all references to the CUSIP Service Bureau were amended to read CUSIP Global Services. Accordingly, CUSIP Global Services (formerly known as the CUSIP Service Bureau) remains the MSRB's designee.

One Business Day Obligation

MSRB Rule G–34(a)(i)(A)(3) states that a municipal advisor advising the issuer with respect to a competitive sale of a new issue of municipal securities shall make an application by no later than one business day after dissemination of a notice of sale or other such request for bids. The proposed rule change removes the obligation to make such application by no later than one business day since it is not always practical for municipal advisors to comply given the realities of the marketplace and therefore may place an undue burden on municipal advisors. The rule already obligates the application to be made at a time sufficient to ensure final CUSIP number assignment occurs prior to the award of the issue. The MSRB believes that this language is sufficient to ensure that any such application is timely without dictating a more burdensome approach of requiring a specific numeric time obligation. Additionally, the MSRB understands that, from an operational perspective, it may be impracticable for municipal advisors to apply for a CUSIP number within one business day after dissemination of a notice of sale, as currently required by Rule G–34(a)(i)(A)(3).[9] Accordingly, removal of this language would better align the rule text with the operational process followed by municipal advisors in connection with their CUSIP applications.

Information To Be Provided When Applying for CUSIP Numbers

MSRB Rule G–34(a)(i)(A)(4) lists specific data points that must be provided when applying for CUSIP numbers. These data points include the complete name of issue and series designation, if any; interest rate(s) and maturity date(s) (*provided, however,* that, if the interest rate is not established at the time of application, it may be provided at such time as it becomes available); dated date; type of issue (*e.g.,* general obligation, limited tax or revenue); type of revenue, if the issue is a revenue issue; details of all redemption provisions; the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to the debt

[9] *See* Letter from Susan Gaffney, Executive Director, NAMA, dated May 28, 2019 available at: *https://www.msrb.org/rfc/2019-08/gaffney.pdf* (stating that there is an inherent timing inconsistency with respect to Rule G–34(a)(i)(A)(3) as it requires application for CUSIP numbers no later than one business day after the Notice of Sale, which will almost always be before the identity of the investors are known, and therefore the [municipal advisor] could not reasonably obtain the investors' written representations) (''NAMA Letter'').

service on all or part of the issue (and, if part of the issue, an indication of which part); and any distinction(s) in the security or source of payment of the debt service on the issue, and an indication of the part(s) of the issue to which such distinction(s) relate.

The proposed rule change removes these data points from the rule and instead provides that underwriters and municipal advisors shall provide the information required by the Board's designee in connection with their CUSIP application. The proposed rule change also makes a similar amendment to Rule G–34(a)(i)(D), removing from the rule text the three specified pieces of information that must be included in an application to obtain a CUSIP number in connection with certain new issuances that refund part of an outstanding issuance. The MSRB believes that Rule G–34 should not contain specific data points to be provided to its designee, as the MSRB does not control the specifics of the application process, nor does it make a determination on the sufficiency of an application to receive CUSIP numbers. The MSRB believes that the entity providing CUSIP numbers, the Board's designee, is the appropriate entity to dictate what individual data points must be provided with an application for CUSIP numbers in order to sufficiently evaluate an application. The MSRB believes that this flexibility will help create a rule that is less likely to become stale over time.

CUSIP Pre-Assignment

The proposed rule change specifies that the Rule G–34(a)(i)(A)(3) obligation to apply for a CUSIP number only applies where no CUSIP numbers have been pre-assigned. The Board believes that this aligns with the common understanding among market participants that there is no obligation to seek a CUSIP number where one has already been pre-assigned. A similar amendment to Rule G–34(a)(i)(C) provides that the provisions of Rule G–34(a)(i) regarding the assignment and affixture of CUSIP numbers do not apply with respect to any new issue of municipal securities on which CUSIP numbers have been preassigned.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act,[10] which provides that the Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act[11] provides that the MSRB's rules shall 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act[12] because the proposed rule change would foster cooperation and coordination with persons engaged in regulating, processing information with respect to and facilitating transactions in municipal securities. It does so by modernizing the rule to align with the realities of the process followed by underwriters and municipal advisors in obtaining a CUSIP number, allowing the Board's designee to dictate the details of the CUSIP application process without the distraction of the rule text describing the application process that may not necessarily reflect the designee's process, and creating a more efficient CUSIP application process more generally. Specifically, the MSRB believes that by removing potential ambiguities as to the identity of the entity to whom CUSIP applications should be sent, specifying directly in the rule that such application should be sent to CUSIP Global Services, and allowing CUSIP Global Services to dictate the details of the CUSIP application process, the MSRB is fostering coordination with those processing information with respect to municipal securities and fostering cooperation with underwriters and municipal advisors by facilitating compliance with a clearer rule.

The MSRB believes that the proposed rule change also will remove impediments to a free and open municipal securities market because it will align MSRB Rule G–34's obligations associated with obtaining CUSIP numbers with the actual process an underwriter or municipal advisor must undertake when obtaining CUSIP numbers for new issues of municipal securities. It would do so by removing burdens on underwriters and municipal advisors that result in no appreciable benefit for the market and promoting clarity of the rule and compliance expectations. The MSRB believes that removal of these burdens may facilitate better and more timely compliance with the rule. For example, in some cases, the proposed rule change may facilitate more timely applications for CUSIP numbers. By removing potential ambiguities as to the identity of the entity to whom CUSIP number applications should be made, underwriters and municipal advisors are less likely to spend time trying to learn to whom such applications should be made and potentially are more likely to make their applications in a timely manner.

Additionally, the Board sees no benefit to requiring municipal advisors to apply for a CUSIP number within a specific numerical time frame—particularly in circumstances where it may be impractical or impossible to do so—where the rule already requires that the application must be made within sufficient time to obtain a CUSIP number. By removing this burden and by specifying that CUSIP applications are not necessary for any new issue on which CUSIP numbers have been preassigned, the proposed rule change would reduce compliance burdens and permit municipal advisors to spend the time that would have been spent trying to comply with those burdens in service of their municipal entity and obligated person clients instead. The MSRB again believes that removal of these obligations does not negatively impact investors, issuers or the public interest, but does facilitate compliance and the establishment of more practical written supervisory procedures for underwriters and municipal advisors that reflect the actual process followed in connection with the process to obtain CUSIP numbers.

The MSRB also believes that the proposed rule change will remove impediments to a free and open municipal securities market because it would create a rule that is less likely to become stale over time. As market practices evolve, rule text that specifies detailed information that must be

[10] 15.U.S.C. 78*o*–4(b)(2).

[11] 15 U.S.C. 78*o*–4(b)(2)(C).

[12] *Id.*

included in a CUSIP application or that otherwise governs the details of the CUSIP application process may become impediments to an efficient CUSIP application process, instead of facilitating that very process. The MSRB believes that the proposed rule change provides the appropriate degree of flexibility in the rule text.

Section 15B(b)(2)(L)(iv) of the Exchange Act [13] requires that rules adopted by the Board not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Exchange Act [14] because the proposed rule change would relieve all municipal advisors, including small municipal advisors of the same compliance burdens and would not impose any new compliance burdens on municipal advisors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB believes that the proposed rule change does not impose a burden on competition. Section 15B(b)(2)(C) of the Act [15] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB has considered the economic impact associated with the proposed rule change, including a comparison to reasonable alternative regulatory approaches, relative to the baseline.[16] The MSRB believes that the proposed rule change would lessen the compliance burden for underwriters and municipal advisors, and encourage fair competition by reducing confusion and ensuring compliance with existing CUSIP number requirements. Furthermore, the proposed rule change would apply equally to all MSRB regulated entities. The MSRB believes the proposed rule change would relieve a burden on competition without any erosion of protection for issuers and investors. Therefore, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of amending Rule G–34 is to better align the CUSIP requirements for underwriters and municipal advisors with current market practices, clarify the identity of the Board's designee for CUSIP number applications, and modernize Rule G–34 by reducing prescriptive requirements on how applicants obtain CUSIP numbers. The proposed rule change would accurately reflect that the MSRB does not assign CUSIP numbers. The proposed rule change would also reflect the Board's designee as CUSIP Global Services. Additionally, the proposed amendments would remove eight currently identified data fields for CUSIP number application and instead require regulated entities to provide the information required by the Board's designee, CUSIP Global Services, to determine the appropriate information that an applicant shall provide when applying to receive CUSIP numbers.[17] Finally, the proposed rule change would eliminate the no later than one business day after the dissemination of a notice of sale or other such request for bids time limit requirement for obtaining CUSIP numbers by municipal advisors, though it would continue to require municipal advisors to obtain CUISP numbers at a time sufficient to ensure final CUSIP number assignment occurs prior to the award of the issue. As the MSRB is not, and never was, involved in assigning CUSIP numbers to applicants, amending the rule text to specify that the Board's designee assigns CUSIP numbers should not affect the practical implementation of Rule G–34. The remainder of the MSRB's statement on burden on competition mostly focuses on the removal of eight data points and the time limit required for CUSIP registration.

For this filing, the current iteration of Rule G–34, where MSRB-registered underwriters and municipal advisors are required to obtain CUSIP numbers for competitive sales, is used as the baseline to evaluate the costs and benefits for the proposed amendments, as well as other reasonable regulatory alternatives.

The MSRB considered and assessed a couple of reasonable regulatory alternatives but determined the proposed rule change is superior to these alternatives. One alternative would be to modify the data fields requirements for CUSIP number applicants to be consistent with what the Board's designee, CUSIP Global Services requires. There are currently eight data elements proscribed in the rule.[18] However, CUSIP Global Services, as an independent entity from the MSRB, may amend the requirements periodically in the future. In this alternative, the MSRB would have to amend Rule G–34 whenever there is a change initiated by CUSIP Global Services. This would be an unpredictable alternative which may require the MSRB to revise Rule G–34 on a regular basis; in addition, it would create inconsistency for a period of time before the MSRB is able to revise Rule G–34.

Another alternative the MSRB considered was to keep a numeric time limit requirement for municipal advisors applying for CUSIP numbers in place but expand the time limit from no later than one business day to more than one business day to provide applicants more flexibility. However, since the MSRB is not involved in any aspect of the CUSIP number application process, the MSRB would not be able to determine what the ideal application time limit would be other than being prior to the award of an issue. As a result, the MSRB determined that eliminating the no later than one business day time limit requirement would be an even better option than simply extending the time limit.

Benefits and Costs

The MSRB believes the proposed amendments to Rule G–34, on aggregate, would reduce the burden for underwriters and municipal advisors by providing more clarity and aligning CUSIP number applicants' responsibility with the real-world practice, without any erosion of protection for issuers and investors.

Benefits

The proposed rule change to Rule G–34 would reduce the uncertainty and challenge in collecting multiple data points by CUSIP number applicants which may not be necessary for, or helpful to, the Board's designee at the time of CUSIP obtainment. As it is

[13] 15 U.S.C. 78o–4(b)(2)(L)(iv).

[14] *Id.*

[15] 15 U.S.C. 78*o*–4(b)(2)(C).

[16] *See* Policy on the Use of Economic Analysis in MSRB Rulemaking, available at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx.* In evaluating whether there was a burden on competition, the Board was guided by its principles that required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approach.

[17] The current obligations require CUSIP number applicants to provide (a) complete name of issue and series designation, if any; (b) interest rate(s) and maturity date(s); (c) dated date; (d) type of issue (*e.g.,* general obligation, limited tax or revenue); (e) type of revenue, if the issue is a revenue issue; (f) details of all redemption provisions; (g) the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to the debt service on all or part of the issue; and (h) any distinction(s) in the security or source of payment of the debt service on the issue.

[18] The eight data elements are listed in footnote 17.

currently written, all underwriters and municipal advisors, as part of a competitive sale, are required to provide security level information such as revenue source, redemption provisions and any obligor related information. This information may not be in line with the information required by the entity providing CUSIP numbers. The proposed rule change would reduce the need to source each data point by removing the list of information that must be given to the Board's designee and simply replacing it with the obligation to provide the Board's designee with the information which the Board's designee requires to obtain a CUSIP number. Additionally, if the Board's designee pre-assigns CUSIP numbers to an issuance, the regulated entity would not need to specify the eight data fields simply to evidence its compliance with Rule G–34 requirements.

The proposed rule change also would remove uncertainty by explicitly identifying CUSIP Global Services as the Board's designee and reduce the burden on municipal advisors by eliminating the time limit for CUSIP number application, which may not be practical in the real world.

Costs

The MSRB believes the changes to Rule G–34 would have minimal costs associated with the amendments. One potential upfront cost would be for underwriters and municipal advisors to update their policies and procedures. The MSRB believes the revisions would be straightforward and should not take much time and effort to implement. The ongoing compliance costs also would be reduced, as the proposed rule change is intended to reduce the compliance burden on underwriters and municipal advisors.

In addition, there is a possibility that the proposed rule change may lead to more usage of express requests for CUSIP numbers with CUSIP Global Services than the current state, if municipal advisors delay their CUSIP number applications until shortly before the competitive bidding process. For example, it currently takes CUSIP Global Services approximately one to two business days to process a standard CUSIP request,[19] which costs $192 for the first maturity, plus $27 for each additional maturity or class per series in the same application/offering document in 2022.[20] The express request is more expensive, with a 50% surcharge, but will result in a CUSIP number produced within one hour of the request. While the MSRB does not have the information to estimate the future usage of express requests,[21] there is a chance that eliminating the no later than one business day time limit required to obtain a CUSIP number may result in more CUSIP numbers being obtained using the express request process, which would be 50% more expensive than the standard process. The MSRB believes, however, with the current CUSIP number application process in place since June 2018, most municipal advisors are unlikely to change the timing of obtaining CUSIP numbers.

Effect on Competition, Efficiency and Capital Formation

At present, the MSRB is unable to quantitatively evaluate the magnitude of efficiency gains or losses, or the impact on capital formation but believes that the benefits outweigh the costs. The MSRB believes that the proposed rule change may improve the operational efficiency of the municipal securities market by aligning the requirements with the real-world practice, promoting consistency, and reducing potentially misaligned requirements. Additionally, the MSRB believes the proposed rule change would encourage fair competition by reducing confusion and ensuring compliance with existing CUSIP number requirements. Furthermore, a smooth and efficient process for CUSIP number applications also helps ensure a successful onset of secondary market trading, which would benefit investors seeking to change their positions in newly issued municipal securities. This would in turn benefit issuers by potentially lowering an issuance's liquidity risk premium, which would also benefit the capital formation process. Finally, the proposed rule change would apply equally to all MSRB regulated entities. Accordingly, the MSRB believes the proposed rule change would relieve a burden on competition without any erosion of protection for issuers and investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not specifically solicit comments on the proposed rule change to MSRB Rule G–34. However, as previously referenced, the Board did seek comment on MSRB Rule G–34 more generally as part of its retrospective rule review initiative in 2017 [22] and 2019.[23]

In response to the 2019 request for comment, NAMA was of the view that Rule G–34(a)(i)(A)(3) presents a timing inconsistency insofar as that section of the rule requires application for CUSIP numbers no later than one business day after the Notice of Sale. NAMA noted that this will almost always be before the identity of the investors are known, and therefore before a municipal advisor could reasonably obtain written representations from investors.[24] The MSRB believes that the proposed rule change's removal of the one business day requirement would remove the timing inconsistency raised by NAMA. The MSRB does not believe that the remaining comments received in response to the 2017 or 2019 requests for comment are applicable to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

[19] Internal analysis conducted by the MSRB using data on CUSIP issuance obtained from CUSIP Global Services for select months in 2018, 2019, 2020 and 2021.

[20] *See https://www.cusip.com/pdf/FeesforCUSIPAssignment.pdf.*

[21] As of January 2021, less than 9% of all CUSIP numbers were obtained via the express request process, based on internal analysis conducted by the MSRB using data on CUSIP issuance obtained from CUSIP Global Services.

[22] *See* MSRB Notice 2017–05, Request for Comment on Draft Amendments to Clarifications of MSRB Rule G–34, on Obtaining CUSIP Numbers (March 1, 2017). Comments submitted in response to Regulatory Notice 2017–05 are available here: *https://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2017/2017-05?c=1. See* MSRB Notice 2017–11, Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G–34, on Obtaining CUSIP Numbers (June 1, 2017). Comments submitted in response to Regulatory Notice 2017–11 are available here: *https://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2017/2017-11?c=1.*

[23] *See* MSRB Notice 2019–08, Request for Comment on MSRB Rule G–34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales (February 27, 2019). Comments submitted in response to MSRB Notice 2019–08 are available here: *https://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2019/2019-08?c=1.*

[24] NAMA Letter at 3.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2022–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2022–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2022–05 and should be submitted on or before August 3, 2022.

[25] 17 CFR 200.30–3(a)(12).

For the Commission, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14881 Filed 7–12–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17503 and #17504; MISSISSIPPI Disaster Number MS–00145]

Administrative Declaration of a Disaster for the State of Mississippi

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 07/06/2022.

Incident: Severe Storms, Straight-Line Winds, and Tornadoes.

Incident Period: 03/30/2022.

DATES: Issued on 07/06/2022.

Physical Loan Application Deadline Date: 09/06/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 04/06/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Wayne.

Contiguous Counties:

Mississippi: Clarke, Greene, Jasper, Jones, Perry.

Alabama: Choctaw, Washington.

The Interest Rates are:

For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.880
Businesses without Credit Available Elsewhere	2.940
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.940
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17503 B and for economic injury is 17504 0.

The States which received an EIDL Declaration # are Alabama, Mississippi.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–14865 Filed 7–12–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Land Swap and Release at the Cyril E. King Airport, St. Thomas, United States Virgin Islands

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Notice is being given that the FAA is considering a request from the Virgin Islands Port Authority to release and exchange 0.822 acres of airport property with the University of the Virgin Islands. The current Port Authority parcel is isolated from the rest of airport property and currently houses a shopping center. The property will be exchanged for a parcel adjacent to the general aviation area and allow aeronautical development.

DATES: Comments must be received on or before August 12, 2022.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA to the following address: Atlanta Airports District Office Attn: Joseph Robinson, Airport Planner, 1701 Columiba Ave., Suite 220, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Virgin Islands Port Authority, Attn: Ms. Catherine Hendry, 8074 Lindbergh Bay, St. Thomas, VI 00802.

FOR FURTHER INFORMATION CONTACT: Joseph Robinson, Airport Planner,

Atlanta Airports District Office, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747, (404)305–6749. The application may be reviewed in person at this same location.

Issued in Atlanta, Georgia on July 7, 2022.

Joseph Parks Preston,

Assistant Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 2022–14891 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0034]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 22 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on July 11, 2022. The exemptions expire on July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0034, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On June 3, 2022, FMCSA published a notice announcing receipt of applications from 22 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (87 FR 33875). The public comment period ended on July 5, 2022, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received one comment in this proceeding. One of the applicants, Vikramdeep Singh, stated his that his name was spelled incorrectly in the notice published on June 3, 2022 (87 FR 33875). The spelling of Mr. Singh's name has been corrected in this notice exempting him from the hearing standard in § 391.41(b)(11).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the

applicants in the exemption document and includes the following: (1) each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above:

Christopher Adams (IA), Jerritt Boehle (IL), Nathan Bohannon (TX), John Darr (TN), Jeremy Earl (IL), Taniko Graham (TN), Rodney Henley (AL), Quincy Hicks (VA), Omar Ibrahim (MN), Larry Mancill (MO), Glenn McCormack (IL), Carlos Morales (FL), Steven Morris (TX), Tisha Simmons (NC), Vikramdeep Singh (NY), Joseph Stanford, III (OR), Charles Stire (KY), Amanda Sturdevant (TX), Robert Walker, Jr. (WA), Joshua Wayland (IL), Kevin Young (AL), Karisa Zapotocky (CA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–14849 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0080]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Lease and Interchange of Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This ICR will enable FMCSA to document the burden associated with the for-hire truck leasing regulations and passenger carrier regulations. These regulations require certain for-hire property carriers and certain for-hire and private passenger carriers to have a formal lease when leasing equipment from other motor carriers. FMCSA requests approval to renew an ICR titled, ''Lease and Interchange of Vehicles.''

DATES: Comments on this notice must be received on or before September 12, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System Docket Number FMCSA–2022–0080 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy: In accordance with 5 CFR 1320.8(d)(1), DOT solicits comments from the public to better inform its collections of information approval process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Stacy Ropp, Compliance Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (609) 661–2062; *Stacy.Ropp@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Property transportation. Under 49 U.S.C. 14102(a), The Secretary of Transportation (Secretary) ''may require a motor carrier providing for-hire transportation that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

(1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of

operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.''

The Secretary has delegated authority pertaining to leased motor vehicles to FMCSA pursuant to 49 CFR 1.87(a)(6). The Agency's regulations governing leased motor vehicles are at 49 CFR part 376.

The regulations were adopted to ensure that small trucking companies were protected when they agreed to lease their equipment and drivers to larger for-hire carriers. They also ensure the government and members of the public can determine who is responsible for a property-carrying commercial motor vehicle. Prior to adoption of the regulations, some equipment was leased without written agreements, leading to disputes over which party to the lease was responsible for charges and actions and, at times, who was legally responsible for the vehicle.

The regulations specify what must be covered in the lease, but leave open how many responsibilities must be divided. The parties to the lease determine numerous details between themselves.

Part 376 applies only to certain motor carriers in interstate commerce and only to certain leasing situations based on exemptions set forth in § 376.11, which cross references other provisions in part 376. Section 376.11 provides that an authorized carrier (a person or persons authorized to engage in the transportation of property as a motor carrier under the provisions of 49 U.S.C. 13901 and 13902) may perform authorized transportation using equipment it does not own only when the following conditions are met:

(1) There shall be a written lease granting the use of the equipment and meeting the requirements contained in § 376.12;

(2) Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given; and

(3) The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service.

Passenger transportation. FMCSA can regulate the lease and interchange of passenger-carrying commercial motor vehicles based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984, as amended. FMCSA's regulations about the lease and interchange of passenger-carrying commercial motor vehicles in subpart G of 49 CFR part 390 help ensure that passenger carriers cannot evade FMCSA oversight and enforcement by entering into lease agreements to operate under the authority of another carrier that exercises no control over these operations. Motor carriers that (1) operate passenger-carrying commercial motor vehicles, (2) have active operating authority registration with FMCSA to transport passengers, and (3) engage in the lease or interchange of passenger-carrying commercial motor vehicles with other motor carriers that have active operating authority registration with FMCSA to transport passengers, are not subject to the regulations in subpart G of 49 CFR part 390 and the recordkeeping requirements therein. Such regulations and requirements also do not apply to financial leases (such as a closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, demonstration or loaner vehicle, etc.) between a motor carrier and a bank or similar financial organization or a manufacturer or dealer of passenger-carrying commercial motor vehicles.

Section 390.403(b) specifies the four required items of information that any lease or interchange record document for passenger-carrying commercial motor vehicles is required to contain. These are (1) vehicle identification information; (2) information about and signatures of the involved motor carriers of passengers [the lessor and the lessee]; (3) specific duration of the lease or interchange agreement; and (4) a clear statement about exclusive possession and responsibilities. Section 390.403(c) requires a copy of the lease or interchange agreement be on the passenger-carrying commercial motor vehicle during the period of the lease or interchange agreement. Both the lessee and lessor must retain a copy of the lease or interchange agreement for one year after the expiration date.

These property carrier and passenger carrier provisions account for the burden in this information collection.

The program change increase of 75,968 estimated annual burden hours (212,256 proposed estimated annual burden hours − 136,288 currently approved estimated annual burden hours) is due to the availability of new or improved data, the use of enhanced analysis or estimation methodologies, and/or the correction of arithmetic or other errors made previously when calculating the burden for the currently approved information collection. Previous estimates were based on 2017 data. Current passenger carrier-related estimates are based on the October 29, 2021, Licensing and Insurance, Motor Carrier Management Information System, and Safety Measurement System snapshots. Current property carrier related estimates are based on the November 26, 2021, Licensing and Insurance, Motor Carrier Management Information System, and Safety Measurement System snapshots. The data pulled for the current ICR shows an increase in the overall number of affected property carriers and a decrease in the overall number of affected passenger carriers from the data used in the previous ICR. The increase in the number of affected property carriers was greater than the decrease in the overall number of affected passenger carriers which resulted in an increase in the overall burden hours associated with this ICR.

Title: Lease and Interchange of Vehicles.

OMB Control Number: 2126–0056.

Type of Request: Renewal of currently approved ICR.

Respondents: Motor carriers authorized by the Secretary to transport property and passengers that use leased equipment.

Estimated Number of Respondents: 48,046 [45,536 property carriers (lessees and lessors) + 2,230 interstate authorized for-hire passenger carriers (lessees and lessors) + 124 interstate exempt for-hire passenger carriers (lessees and lessors) + 156 interstate private motor carriers of passengers (lessees and lessors)].

Estimated Time per Response: Varies from 5 to 30 minutes.

Expiration Date: October 31, 2022.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 212,256 hours [45,536 hours for master lease (creation of master leases by lessees and lessors that are property carriers) + 73,067 hours for standard statement (creation of a statement or copy of the lease to be carried in each leased truck tractor) + 80,320 hours for one-time lease negotiations by lessees and lessors that are passenger carriers + 13,333 hours for lease documentation by lessees and lessors that are passenger carriers + zero or de minimis hours for lease copying by passenger carriers].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–14850 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0044]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 12, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2022–0044 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0044, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2022–0044), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2022-0044.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0044, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 16 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Cody Baker

Mr. Baker is a 31-year-old class A license holder in Indiana. He has a history of a seizure disorder and has been seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since 2012. His physician states that he is supportive of Mr. Baker receiving an exemption.

Reed Byrum

Mr. Byrum is a 46-year-old class E license holder in West Virginia. He has a history of a seizure disorder and has been seizure free since 2001. He takes anti-seizure medication with the dosage and frequency remaining the same since 2001. His physician states that he is supportive of Mr. Byrum receiving an exemption.

Bradley Fullmer

Mr. Fullmer is a 38-year-old class D license holder in Utah. He has a history of epilepsy and has been seizure free since 2006. He takes anti-seizure medication with the dosage and frequency remaining the same since 2006. His physician states that he is supportive of Mr. Fullmer receiving an exemption.

Cole Funk

Mr. Funk is a 35-year-old class C license holder in Pennsylvania. He has a history of generalized epilepsy and has been seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since 2019. His physician states that he is supportive of Mr. Funk receiving an exemption.

Michael C. Hammond

Mr. Hammond is a 34-year-old class A license holder in South Carolina. He has a history of a seizure disorder and has been seizure free since 2001. He takes anti-seizure medication with the dosage and frequency remaining the same since 2019. His physician states that he is supportive of Mr. Hammond receiving an exemption.

John Hammond

Mr. Hammond is a 57-year-old class C license holder in Oregon. He has a history of a seizure disorder and has been seizure free since 2013. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Hammond receiving an exemption.

Michael Modica, III

Mr. Modica is a 39-year-old class B license holder in Florida. He has a history of epilepsy and has been seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2012. His physician states that he is supportive of Mr. Modica receiving an exemption.

Brent Nelson

Mr. Parker is a 52-year-old class B commercial driver's license holder in Utah. He has a history of seizures and has been seizure free since 1988. He takes anti-seizure medication with the dosage and frequency remaining the same for over 10 years. His physician states that he is supportive of Mr. Parker receiving an exemption.

Roger Parker

Mr. Parker is a 55-year-old class A commercial driver's license holder in North Carolina. He has a history of seizures and has been seizure free since 2003. He takes anti-seizure medication with the dosage and frequency remaining the same for over 10 years. His physician states that he is supportive of Mr. Parker receiving an exemption.

Kevin Revis

Mr. Revis is a 61-year-old class B commercial driver's license holder in Texas. He has a history of a seizure disorder and has been seizure free since 1980. He takes anti-seizure medication with the dosage and frequency remaining the same since 1980. His physician states that he is supportive of Mr. Revis receiving an exemption.

Alexis E. Roldan

Mr. Roldan is a 42-year-old class AM commercial driver's license holder in Illinois. He has a history of partial complex seizure and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Roldan receiving an exemption.

Brian Runk

Mr. Runk is a 32-year-old class A commercial driver's license holder in Pennsylvania. He had a single unprovoked nocturnal seizure and has been seizure free since November 2016. He takes anti-seizure medication with the dosage and frequency remaining the same since 2017. His physician states that he is supportive of Mr. Runk receiving an exemption.

Dominick Sempervive

Mr. Sempervive is a 64-year-old class A commercial driver's license holder in New Jersey. He has a history of a complex partial seizure disorder and has been seizure free for over 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 20 years. His physician states that he is supportive of Mr. Sempervive receiving an exemption.

William F. Smith

Mr. Smith is a 61-year-old class C driver's license holder in North Carolina. He has a history of a seizure disorder and has been seizure free for over 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 20 years. His physician states that he is supportive of Mr. Smith receiving an exemption.

Yoon Song

Mr. Song is a 51-year-old class A commercial driver's license holder in California. He has a history of a seizure disorder and has been seizure free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since 2012. His physician states that he is supportive of Mr. Song receiving an exemption.

Jerry Wise

Mr. Wise is a 27-year-old class C driver's license holder in Pennsylvania. He has a history of a seizures and has been seizure free since 2006. He has never taken anti-seizure medication. His physician states that he is supportive of Mr. Wise receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–14851 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2002–13251]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on June 1, 2022, Arizona Eastern Railway Company (AZER) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-passenger Trains and Equipment; End of Train Devices. The relevant FRA Docket Number is FRA–2002–13251.

Specifically, AZER seeks to extend relief that permits movement from the Freeport-McMoRan Copper & Gold's mining facility near Claypool, Arizona, to a location between mileposts (MPs) 1229.0 and 1227.6 on AZER trackage, where the required inspections (a pre-departure inspection and Class 1 initial terminal air brake test and inspection) are performed. Additionally, AZER seeks to extend relief formerly granted in FRA Docket Number FRA–2017–0100, which permits movement from Clifton Yard in Clifton, Arizona, to South Siding near MP 1210.0, where the required inspections are performed. FRA is combining the requests and relief from both dockets and considering them under the originally assigned docket number for the relief in Claypool, Arizona, Docket Number FRA–2002–13251. In support of its request, AZER states that railroad operations have remained the same since the original waivers were granted, and rail traffic volumes have continuously increased, supporting the need for this relief.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by August 29, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–14855 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0096]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on May 31, 2022, Brightline West (BW) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238, Passenger Equipment Safety Standards. FRA assigned the petition Docket Number FRA–2020–0096.

Specifically, BW requests relief from two regulations: §§ 238.112(f) and

238.121(c)(2), regarding interior doors and emergency system back-up power, respectively. As background, in December 2020, FRA denied BW's request for relief to use single-leaf breakable safety glass vestibule doors instead of doors with removal panels per § 238.112(f), because BW did not provide enough information and safety justification for FRA to render an appropriate decision. In its May 31, 2022, petition, BW states it has provided additional information as FRA identified, and renews its request for relief from this requirement. BW also requests new relief from § 238.121(c)(2), pertaining to the requirement that passenger equipment's emergency system back-up power be capable of withstanding shocks leading to individually applied accelerations of 8g/4g/4g (longitudinal/lateral/vertical). BW explains that the 8g/4g/4g accelerations are ''inconsistent with the general design approach [for] a Tier III vehicle, which considers accelerations of [5g/3g/3g].'' Additionally, BW notes that the Tier III notice of proposed rulemaking consensus language allows this specification if certain conditions are met for other back-up power supply systems. Further, BW notes that the approval of BW's waiver request in December 2020 assumed that the Siemens Velaro ''Classic'' trainsets would be used. BW requests FRA's confirmation and approval that the relief in this docket would apply to its next generation Siemens Velaro ''Novo'' trainsets, which are similar in design, but offer better accessibility, energy efficiency, and other improvements compared to the ''Classic'' trainsets.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by August 29, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–14860 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Infrastructure Investment and Jobs Act; and FTA Fiscal Year 2022 Apportionments, Allocations, Program Information and Interim Guidance; Correction

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: On April 28, 2022, the Federal Transit Administration (FTA) published a notice in the **Federal Register** apportioning funds appropriated by law. The notice provided information on the FY 2022 funding available for the FTA assistance programs, and provides program guidance and requirements. This notice provides a needed correction to that notice regarding pre-award authority, FY 2022 Section 5311 Formula Grants for Rural Areas Program and Rural Transportation Assistance Program funding, and the expenditure deadline for the FY 2015 Transportation Investment Generating Economic Recovery (TIGER VII) Discretionary Grants.

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact John Bodnar, Director, Office of Transit Programs, at (202) 366–2053. Please contact the appropriate FTA Regional Office for any specific requests for information or technical assistance. FTA Regional Office contact information is available at: *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

An FTA headquarters contact for each major program area is included in the discussion of that program in the text of this notice. FTA recommends that stakeholders subscribe to GovDelivery (*https://public.govdelivery.com/accounts/USDOTFTA/subscriber/new*) to receive email notifications when new information is available.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 28, 2022, FR Doc. 2022–09143 make, on the following corrections:

1. On page 25376, in the second column under the heading ''1. Authorized Amounts,'' correct the table to read as follows:

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized	$787,760,599	$804,217,747	$825,216,831	$842,263,841	$863,675,829

2. On the same page, in the first column under the heading ''2. FY 2022 Funding Availability,'' correct the paragraph and table to read as follows:

''In FY 2022, a total of $787,760,599 is authorized and appropriated for the section 5311 program for the period October 1, 2021, through September 30, 2022. The total amount apportioned is $896,275,765 to Section 5311 programs and includes the amount for Growing States formula factors, reapportioned

funds, and deduction for oversight (required by section 5338), as shown in the table below.''

FORMULA GRANTS FOR RURAL AREAS PROGRAM—FY 2022

Total Appropriation	$787,760,599
Oversight Deductions	(4,376,448)
Section 5340 Growing States	112,286,712
Reapportioned Funds	604,902
Total Apportioned	896,275,765

3. On Page 25377, in the first column under the heading ''1. Authorized Amount,'' correct the table to read as follows:

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized	$17,505,791	$17,871,506	$18,338,152	$18,716,974	$19,192,796

4. On the same page, in the first column under the heading ''2. FY 2022 Funding Availability,'' correct the paragraph and table to read as follows:

''In FY 2022, $17,505,791 is authorized and appropriated for the Section 5311 RTAP program. After the reduction to the National RTAP program, and the addition of reapportioned funds a total of $14,951,719 is available for allocation to the States, as shown in the table below.''

RURAL TRANSPORTATION ASSISTANCE PROGRAM—FY 2022

Total Appropriation	$17,505,791
National RTAP	(2,625,869)
Reapportioned Funds	71,797
Total Apportioned	14,951,719

5. On Page 25386, in the second column, under the heading ''2. Policy,'' correct the following sentence that reads: ''In this notice, FTA provides pre-award authority through the authorization period of the IIJA (October 1, 2022, through September 30, 2026) for capital assistance under all formula programs, so long as the conditions described below are met.'' to read as follows: ''In this notice, FTA provides pre-award authority through the authorization period of the IIJA (October 1, 2021, through September 30, 2026) for capital assistance under all formula programs, so long as the conditions described below are met. Previous notices provided pre-award authority applicable through September 30, 2021.''

6. On page 25392, in the second column under the heading ''3. Transportation Investments Generating Economic Recovery (TIGER), Better Utilizing Investments to Leverage Development (BUILD) and Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Discretionary Grants,'' correct the paragraph to read as follows:

''Recipients of open TIGER, BUILD and RAISE grants should be aware that, as matter of law, all remaining TIGER funds must be disbursed from grants by the end of the fifth fiscal year after the Expiration of Obligation Authority. (See 31 U.S.C. 1552.) For FTA TIGER VII projects, Section 105—Administrative Provisions—Office of the Secretary of Transportation of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103, March 15, 2022), extended the availability of remaining TIGER VII funds for one year, through September 30, 2023. Recipients of open TIGER VII projects are encouraged to contact the appropriate FTA Regional Office with questions about the extension.''

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–14963 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2021–0129]

Request for Comments on the Renewal of a Previously Approved Information Collection: Ocean Shipments Moving Under Export-Import Bank Financing

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves documenting shipments made during the life of certain EXIM Bank financed projects. The information to be collected is necessary for MARAD to fulfill its legislative requirement to monitor the percentage of ocean freight revenues/tonnage. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on May 3, 2022. This document described a collection of information for which MARAD intends to seek OMB approval.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2021–0129] through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access and Filing

A copy of the notice may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this notice will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT: James Mead, (202) 366–5723, Office of Cargo and Commercial Sealift, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Ocean Shipments Moving Under Export-Import Bank Financing.

OMB Control Number: 2133–0013.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The information collection will be used by MARAD to monitor compliance with the cargo preference laws by parties covered under PR 17 and 46 CFR part 381. In addition, MARAD will use the information to compile annual information on EXIM Bank-financed shipments, and when applicable, to provide for an informal grievance procedure, in the event there is a question or complaint pertaining to cargo preference matters.

The monthly shipping reports, with substantiating documents, will provide the only basis for MARAD to exercise its legislative responsibility to monitor EXIM Bank-financed cargoes that are transported on U.S.-flag vessels, recipient flag vessels and on third-flag vessels according to the determinations and certifications of vessel non-availability that have been granted. The compilation of the statistics from the shipping reports forms the basis for determining compliance with PR 17 for each loan participant. This information is also provided to the EXIM Bank, and is the nucleus for conducting annual reviews of the shipping activities of the EXIM Bank programs.

MARAD uses the information collected as part of the Transparency Initiative to share with the EXIM Bank. MARAD also intends to use the information to assist EXIM Bank shippers with finding suitable U.S.-flag vessels and in support of the determinations MARAD makes with respect to requests from EXIM Bank shippers for certifications of non-availability.

Respondents: All EXIM Bank loan and certain loan guarantee recipients and designated representatives charged with the responsibility of monthly and annual reporting. These can be a contractor, ocean transportation intermediary, supplier, etc.

Affected Public: EXIM Bank loan and certain loan guarantee recipients.

Estimated Number of Respondents: 28.

Estimated Number of Responses: 12.

Estimated Hours per Response: 0.5.

Annual Estimated Total Annual Burden Hours: 168.

Frequency of Response: Monthly.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–14903 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2022–0130]

Request for Comments on the Renewal of a Previously Approved Information Collection: Application for Conveyance of Port Facility Property

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collection is necessary for MARAD to determine whether the applicant is committed to the redevelopment plan; the plan is in the best interests of the public, and the property will be used in accordance with the terms of the conveyance and applicable statutes and regulations. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on May 3, 2022. This document described a collection of information for which MARAD intends to seek OMB approval.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2022–0130] through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access and Filing

A copy of the notice may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this notice will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Linden Houston, (202) 366–4839, Office of Deepwater Port Licensing & Port Conveyance, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Application for Conveyance of Port Facility Property.

OMB Control Number: 2133–0524.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Public Law 103–160, as applied by 40 U.S.C. 554, authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program.

Respondents: Eligible state and local public entities.

Affected Public: Eligible state and local public entities.

Estimated Number of Respondents: Thirteen (13).

Estimated Number of Responses: Thirteen (13).

Estimated Hours per Response: Forty-four (44).

Annual Estimated Total Annual Burden Hours: Five hundred seventy-two (572).

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–14907 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA NHTSA–2022–0060]

Agency Information Collection Activities; Notice and Request for Comment; Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a revision of currently approved information collection request.

SUMMARY: NHTSA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a revision of a currently approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval regarding importation of vehicles and equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

DATES: Comments must be submitted on or before September 12, 2022.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2022–XXXX through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Neil Thurgood, Office of Vehicle Safety Compliance (NEF–230), National Highway Traffic Safety Administration, West Building—4th Floor—Room W45–205, 1200 New Jersey Avenue SE, Washington, DC 20590. Mr. Thurgood's telephone number is (202) 366–0712. Please identify the relevant collection of information by referring to its OMB Control Number (2127–0002).

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards.

OMB Control Number: 2127–0002.

Form Number(s): HS–7, HS–474, NHTSA Form 1481, NHTSA Form 1482, NHTSA Form 1483, NHTSA Form 1484.

Type of Request: Revision.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information:

This information collection request covers various collections needed for the administration of NHTSA's regulations governing the importation of motor vehicle and motor vehicle equipment. This information collection includes the declaration form required for the importation of all motor vehicles and regulated items of motor vehicle equipment and related information requests as well as information requirements for Registered Importers (RIs).

Description of the Need for the Information and Proposed Use of the Information: This information collections described in this document are necessary to ensure that motor vehicles and items of motor vehicle equipment subject to the Federal motor vehicle safety, bumper and theft prevention standards are lawfully imported into the United States. The primary component of this information collection is the declaration requirement for the importation of motor vehicles and items of motor vehicle equipment. NHTSA's regulations at 49 CFR part 591 provide that no person shall import a motor vehicle or regulated item of motor vehicle equipment [*e.g.,* tires, glazing, seat belts, etc.] unless the importer files a declaration.[1] To be lawfully imported, the vehicle or equipment item must be covered by one of the boxes on the HS–7 Declaration form and the importer must declare, subject to penalty for

[1] 49 CFR 591.5.

making false statements, that the vehicle or equipment item is entitled to entry under the conditions specified on the form, including the provision of any supporting information or materials that may be required. This declaration is filed with U.S. Customs and Border Protection (Customs) on a paper copy of the HS–7 Declaration form, or, if the entry is made by a Customs House Broker, it can be made electronically using Customs' Automated Broker Interface (ABI) system. The ABI feeds into Custom's Automated Commercial Environment (ACE) system that tracts all of the HS–7 information. The HS–7 Declaration form has 14 boxes, each of which identifies a lawful basis for the importation of a motor vehicle or equipment item into the United States. The regulations require a declaration to be filed (on the HS–7 Declaration Form) at the time a vehicle or item of motor vehicle equipment is imported that identifies, among other things, whether the vehicle or item of equipment was originally manufactured to conform to all applicable FMVSS, and if it was not, to state the basis for the importation of the vehicle or item of equipment. In calendar years 2019, 2020, and 2021, there were 14,028,097; 12,509,672; and 12,754,348 entries made under HS–7 Declarations filed with U.S. Customs and Border Protection, respectively.

In addition to the declarations, entries made under certain boxes on the HS–7 form are required to be accompanied by additional information. In some cases, the additional information is an additional form or statement accompanying the HS–7 form. However, in other cases, the entry can only be made after NHTSA has reviewed and approved an application or granted a petition, such as the petitions related to entry under NHTSA's Registered Importer program.

As described in detail below, this request also covers several information collections related to the Registered Importer program. NHTSA relies on this information when approving and renewing RI registrations to better ensure that RIs are meeting their obligations under the statutes and regulations governing the importation of nonconforming vehicles and to allow the agency to make more informed decisions in conferring RI status on applicants and in permitting RI status to be retained by those currently holding registrations. This information also allows NHTSA to deny those lacking the capability to responsibly provide RI services and take enforcement action, such as suspending or revoking registrations, against RIs that have committed or are associated with those who have committed past violations of the vehicle importation laws.

A more detailed description of this information collection is provided below and is broken down by the 14 boxes on the HS–7 form and the requirements for RIs.

HS–7 Declaration Form: Importation of Motor Vehicles and Motor Vehicle Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards

1. Box 1: Importation of Vehicles at Least 25 Years Old or Equipment Not Subject to the Safety Standards

Motor vehicles at least 25 years old and items of motor vehicle equipment manufactured on a date when no applicable FMVSS was effect may be lawfully imported without regard to compliance with the FMVSS. These vehicles and equipment items are declared under Box 1 on the HS–7 Declaration form. In calendar years 2019, 2020, and 2021, there were, respectively, 2,515,742; 2,161,035; and 1,696,886 entries made for vehicles and equipment items imported under Box 1. The average for the last three years was 2,124,554.33. Using this estimate, NHTSA estimates that an average of 2,200,000 entries will be made under Box 1 in each of the next three years.

2. Box 2A: Importation of Conforming Vehicles and Equipment

Vehicles and equipment that are originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and that bear a label or tag certifying such compliance that is permanently affixed by the original manufacturer, are declared under Box 2A on the HS–7 Declaration form. Vehicles that are covered by exemptions under 49 CFR parts 555 and 586 are also imported under Box 2A. In 2019, 2020, and 2021 there were 8,517,969; 7,497,561; and 8,172,429 entries made under Box 2A, respectively. The average number of entries made under Box 2A in the last three years was 8,062,653. Based on this average, NHTSA estimates that number of entries made in each of the next three years under Box 2A will be, on average, 8,100,000.

3. Box 2B: Importation of Conforming Canadian-Market Vehicles for Personal Use

A motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards can be imported by an individual for personal use under Box 2B. To accomplish the entry, the importer must furnish Customs with a letter from the vehicle's original manufacturer confirming that the vehicle conforms to all applicable U.S. Federal motor vehicle safety, bumper, and theft prevention standards, or that it conforms to all such standards except for the labeling requirements of Standard Nos. 101 Controls and Displays and 110 or 120, Tire Selection and Rims, and/or the requirements of Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, relating to daytime running lamps. In 2019, 2020, and 2020 there were 1,740; 1,919; and 2,553 entries made under Box 2B, respectively. Although the average number of entries for the last three years was 2,070.67 entries per year, the number of Box 2B entries appears to be increasing. Accordingly, NHTSA estimates that, on average, 2,600 entries will be made under Box 2B in each of the next three years. As noted above, entries under Box 2B must be accompanied by a confirmation letter from the manufacturer of the vehicle. Accordingly, NHTSA estimates that in each of the next three years, 2,600 requests will be made to manufacturers for confirmation letters and manufacturers will send 2,600 confirmation letters in response.

4. Box 3: Importation of Nonconforming Vehicles by Registered Importers

A motor vehicle that does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards, but does conform to applicable Federal Theft Prevention Standards may be imported under Box 3 if NHTSA has determined that the model and model year of the vehicle to be imported is eligible for importation because it can be modified to meet the standards. Generally, the National Traffic and Motor Vehicle Safety Act prohibits the importation into the United States of a motor vehicle manufactured on or after the date an applicable Federal motor vehicle safety standard (FMVSS) takes effect, unless the motor vehicle was manufactured in compliance with the standard and was so certified by its original manufacturer.[2] Under one of the exceptions to this prohibition, found at 49 U.S.C. 30141, a nonconforming vehicle can be imported into the United States provided (1) NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS, and (2) it is imported by a registered importer (RI), or by a person who has a contract with an RI to bring the vehicle into conformity with all applicable

[2] 49 U.S.C. 30112(a)(1).

standards following importation. Regulations implementing this statute are found at 49 CFR parts 591 and 592. There are four information collection components for vehicles imported under Box 3: (1) HS–7 Declaration Forms, (2) HS–474 Conformance Bond Forms; (3) Conformity Packages; and (4) Import Eligibility Petitions.

A nonconforming vehicle that NHTSA has decided to be eligible for importation can be imported by an RI, or by a person who has a contract with an RI to modify the vehicle so that it conforms to all applicable FMVSS, under Box 3 on the HS–7 Declaration form. The volume of imports under Box 3 has greatly increased in recent years. In 2019, there were a total of 296,898 entries under Box 3. Of those entries, 298,767 were for Canadian-market vehicles and 131 were for vehicles for sale in other foreign markets. In 2020, there were a total of 228,256 entries under Box 3. Of those entries, 228,138 were for Canadian-market vehicles and 118 were for vehicles for sale in other foreign markets. In 2021, there were a total of 374,105 entries under Box 3. Of those entries, 374,001 were for Canadian-market vehicles and 104 were for vehicles for sale in other foreign markets. Based on these figures, the agency estimates that on average, 300,120 vehicles will be imported each year under Box 3, with 300,000 Canadian-market vehicles being imported and 120 vehicles for other foreign markets being imported. Entries made under Box 3 are required to be accompanied with a copy of the DOT Bond and, if applicable, a copy of the contract with the RI.

a. HS–474 Conformance Bond

NHTSA's regulations also require an RI, among other things, to furnish a bond (on the HS–474 Conformance Bond form) at the time of entry for each nonconforming vehicle it imports, to ensure that the vehicle will be brought into conformity with all applicable safety and bumper standards within 120 days of entry or will be exported from, or abandoned to, the United States. A HS–474 Conformance Bond has to be furnished for each nonconforming vehicle imported under Box 3. Using NHTSA's estimate that, on average, 300,120 vehicles will be imported under Box 3 each year, NHTSA estimates that importers will also complete 300,120 HS–474 forms each year. In addition, the documents required for importation under Box 3, NHTSA also requires a statement of conformity to be submitted for each vehicle that was imported under Box 3.

b. Conformity Package

After modifying the vehicle to conform to all applicable standards, the RI must submit a statement of conformity (NHTSA Form 1484) to NHTSA. After receiving the statement of conformity, NHTSA will issue a letter permitting the bond to be released if the agency is satisfied that the vehicle has been modified in the manner stated by the RI. The statement of conformity contains a check-off list on which the RI identifies the FMVSS and other agency requirements to which the vehicle conforms as originally manufactured and the FMVSS and other requirements to which the vehicle was modified to conform. The RI also attaches to the statement of conformity documentary and photographic evidence of the modifications that it made to the vehicle to achieve conformity with applicable standards. Collectively, these documents are referred to as a ''conformity package.'' A conformity package must be submitted for each nonconforming vehicle imported under Box 3. Therefore, NHTSA estimates that, on average, 300,120 conformity packages will be submitted each year for vehicles that were imported under Box 3. Each RI must also retain a copy of each conformity package for 10 years.

c. Import Eligibility Petition

As previously noted, a motor vehicle that was not originally manufactured to comply with all applicable FMVSS cannot be lawfully imported into the United States on a permanent basis unless NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified to conform to those standards. Under 49 U.S.C. 30141, the eligibility decision can be based on the nonconforming vehicle's substantial similarity to a vehicle of the same make, model, and model year that was manufactured for importation into, and sale in the United States, and certified as complying with all applicable FMVSS by its original manufacturer. Where there is no substantially similar U.S.-certified vehicle, the eligibility decision must be predicated on the vehicle having safety features that are capable of being modified to conform to the FMVSS, based on destructive crash test data or such other evidence that the agency may deem adequate. The agency makes import eligibility decisions either on its own initiative, or in response to petitions filed by RIs. In 2019, NHTSA received 28 import eligibility petitions. Of these, 25 were for vehicles with substantially similar U.S.-certified counterparts and 3 were for vehicles for which there were no substantially similar U.S. certified counterparts. In 2020, 8 import eligibility petitions were submitted to the agency. Of these, 4 were for vehicles with substantially similar U.S.-certified counterparts, and 4 were for vehicles for which there were no substantially similar U.S.-certified counterparts. In 2021, 11 import eligibility petitions were submitted to the agency. Of these, 9 were for vehicles with substantially similar U.S.-certified counterparts, and 2 were for vehicles for which there were no substantially similar U.S.-certified counterparts. Assuming this trend continues in future years, the agency estimates that roughly 16 import eligibility petitions will be submitted each year, 13 of which will be for vehicles with substantially similar U.S.-certified counterparts and 3 petitions will be for vehicles lacking substantially similar U.S.-certified counterparts.

5. Box 4: Importation of Vehicles or Equipment Intended Solely for Export

A nonconforming vehicle or equipment item that is intended solely for export, and bears a tag or label to that effect, can be entered under Box 4 on the HS–7 Declaration form. In 2019, 2020, and 2021, there were 13,797; 9,932, and 10,910 entries made under Box 4, respectively, for an average of 11,544.33. Based on this average, NHTSA estimates that, on average, there will be 12,000 entries under Box 4 in each of the next three years.

6. Box 5: Temporary Importation of Nonconforming Vehicles by Nonresidents of the United States

Under an international convention to which the United States is a signatory, a nonresident of the United States may import a nonconforming vehicle for personal use, for a period of up to one year, provided the vehicle is not sold while in the United States and is exported no later than one year from its date of entry. These vehicles are entered under Box 5 on the HS–7 Declaration form. To enter a vehicle under Box 5, the importer must also furnish Customs with the importer's passport number and the name of the country that issued the passport. In 2019, 2020, and 2021, there were 324, 157, and 176 entries made under Box 5, respectively, for an average of 219 entries per year. Based on this average, NHTSA estimates that, on average, there will be 220 entries made each year under Box 5.

7. Box 6: Temporary Importation of Nonconforming Vehicles by Foreign Diplomats

A member of the personnel of a foreign government on assignment in the United States, or a member of the secretariat of a public international organization so designated under the International Organizations Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State, may temporarily import a nonconforming vehicle for personal use while in the United States pursuant to 49 CFR 591.5(h)(1) if the importer: (1) is importing the motor vehicle on a temporary basis for personal use and will register it through the Office of Foreign Missions of the Department of State; (2) will not sell the vehicle to any person in the United States, other than a person who is eligible to import a vehicle under Box 6; and (3) will obtain from the Office of Foreign Missions of the Department of State, before departing the United States at the conclusion of a tour of duty, an ownership title to the vehicle good for export only. These vehicles are entered under Box 6 on the HS–7 Declaration form. The importer must attach to the declaration a copy of the importer's official orders and provide Customs with the name of the embassy to which the importer is attached. In 2019, 2020, and 2021, there were 33, 24, and 40 entries made under Box 6, respectively, for an average of 32.33 entries per year. Based on this average, NHTSA estimates that, on average, 40 entries will be made under Box 6 in each of the next three years.

8. Box 7: Temporary Importation of Nonconforming Vehicles and Equipment

Certain vehicles and items of regulated motor vehicle equipment that do not conform with all applicable Federal motor vehicle safety standards may be imported under Box 7 for the purpose of research, investigations, demonstrations, training or competitive racing events. Under 49 U.S.C. 30114(a), NHTSA is authorized to exempt a motor vehicle or item of motor vehicle equipment for purposes of research, investigations, demonstrations, training, competitive racing events, show, or display. Such exemptions are made on such terms the agency decides are necessary from 49 U.S.C. 30112(a)(1), which prohibits the importation of nonconforming motor vehicles and items of motor vehicle equipment. Written permission from NHTSA is required to temporarily import a nonconforming motor vehicle or motor vehicle equipment item for one of the specified purposes unless the importer is a manufacturer of motor vehicles that are certified to the FMVSS. This information collection is being modified to reflect that NHTSA is requesting approval for a new information collection that will cover the information requirements associated with requesting permission to import a vehicle or item of equipment under box 7. With respect to Box 7 entries, this information collection will now only cover the declaration form for Box 7 entries and, in the case that written permission is not required, the importer's written statement. Under Part 591, declarations for importation under Box 7 that do not require to be accompanied by a permission letter from NHTSA must be accompanied by the importer's written statement, or by entering in electronic format information contained in the statement, into the U.S. Customs and Border Protection electronic data collection system, describing the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall describe the purpose which makes such use necessary, state the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary, and state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported. In 2019, there were 12,444 entries made under Box 7, of which 11,974 were made by certifying manufacturers not requiring permission from NHTSA and 470 were made by importers that received permission from NHTSA. In 2020, there were 6,131 entries made under Box 7, of which 5,716 were made by certifying manufacturers not requiring permission from NHTSA and 415 were made by importers that received permission from NHTSA. In 2021, there were 6,395 entries made under Box 7, of which 5,960 were made by certifying manufacturers not requiring permission from NHTSA and 435 were made by importers that received permission from NHTSA. Although there were, on average, 7,883.33 entries made under Box 7 in the last three years, NHTSA estimates that, on average, 10,000 entries will be made under Box 7 in each of the next three years. NHTSA estimates that 10,000 will be entries made without permission from NHTSA and 500 entries will be made with permission from NHTSA.

9. Box 8: Importation of Off-Road Vehicles

NHTSA regulates the importation of ''motor vehicles,'' which are defined, at 49 U.S.C. 30102, as vehicles that are driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways. Vehicles that are not primarily manufactured for on-road are not ''motor vehicles'' under this definition and are not subject to 49 U.S.C. 30112(a)(1) which prohibits the importation of motor vehicles that do not comply with all applicable FMVSS. Vehicles for off-road may, therefore, be imported without regard to their compliance with the FMVSS. These vehicles are entered under Box 8 on the HS–7 Declaration form. In 2019, 2020, and 2021 there were 673,323; 843,864; and 1,119,305 entries made under Box 8, respectively, with an average of 878,830.67 entries per year. However, because the number of entries under Box 8 increased over the last three years, NHTSA estimates that, on average, 1,200,000 entries will be made under Box 8 in each of the next three years. Declarations made under Box 8 must be accompanied by a statement substantiating the vehicle was not manufactured for use on the public roads, other than the equipment item was not manufactured for use on a motor vehicle or is not an item of motor vehicle equipment. Vehicles that may be imported under Box 8 include those that are originally manufactured for closed circuit racing. Although approval from NHTSA is not needed to import a vehicle that was originally manufactured for racing purposes, the agency will issue a letter recognizing that the vehicle was manufactured for off-road use if the importer requests the agency to do so. An application form that can be used to obtain such a letter is also posted to the agency's website at *www.nhtsa.gov/cars/rules/import.* In its last request for approval for this information collection, NHTSA estimated that it would receive approximately 13 applications each year. However, NHTSA received no applications to request letters recognizing that a vehicle was manufactured for off-road use in the years between 2017 and 2022. Based on this fact, NHTSA is lowering its estimate of the number applications NHTSA expects to receive in each of the next three years to 10.

10. Box 9: Importation of Vehicles or Equipment Requiring Further Manufacturing Operations

A motor vehicle or equipment item that requires further manufacturing operations to perform its intended function, other than the addition of readily attachable components such as mirrors or wipers, or minor finishing operations such as painting, may be entered under Box 9 on the HS–7 Declaration form. Declarations made under Box 9 must be accompanied with documentation from the manufacturer. If the declaration is for a vehicle, it must be accompanied by a copy of the Incomplete Vehicle Document, issued by the incomplete vehicle manufacturer, providing guidance on completing the vehicle so that it conforms to all applicable FMVSS. For an item of equipment, the declaration must be accompanied by a statement issued by the item's manufacturer identifying the applicable FMVSS to which the item does not conform and describing the further manufacturing required for the item to perform its intended function. In 2019, 2020, and 2021 there were 85,015; 67,295; and 85,562 entries made under Box 9, respectively, with an average of 79,290.67 entries per year. NHTSA estimates that, on average, 90,000 entries will be made under Box 9 in each of the next three years.

11. Box 10: Importation of Vehicles for Show or Display

Vehicles that have been granted exemption from NHTSA may be imported for purposes for show or display under Box 10. Under 49 U.S.C. 30114(a), NHTSA is authorized to exempt a motor vehicle or item of motor vehicle equipment for purposes of research, investigations, demonstrations, training, competitive racing events, show, or display from 49 U.S.C. 30112(a)(1) which prohibits the importation of nonconforming motor vehicles and items of motor vehicle equipment. Such exemptions are made on such terms the agency decides are necessary. With written permission, vehicles that are deemed by NHTSA to have sufficient technological or historical significance that they would be worthy of being exhibited in car shows if they were brought to the United States are eligible for importation for purposes of show or display under Box 10 on the HS–7 Declaration form. This information collection is being modified to reflect that NHTSA is requesting approval for a new information collection that will cover the information requirements associated with obtaining an exemption for show or display. For vehicles imported for show or display, this information collection will now only cover the declaration form for Box 10 entries. In 2019, 2020, and 2021 there were 30, 70, and 69 entries made under Box 10, respectively, with an average of 56.33 entries per year. Because the number of Box 10 entries has increased over the last three years, NHTSA estimates that, on average, 70 entries will be made under Box 10 in each of the next three years.

12. Box 11: Importation of Equipment Subject to the Theft Prevention Standard

Items of motor vehicle equipment that are marked in accordance with the Theft Prevention Standard in 49 CFR part 541 may be entered under Box 11 on the HS–7 Declaration form. In 2019, 2020, and 2021 there were 1,911,103; 1,693,295; and 1,285,783 entries made under Box 11, respectively, with an average of 1,630,060.33 entries per year. NHTSA estimates that, on average, 1,630,000 entries will be made under Box 11 in each of the next three years.

13. Box 12: Temporary Importation of Nonconforming Vehicles by Foreign Military Personnel

A member of the armed forces of a foreign country on assignment in the United States may temporarily import a nonconforming vehicle for personal use during the member's tour of duty under Box 12 on the HS–7 Declaration form pursuant to 49 CFR 591.5(h)(2) if they: (1) import the vehicle on a temporary basis for personal use; (2) certify that they will not sell the vehicle to any person in the States other than to a person eligible to import a vehicle under Box 12; (3) export the vehicle upon departing the United States at the conclusion of their tour of duty; and (4) attach a copy of their official orders. In 2019, 2020, and 2021 there were 139, 119, and 127 entries made under Box 12, respectively, with an average of 128.33 entries per year. Based on this average, NHTSA estimates that, on average, 130 entries will be made under Box 12 in each of the next three years.

14. Box 13: Importation of Vehicles to Prepare Import Eligibility Petitions

Nonconforming vehicles may be imported with a declaration under Box 13 for the purpose of preparing an import eligibility petition if the vehicle is imported by a registered importer that has received written permission from NHTSA to import the vehicle. RIs request permission to import vehicles under Box 13 to allow them to prepare a petition requesting that NHTSA determine that a particular make, model, and model year is eligible for importation under Box 3. In 2019, 2020, and 2021 there were 6, 10 and 5 entries made under Box 13, respectively, with an average of 7 entries per year. Based on this average, NHTSA estimates that, on average, 7 entries will be made under Box 13 in each of the next three years.

As noted above, a declaration under Box 13 must be accompanied by a permission letter from NHTSA. NHTSA has issued guidance to inform RIs that it will permit no more than two vehicles to be imported for the purpose of preparing an import eligibility petition. In 2019, 2020, and 2021 NHTSA received 10, 4, and 3 applications for permission to import a vehicle under Box 13, respectively, with an average of 5.67 entries per year. Based on this average, NHTSA estimates that, on average, it will receive, on average, 6 applications for importation under Box 13 in each of the next three years.

Information Collection Requirements for Registered Importers

In addition, to the information collection requirements discussed above regarding the importation of vehicles by Registered Importers, NHTSA has four other information collections related to its Registered Importer program. The additional information collections for the RI program include (1) information collected from applicants seeking status as RIs; (2) annual reporting requirements for RIs to retain their status; (3) recordkeeping requirements for RIs who issue conformity statement for modified vehicles; and (4) requests sent to manufacturers, in connection with the RI program, regarding compliance with FMVSS No. 138, Tire Pressure Monitoring Systems. The first three information collections affect applicants seeking status as RIs and existing RIs seeking to renew their registrations. The fourth affects manufacturers of Canadian-certified vehicles.

Under 49 U.S.C. 30141, a motor vehicle that was not originally manufactured to comply with all applicable FMVSS may not be lawfully imported into the United States on a permanent basis unless (1) NHTSA decides it is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS and (2) it is imported by an RI or by a person who has a contract with an RI to modify the vehicle so that it complies with all applicable FMVSS following importation. 49 U.S.C. 30141(c) authorizes NHTSA to establish, by regulation, procedures for registering

RIs. Those regulations are found in 49 CFR part 592.

1. Information Collected From Applicants

Under the terms of the regulations in part 592, an applicant for RI status must submit to the agency information (NHTSA Form 1481) that identifies the applicant, specifies the manner in which the applicant's business is organized (*i.e.,* sole proprietorship, partnership, or corporation), and, depending on the form of organization, identifies the principals of the business. The application must also state that the applicant has never had a registration revoked and identify any principal previously affiliated with another RI. The application must also provide the street address and telephone number in the United States of each facility for the conformance, storage, and repair of vehicles that the applicant will use to fulfill its duties as an RI, including records maintenance, and the street address in the United States that it designates as its mailing address. The applicant must also furnish a business license or other similar document issued by a State or local authority authorizing it to do business as an importer, seller, or modifier of motor vehicles, or a statement that it has made a bona fide inquiry and is not required by any State or local authority to maintain such a license. The application must also set forth sufficient information to allow the Administrator to conclude that the applicant (1) is technically able to modify nonconforming vehicles to conform to applicable Federal motor vehicle safety and bumper standards, (2) owns or leases one or more facilities sufficient in nature and size to repair, conform, and store the vehicles for which it furnishes statements of conformity to NHTSA, (3) is financially and technically able to provide notification of and a remedy for a noncompliance with an FMVSS or a defect related to motor vehicle safety determined to exist in the vehicles it imports, and (4) is able to acquire and maintain information on the vehicles that it imports and the owners of those vehicles so that it can notify the owners if a safety-related defect or noncompliance is determined to exist in such vehicles. The application must also contain a statement that the applicant will abide by the duties of an RI and attest to the truthfulness and correctness of the information provided in the application. A brochure containing sample documents that an applicant may use in applying to become an RI is posted to the agency's website at *https://www.nhtsa.gov/importing-vehicle/registered-importers#for-importers.* In 2019, 2020 and 2021 NHTSA received 17, 14, and 18 applications for RI status, respectively, with an average of 16.33 applications submitted each year. Based on these figures, the agency estimates that it will receive 17 applications for RI status in each of the next three years.

2. Annual Reporting Requirement for Existing Registered Importers

To maintain registration, each RI must file an annual statement (NHTSA Form 1482) affirming that all information it has on file with the agency remains correct and that it continues to comply with the requirements for being an RI. Formats that existing RIs may use to renew their registrations are included in a newsletter sent electronically to each RI before the renewal is due and posted to the agency's website at *https://www.nhtsa.gov/importing-vehicle/registered-importers#for-importers.* In 2019, 2020, and 2021 NHTSA received 109, 115, and 111 renewal packages from existing RIs, respectively, with an average of 111.67 applications submitted each year. Because the number of renewal packages received has increased over the last three years, the agency estimates that it will receive 121 renewal packages in each of the next three years.

3. Notification of Business Change

Under 49 CFR 592.6(l), each RI must ensure that it notifies NHTSA in writing of any changes that occur in the information which was submitted in its registration application not later than the 30th calendar day after the change. An RI submits this notification using NHTSA Form 1483. In calendar years 2019, 2020, and 2021, NHTSA received 86, 78, and 61 such notifications, respectively, which reflects an annual average of approximately 75 notifications. NHTSA estimates that it will receive 75 notifications of RI business changes in each of the next three years.

4. Recordkeeping Requirements for Registered Importers

NHTSA's regulations, at 49 CFR 592.6(b), require RIs to maintain and retain certain specified records for each motor vehicle for which it furnishes a certificate of conformity to NHTSA, for a period of 10 years from the vehicle's date of entry. As described in the regulations, those records must consist of ''correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator.'' The regulations further specify that the records to be retained must include (1) a copy of the HS–7 Declaration Form furnished for the vehicle at the time of importation, (2) all vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than RIs, and correspondence between the RI and the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity to NHTSA, (3) the last known name and address of the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity, and the vehicle identification number (VIN) of the vehicle, and (4) records, both photographic and documentary, reflecting the modifications made by the RI, which were submitted to NHTSA to obtain release of the conformance bond furnished for the vehicle at the time of importation.[3] The latter records are referred to as a ''conformity package.'' Most conformity packages submitted to the agency covering vehicles imported from Canada are comprised of approximately six sheets of paper (including a check-off sheet identifying the vehicle and the standards that it was originally manufactured to conform to and those that it was modified to conform to, a statement identifying the recall history of the vehicle, a copy of the HS–474 conformance bond covering the vehicle, and a copy of the mandatory service insurance policy obtained by the RI to cover its recall obligations for the vehicle). In addition, most conformity packages include photographs of the vehicle, components that were modified or replaced to conform the vehicle to applicable standards, and the certification labels affixed to the vehicle. In 2019, 2020, and 2021 there were 112, 121, and 121 active RIs, respectively. Based on this information, NHTSA estimates that there will be 121 active RIs in each of the next three years.

5. Information From Vehicle Manufacturers Regarding FMVSS No. 138 Compliance

As explained above, many of the vehicles determined to be eligible for importation under Box 3 are Canadian-market vehicles. Vehicles that are certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards are one category that may be lawfully imported under Box 3, provided the vehicle was originally manufactured to comply with the U.S. version of any safety standard for which there is no Canadian counterpart or that differs from the

[3] 49 CFR 592.6(b)(1) through (b)(4).

Canadian version of the standard. One standard adopted by the United States that has not been adopted by Canada is FMVSS No. 138, ''Tire Pressure Monitoring Systems (TPMS).'' To assist Registered Importers in selecting vehicles that are eligible for importation, NHTSA publishes an RI Newsletter that lists Canadian-certified vehicles that were not originally manufactured to comply with FMVSS No. 138 and are therefore not eligible for importation into the United States. To aid in assembling this list, the agency requests information from the 20 major manufacturers that manufacture vehicles certified to the Canadian motor vehicle safety standards and offer substantially similar vehicles in the United States.

Affected Public: With regard to the HS–7 Declaration form, likely respondents include any private individual or commercial entity importing into the United States a vehicle or item of motor vehicle equipment subject to the Federal motor vehicle safety standards. There are also specific information collection for registered importers.

Estimated Number of Respondents: It is difficult to estimate, with reliability, the absolute number of respondents; however, that number would include: (1) the 121 RIs who are currently registered with NHTSA and import nonconforming vehicles under Boxes 3 and 13; (2) the estimated 2,600 individuals who will import Canadian-certified vehicles for personal use under Box 2B in each of the next three years; (3) the several hundred original manufacturers who import conforming motor vehicles and equipment items under Box 2A; nonconforming vehicles or equipment intended for export under Box 4; nonconforming vehicles and equipment on a temporary basis for purposes of research, investigations, or other reasons specified under Box 7; vehicles and equipment requiring further manufacturing operations under Box 9; and equipment subject to the Theft Prevention Standard under Box 11; (4) the several hundred dealers, distributors, and individuals who import off-road vehicles such as dirt bikes and all-terrain vehicles or ATVs, as well as other vehicles that are not primarily manufactured for on-road use under Box 8; and the several hundred nonresidents of the United States and foreign diplomatic and military personnel who temporarily import nonconforming vehicles for personal use under Boxes 5, 6, and 12. Using current entry information, NHTSA estimates that if every declaration (covering one or more entries) is submitted by a unique company or individual, the number of respondents for the HS–7 portion of the collection will be 6,257,145. The following Table includes estimates of the number of respondents for each of the 12 information collections.

TABLE 1—NUMBER OF RESPONDENTS

Information collection	Number of respondents
HS–7 Declarations	6,257,145
Box 2B: Letters Requesting Confirmation from Manufacturers	2,600
Box 2B: Confirmation Letters from Manufacturers	2,600
HS–474 Forms for Box 3 Declarations	121
Box 8: Request Letters	10
Box 13: Request Letters	6
RI Applications	17
RI Renewal	121
Conformity Packages	121
Retention of RI Conformity Packages	121
Import Eligibility Petitions	16
Requests to Manufacturers Regarding Compliances of Canadian-Market Vehicles with FMVSS No. 138.	20
Total	6,262,908

Frequency: All information collections discussed in this document are collected on an as-needed basis except for the annual reporting requirement for Registered Importers.

Estimated Total Annual Burden Hours: To calculate the total burden hours associated with this information collection request, NHTSA estimated (1) the total number of declarations that will be filed, the total number of each type of supplemental document that will be filed with declarations, the total number of requests that will be made and, as applicable, responded to obtain documentation needed to import vehicle and equipment; and (2) the number of submissions for different collections that are part of the RI program. NHTSA then multiplied the total number of submissions by the average estimated burden time for each type of submission.

1. Declarations and Supplemental Documentation To Accompany Declarations

As stated above, NHTSA estimates the number of entries to be made with HS–7 declarations in each of the next three years to be 2,200,000 under Box 1; 8,100,000 under Box 2A; 2,600 under Box 2B; 300,120 under Box 3; 12,000 under Box 4; 220 under Box 5; 40 under Box 6; 10,500 under Box 7; 1,200,000 under Box 8; 90,000 under Box 9; 70 under Box 10; 1,630,000 under Box 11, 130 under Box 12; and 7 under Box 13. Therefore, NHTSA estimates that there will be a total of 13,845,807 entries made in each of the next three years.

NHTSA estimates that it takes approximately 5 minutes to fill out each declaration not including any supplemental information. The number of entries, however, is not equal to the number of declarations filed because multiple entries can be made using a single declaration form. This practice is most common for entries of vehicles and equipment under Box 2A. NHTSA estimates that the overwhelming majority of vehicles entered under Box 2A are imported by original manufacturers. These manufacturers do not file a separate HS–7 Declaration form for each conforming vehicle or item of equipment they import under Box 2A. Instead, they furnish NHTSA with a single declaration form, on a monthly basis, to which they attach a list of all vehicles, identified by make, model, model year, and vehicle identification number (VIN) and equipment, that were imported under Box 2A during that month. In this manner, it is not unusual for a single HS–7 Declaration form to be filed with the agency to cover the entry of many thousands of vehicles. NHTSA assumes that 90 percent of the vehicles imported and equipment under Box 2A will be imported in this manner, and that a manufacturer will, on average, report the entry of 5,000 vehicles or items of equipment on a single Declaration form. For the estimated 8,100,000 entries that will be made in the next three years, NHTSA estimates that 90% or 7,290,000 will be made by large manufacturers who will submit one declaration for, on average, 5,000 vehicles or items of equipment. Therefore, for these 7,290,000 entries, NHTSA estimates that there will only be 1,458 HS–7 declarations filed 7,290,000 ÷ 5,000). Accordingly, NHTSA estimates that there will be 811,458 Box 2A declarations filed in each of the next three years (1,458 + 810,000).

For all other entries, NHTSA estimates that individual declaration forms will be used, and it will take approximately 5 minutes to complete each declaration form, not including additional information. Accordingly, NHTSA estimates that 6,257,145 individual declaration forms will be filed and the burden with the declarations will be 521,429 hours ((6,257,145 × 5 minutes) ÷ 60 min./hr. = 521,228.75 hrs.). However, some declarations are estimated to take a little

longer if they require the submission of any supplemental documentation.

As explained above, in additional to the HS–7 Declaration Form, importations of some motor vehicles and motor vehicle equipment require supplementation documentation to be submitted with the HS–7 Form at the time of entry. The required supplemental documentation includes: copies of manufacturer's confirmation letters for entries under Box 2B; copies of contracts with registered importers, as applicable for entries under Box 3; copies of official orders for entries under Box 6; statements made by certifying manufacturers or copies of permissions letters from NHTSA, as applicable for entries under Box 7; substantiating statements accompanying entries under Box 8; copies of incomplete vehicle documents for vehicles or a statement from the manufacturer for equipment imported under Box 9; copies of NHTSA permission letters for entries under Box 10; copies of official orders for entries under Box 12; and copies of NHTSA permission letters for entries under Box 13. Although many entries require submission of supplemental documentation, production of many of these documents is not expected to increase burden on respondents beyond the burden associated with the declaration because it merely requires production of documents the importer already has or NHTSA or another entity has provided the document, such as when entry must be accompanied by a NHTSA permission letter and the burden for requesting the document is accounted elsewhere. Of these supplemental documents, only the following are expected to increase burden associated with completing the HS–7 Declaration: statements made by certifying manufacturers for entries under Box 7 and substantiating statements accompanying entries under Box 8.

NHTSA estimates that in each of the next three years there will be approximately 10,000 entries under Box 7 for vehicles imported for research, investigations, demonstrations, or training by manufacturers of motor vehicles that are certified as complying with all applicable FMVSS. As explained above, these entries are required to be accompanied by a statement from the manufacturer. NHTSA estimates that preparation of this accompanying statement will take no more than 5 minutes. Therefore, NHTSA estimates the total burden associated with preparing accompanying statements for Box 7 entries to be 833 hours ((10,000 entries × 5 minutes) ÷ 60 min./hr. = 833.33 hours)).

NHTSA estimates that in each of the next three years there will be approximately 1,200,000 entries made under Box 8 for vehicles not originally manufactured for use on public roads and equipment that is not for use in motor vehicles. Entries under Box 8 must be accompanied by a statement substantiating that the vehicle was not manufactured primarily for use on public roads and is not a motor vehicle subject to the FMVSS or a statement substantiating that the equipment item is not a system, part, or component of a motor vehicle and therefore not an item of motor vehicle equipment. NHTSA estimates that preparation of this accompanying statement will take no more than 5 minutes. Therefore, NHTSA estimates the total burden associated with preparing accompanying statements for Box 8 entries to be 100,000 hours (1,200,000 entries × 5 minutes) ÷ 60 min./hr. = 100,000 hours)).

Accordingly, NHTSA estimates that the total burden associated with the estimated 6,257,145 HS–7 declarations that will be submitted each year is approximately 622,262 hours (521,428.75 + 833.33 hours +100,00 hours = 622,262.08 hours).

2. Requests for Manufacturer Confirmation Letters for 2B Entries

As explained above, before certain vehicles or equipment may be imported into the U.S. the importer must obtain permission from NHTSA or obtain documentation from the vehicle or equipment's manufacturer. To account for the burden associated with these requests, NHTSA has estimated the number of each requests that will be made in each of the next three years and, as applicable, the burden associated with responding to those requests. The following are different information collections associated with obtaining documentation required before importing vehicles into the U.S.: requests and responses to requests for manufacturer's confirmation letters for entries under Box 2B; requests for permission from NHTSA for entries under Box 7; requests for confirmation from NHTSA that a vehicle qualifies for entry under Box 8; requests for permission from NHTSA for entries under Box 10; and requests for permission from NHTSA for entries under Box 13. As explained above, NHTSA is requesting approval for a new information collection that will cover requests for permission for entry under Box 7 and 10 and, therefore, those requests will no longer be covered by this ICR.

As described above, NHTSA estimates that there will be 2,600 entries under Box 2B in each of the next three years. Accordingly, NHTSA also estimates that importers will send 2,600 requests to manufacturers for confirmation that the vehicle was certified as conforming to all applicable Canadian motor vehicle safety standards and conforms with all applicable U.S. Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards (or that it conforms to all such standards except for the labeling requirements of Standard Nos. 101 and 110 or 120, and/or the specifications of Standard No. 108 relating to daytime running lamps). NHTSA estimates that submitting such responses, which include information about the importer and the vehicle, will take no more than 5 minutes. Therefore, NHTSA estimates the total burden associated with requesting manufacturer confirmation letters to be submitted with Box 2B entries will be 217 hours ((2,600 requests × 5 minutes) ÷ 60 min./hr. = 216.66 hours)).

3. Confirmation Letters From Manufacturers for Box 2B Entries

NHTSA also estimates that manufacturers will send 2,600 confirmation letters in response to requests for confirmation that the vehicle was certified as conforming to all applicable Canadian motor vehicle safety standards and conforms with all applicable U.S. Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards (or that it conforms to all such standards except for the labeling requirements of Standard Nos. 101 and 110 or 120, and/or the specifications of Standard No. 108 relating to daytime running lamps). NHTSA estimates that responding to such requests will take no more than 10 minutes. Therefore, NHTSA estimates the total burden associated with requesting and producing manufacturer confirmation letters to be submitted with Box 2B entries will 433 hours ((2,600 requests × 10 minutes) ÷ 60 min./hr. = 433.33 hours)).

4. Box 8 Request Letters

NHTSA estimates that in each of the next three years, NHTSA will receive approximately 10 requests from importers for letters from NHTSA confirming that the vehicle they seek to import qualifies under Box 8 as a vehicle that was not manufactured primarily for use on the public roads. NHTSA estimates that it will take approximately 5 minutes to fill out the form to request such confirmation from

NHTSA. Therefore, NHTSA estimates that the burden associated with Box 8 requests will be 1 hour per year. ((10 requests × 5 minutes) ÷ 60 min./hr. = .83 hours)).

5. HS–474 Forms To Accompany Box 3 Entries

NHTSA estimates that in each of the next three years there will be approximately 310,120 entries made under Box 3 that will be accompanied by HS–474 Forms. NHTSA estimates that completion of the HS–474 Form takes approximately 6 minutes. Therefore, the burden associated with completion of the forms is estimated to be 30,012 hours per year (300,120 HS–474 Forms × 6 minutes) ÷ 60 min./hr. = 30,012 hours)).

6. Box 13 Request Letters

NHTSA estimates that in each of the next three years, NHTSA will receive approximately 6 requests from RIs for permission to import a vehicle under Box 13 that does not conform to all applicable FMVSS and Bumper Standards conforms to applicable Federal Theft Prevention Standards and that RI has petitions or will petition NHTSA for a determination that the vehicle is eligible for importation. NHTSA estimates that submitting each request will take approximately 5 minutes and the total burden associated with submitting Box 13 requests will be 1 hour per year. (6 Requests Letters × 5 minutes) ÷ 60 min./hr. = .5 hour)).

7. Registered Importer Applications

In order for an entity to gain status as a RI, it must first submit an application package to NHTSA. NHTSA estimates that it will take up to ten hours to compile and assemble the material needed to support a single application. As explained above, NHTSA estimates that it will receive 17 applications in each of the next three years from entities seeking to become RIs. Therefore, the agency estimates that 170 hours will be expended in this activity for each of the next three years (17 applications × 10 hours).

8. Registered Importer Annual Reports

Once an entity becomes a RI, it must submit annual reports to retain its status as an RI. NHTSA estimates that 121 RIs will submit the required information each year and estimates that each submission will take approximately 2 hours. Therefore, NHTSA estimates the total burden associated with RI renewal reporting to be 242 hours (121 renewals × 2 hours).

9. Registered Importer Notification of Business Change

Each RI must ensure that it notifies NHTSA in writing of any changes that occur in the information which was submitted in its registration application not later than the 30th calendar day after the change. NHTSA estimates that RIs will submit a total of 75 such notifications in each of the next three years, and that each submission will take approximately 10 hours. Therefore, NHTSA estimates the total burden associated with notifications of business changes to be 750 hours (75 applications × 10 hours).

10. Conformity Packages

Once an entity becomes an RI, it may begin importing nonconforming vehicles under Box 3. For each vehicle imported under Box 3, the RI must submit a conformity package to NHTSA certifying that the vehicle has been brought into compliance with all applicable Federal motor vehicle safety and bumper standards, supported by photographic and documentary evidence of the modification performed to achieve conformity. Because the Canadian motor vehicle safety standards are identical in most respects to the FMVSS, there are relatively few modifications that need to be performed on a Canadian-certified vehicle to conform it to the FMVSS and the conformity packages that are submitted on these vehicles are considerably less comprehensive than those submitted for vehicles from Europe, Japan, and other foreign markets. The agency estimates that it would take the average RI no more than 30 minutes to collect information for, and assemble, a conformity package for a Canadian-certified vehicle. NHTSA estimates that in each of the next three years, it will receive conformity packages for approximately 300,000 Canadian-market vehicles imported under Box 3. Therefore, NHTSA estimates the burden associated with these conformity packages to be 150,000 hours (300,000 conformity packages × .5 hours).

Generally, more modifications are needed to conform a non-Canadian vehicle to the FMVSS. To properly document these modifications, more information must be included in the conformity package for a non-Canadian vehicle than is required for a Canadian-certified vehicle. The agency estimates that it would take an RI approximately twice as long, or roughly one hour, to compile information for, and assemble, a conformity package for a typical non-Canadian vehicle. NHTSA estimates that in each of the next three years, it will receive conformity packages for approximately 120 vehicles imported under Box 3 that are not Canadian-market vehicles. Therefore, NHTSA estimates the burden associated with these conformity packages to be 120 hours (120 conformity packages × 1 hour).

Accordingly, NHTSA estimates the total burden associated with conformity packages is approximately 150,120 hours (150,000 hours + 120 hours).

11. Retention of Conformity Packages

Beginning in March of 2020, 100% of conformity packages submitted to the agency have been submitted electronically. The additional burden imposed by a requirement to store electronic records that were already required to be prepared electronically is negligible.

12. Eligibility Petitions

RIs that are interested in importing a particular model of vehicle under Box 3 that is not currently eligible to import may petition NHTSA for a determination that the vehicle is eligible for importation because it can be modified to meet the Federal standards. The agency estimates that it would take the typical RI that petitions the agency roughly two hours to complete the paperwork associated with the submission of a petition for a vehicle that has a substantially similar U.S.-certified counterpart, and roughly twice as long, or four hours, to complete the paperwork associated with the submission of a petition for a vehicle that lacks a substantially similar U.S.-certified counterpart. NHTSA estimates that in each of the next three years it will receive 13 import eligibility petitions for vehicles that have a substantially similar U.S.-certified counterpart and 3 petitions for vehicles that do not have a substantially similar U.S.-certified counterpart. Therefore, NHTSA estimates the burden associated with these petitions to be 38 hours, consisting of 26 hours (13 petitions × 2 hours) and 12 hours (3 petitions × 4 hours) for vehicles with a substantially similar counterpart and for those without, respectively.

13. Requests to Manufacturers Regarding Compliance With FMVSS No. 138

As explained above, to assist Registered Importers in selecting vehicles that are eligible for importation, NHTSA requests information from the 20 major manufacturers that manufacture vehicles certified to the Canadian motor vehicle safety standards and offer

substantially similar vehicles in the United States about compliance with FMVSS No. 138. These manufacturers are asked to identify, by model and model year, such vehicles that were not originally manufactured with a TPMS that met FMVSS No. 138, or for which a FMVSS No. 138-compliant TPMS was only available as optional equipment. NHTSA estimates that it takes each of these manufacturers two hours to prepare the requested list, resulting in an annual expenditure for the entire industry of 40 hours to comply with the agency's requests.

Labor Costs

NHTSA estimates the annual labor cost associated with the burden hours for the collections using an appropriate average hourly labor rate for clerical personnel, primarily licensed customs brokers, who will be filing the HS–7 Declaration and related documentation and accounting for non-wage compensation. NHTSA calculated a loaded hourly labor cost by (1) using the average hourly wage of $38.10 for ''Business Operations Specialists, All Other,'' Occupation Code 13–1199, published by the Bureau of Labor Statistics,[4] (2) dividing by 0.704 (70.4%) to obtain the total compensation rate for private industry workers,[5] and (3) multiplying by the estimated labor hours. Therefore, the hourly burden cost associated with the burden hours is estimated to be $54.10 and the total labor cost associated with the 798,534 hours is $43,216,664.59. The estimated burden hours and associated labor costs are shown in Table 2 below.

TABLE 2—ESTIMATED LABOR HOURS AND ASSOCIATED LABOR COSTS

Information collection	Number of responses (number of respondents)	Average burden per response	Hourly labor cost	Total labor cost per response	Total labor cost	Total burden hours
HS–7 Declaration	6,257,145 (6,257,145)	5.97 minutes	$54.12	$5.38	$33,676,824.00	622,262
Requests for Manufacturer Confirmation Letters for Box 2B Entries.	2,600 (2,600)	5 minutes	54.12	4.52	11,744.04	217
Confirmation Letters from Manufacturers for Box 2B Entries.	2,600 (2,600)	10 minutes ..	54.12	9.01	23,433.96	433
Box 8 Request Letters	10 (10)	5 minutes	54.12	5.41	54.12	1
HS–474 Forms	300,120 *(121)*	5 minutes	54.12	4.51	1,353,541.20	25,010
Box 13 Request Letters ..	6*(6)*	5 minutes	54.12	9.02	54.12	1
Registered Importer Applications.	17 *(17)*	10 hours	54.12	541.20	9,200.40	170
Registered Importer Annual Reports.	121 *(121)*	2 hours	54.12	108.24	13,097.04	242
Registered Importer Notification of Business Changes.	75 *(121)*	10 hours	54.12	541.20	40,590	750
RI Conformity Packages	300,120 (*121)*	30 minutes ..	54.12	27.07	8,124,494.40	150,120
Retention of RI Conformity Packages.	121 *(121)*	0 minutes	0.00	0.00	0.00	0
RI Eligibility Petitions	16 *(16)*	2.38 hours ..	54.12	128.48	2,056.56	38
Requests to Manufacturers Regarding FMVSS No. 138.	20 *(20)*	2 hours	54.12	108.25	2,164.80	40
Total	.....	.....	.....	.....	43,257,254.64	799,284

Estimated Total Annual Burden Cost: Other than the cost of the burden hours, the only additional costs associated with this information collection are the annual cost to the industry for the storage of records pertaining to the nonconforming vehicles that each RI imports into the United States. RIs are required under 49 CFR 592.6(b) to maintain and retain certain specified records for each motor vehicle for which it furnishes a certificate of conformity to NHTSA, for a period of 10 years from the vehicle's date of entry. As described in the regulations, those records must consist of ''correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator.'' The regulations further specify that the records to be retained must include (1) a copy of the HS–7 Declaration Form furnished for the vehicle at the time of importation, (2) all vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than RIs, and correspondence between the RI and the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity to NHTSA, (3) the last known name and address of the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity, and the vehicle identification number (VIN) of the vehicle, and (4) records, both photographic and documentary, reflecting the modifications made by the RI, which were submitted to NHTSA to obtain release of the conformance bond furnished for the vehicle at the time of importation. See 49 CFR 592.6(b)(1) through (b)(4). The latter records are referred to as a ''conformity package.'' Most conformity packages submitted to the agency covering vehicles imported from Canada are comprised of approximately six sheets of paper (including a check-off sheet identifying the vehicle and the standards that it was

[4] May 2021 National Occupational Employment and Wage Estimates, United States. *Business Operations Specialists, All Other, Occupation Code 13–1199. https://www.bls.gov/oes/2021/may/oes_nat.htm.* Accessed May 6, 2022.

[5] See Table 1 at *https://www.bls.gov/news.release/archives/ecec_06172021.pdf.* Accessed May 6, 2020.

originally manufactured to conform to and those that it was modified to conform to, a statement identifying the recall history of the vehicle, a copy of the HS–474 conformance bond covering the vehicle, and a copy of the mandatory service insurance policy obtained by the RI to cover its recall obligations for the vehicle). In addition, most conformity packages include photographs of the vehicle, components that were modified or replaced to conform the vehicle to applicable standards, and the certification labels affixed to the vehicle. Because these records are prepared and submitted electronically, and ultimately stored electronically, there is no additional burden attributable to the recordkeeping requirement.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Issued on July 8, 2022.

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–14938 Filed 7–12–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Definitions of Contributions for Aid of Construction Under Section 118(c)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning definitions of contributions for aid of Construction Under Section 118(c).

DATES: Written comments should be received on or before September 12, 2022 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, or by email *pra.comments@irs.gov.* Include 1545–1639 or Aid of Construction Under Section 118(c) in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Aid of Construction Under Section 118(c).

OMB Number: 1545–1639.

Regulation Project Number: TD 8936.

Abstract: This regulation provides guidance with respect to section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Current Actions: There is no change to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 300 hrs.

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. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2022.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2022–14949 Filed 7–12–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on the Enrollment Application To Practice Before the IRS

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning application for enrollment to practice before the Internal Revenue Service.

DATES: Written comments should be received on or before September 12, 2022 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, or by email *pra.comments@irs.gov.* Include 1545–0950 or Application for Enrollment to Practice Before the Internal Revenue Service in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment to Practice Before the Internal Revenue Service.

OMB Number: 1545–0950.

Form Number: Form 23.

Abstract: Form 23 must be completed by those who desire to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment.

Current Actions: There are no changes to Form 23.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,429.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,715 hrs.

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. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2022.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2022–14952 Filed 7–12–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for IRS Notice 97–45

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 Notice 97–45, Highly Compensated Employee Definition.

DATES: Written comments should be received on or before September 12, 2022 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, or by email to *pra.comments@irs.gov.* Include 1545–1550 or Title: Highly Compensated Employee Definition in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, 202–317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Highly Compensated Employee Definition.

OMB Number: 1545–1550.

Notice Number: Notice 97–45.

Abstract: Notice 97–45 provides guidance on the definition of highly compensated employee (HCE) within the meaning of section 414(q) of the Internal Revenue Code, as simplified by section 1431 of the Small Business Job Protection Act of 1996, including an employer's option to make a top-paid group election under section 414(q)(1)(B)(ii). The notice requires qualified retirement plans that contain a definition of HCE to be amended to reflect the statutory changes to section 414(q).

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 218,683.

Estimated Time per Response: 18 minutes.

Estimated Total Annual Burden Hours: 65,605.

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. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2022.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2022–14951 Filed 7–12–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0021]

Agency Information Collection Activity: VA Loan Electronic Reporting Interface (Valeri) System and Title Requirements for Conveyance of Real Property to the Secretary

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. 2900–0021.

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. 2900–0021'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 CFR 36.4338(a).

Title: VA Loan Electronic Reporting Interface (VALERI) System and Title Requirements for Conveyance of Real Property to the Secretary.

OMB Control Number: 2900–0021.

Type of Review: Revision.

Abstract: VA is submitting this modification to address information collection in the event loss mitigation efforts are unsuccessful and a VA-guaranteed loan goes into foreclosure. Statutory requirements for conveyance of properties to the Secretary are found in chapter 37 of title 38, United States Code. The implementing regulations are found in part 36 of title 38, Code of Federal Regulations (CFR). In 38 CFR 36.4323, titled ''Election to convey security'', VA explains that each conveyance or transfer of real property to the Secretary pursuant to this section shall be acceptable if:

The holder thereby covenants or warrants against the acts of the holder and those claiming under the holder (*e.g.,* by special warranty deed); and

It vests in the Secretary or will entitle the Secretary to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated.

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 insert citation date: 87 FR 89 on May 9, 2022, pages 27700 and 27701.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,027 hours.

Estimated Average Burden per Respondent: 11 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 16,509.

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. 2022–14909 Filed 7–12–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Agency Information Collection Activity: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 12, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0116'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

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. 2900–0116'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1505 and 5313.

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution (VA Form 21–4193).

OMB Control Number: 2900–0116.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21–4193 is used to gather information from penal institutions about incarcerated VA beneficiaries. When beneficiaries are incarcerated in penal institutions in

excess of 60 days after conviction, VA benefits are reduced or terminated. Without this collection of information, VA would be unable to accurately adjust the rates of incarcerated beneficiaries and overpayments would result.

No substantive changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

Affected Public: State, Local and Tribal Governments.

Estimated Annual Burden: 1,999 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,997.

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. 2022–14966 Filed 7–12–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Agency Information Collection Activity Under OMB Review: State or Tribal Organization Application for Interment Allowance (Under 38 U.S.C. Chapter 23)

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. 2900–0565.

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. 2900–0565'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 2302 and 2303.

Title: State or Tribal Organization Application for Interment Allowance (Under 38 U.S.C. Chapter 23); VA Form 21P–530a.

OMB Control Number: 2900–0565.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA) through its Veterans Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. VA Form 21P–530a is used to gather the information required to determine whether a State or Tribal Organization is eligible for interment allowances for eligible Veterans who have been buried in a State Veterans' cemetery or Tribal Trust land. Information is requested by this form under the authority of 38 U.S.C. 2302 and 2303.

The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 25360 on April 28, 2022, page 25360.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,795 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 33,544.

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. 2022–14910 Filed 7–12–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Tribal and Indian Affairs, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2., that the Advisory Committee on Tribal and Indian Affairs will meet on August 15, 16 and 17, 2022. The meeting session will begin and end as follows:

Date	Time
August 15, 2022	8:30 a.m.–5:00 p.m.—Mountain Standard Time (MST).
August 16, 2022	8:30 a.m.–5:00 p.m. MST.
August 17, 2022	8:30 a.m.–5:00 p.m. MST.

Sessions are open to the public (virtually), except during the time the Advisory Committee is conducting tours of VA facilities, participating in off-site events, and site visits. Tours of VA facilities are closed, to protect Veterans' privacy and personal information, in accordance with 5 U.S.C 552b(c)(6).

The purpose of the Committee is to advise the Secretary on all matters relating to Indian Tribes, tribal organizations, Native Hawaiian organizations, and Native American Veterans. This includes advising the Secretary on the administration of healthcare services and benefits to American Indians and Alaska Native Veterans; thereby assessing those needs and whether VA is meeting them. The Advisory Committee on Tribal and Indian Affairs is a newly established FACA Committee. The Committee provides advice and guidance to the Secretary of Veterans Affairs on all matters relating to Indian tribes, tribal organizations, Native Hawaiian organizations, and Native American Veterans.

On August 15, 2022, from 8:30 a.m. to 11:30 a.m. MST, the Committee will meet in open session with key staff from the Albuquerque Veterans Benefits Administration (VBA), held at the Albuquerque VBA Regional Office, 500 Gold Ave. SW, Albuquerque, NM 87102. The agenda will include opening remarks from the Committee Chair, Executive Sponsor, and other VA officials. There will be updates from the Benefits & NCA Subcommittee for discussion. From 1:30 p.m. to 5:00 p.m. MST, the Committee will convene with closed tour of the Santa Fe National Cemetery and New Mexico State Department of Veterans Affairs, and Santa Fe Indian Hospital.

On August 16, 2022, from 8:30 a.m. to 11:30 a.m. MST, the Committee will convene at the Albuquerque VBA Regional Office, and receive updates from the Administrative Subcommittee for discussion. From 11:30 a.m. to 12:00 p.m. there will be Public Comment from those public members who have provided a written summary. From 1:30 p.m. to 5:00 p.m. MST, the Committee will convene with closed tour of the Albuquerque VBA site visits.

On August 17, 2022, from 8:30 a.m. to 11:30 a.m. MST, the Committee the Committee will convene at the Albuquerque VBA Regional Office and receive updates from the Health Subcommittee for discussion. The committee will hold open discussion on topics relevant to the Committee and address follow-up and action items including dates for next meeting. From 1:30 p.m. to 5:00 p.m. MST, the Committee will convene with closed tour of the VA Medical Center, Indian Health Service Albuquerque Indian Hospital and the First Nations Community HealthSource.

The meetings are open to the public and will be recorded. Members of the public can attend the meeting by joining the WebEx meeting at the link below. The link will be active from 8:30 a.m. to 11:30 a.m. (MST) daily, August 15–17, 2022.

Meeting Link: https://veteransaffairs.webex.com/veteransaffairs/onstage/g.php?MTID=e2f851db6165e47193fd753b4c16c0eb5.

Individuals who speak are invited to submit a 1–2 page summary of their comments no later than August 5, 2022, for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. David Clay Ward, at *david.ward@va.gov.* Any member of the public seeking additional information should contact Mr. David Clay Ward at 202–461–7445.

Dated: July 7, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–14854 Filed 7–12–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Wednesday,

No. 133 July 13, 2022

Part II

Department of Education

34 CFR Parts 600, 668, 674, et al.

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 674, 682, and 685

[Docket ID ED–2021–OPE–0077]

RIN 1840–AD53, 1840–AD59, 1840–AD70, 1840–AD71

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program.

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) covers student loans and affordability issues. This rulemaking specifically discusses issues involving loans under the William D. Ford Direct Loan (Direct Loan) Program, the Federal Perkins Loan (Perkins) Program, and the Federal Family Education Loan (FFEL) Program. The Secretary proposes to amend the regulations governing seven topics related to student loans administered by the U.S. Department of Education. First, we propose to amend the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to establish a new Federal standard and process for determining whether a borrower has a defense to repayment on a loan. We also propose to prohibit the use of certain contractual provisions regarding dispute resolution processes by participating institutions, and to require certain notifications and disclosures by institutions regarding their use of arbitration. Additionally, we propose to amend the Perkins, Direct Loan, and FFEL Program regulations to improve the process for granting total and permanent disability (TPD) discharges by eliminating the income monitoring period and expanding allowable documentation allowing additional health care professionals to provide a certification that a borrower is totally and permanently disabled. We further propose to amend the closed school discharge provisions in the Perkins Loan, Direct Loan, and FFEL programs to expand borrower eligibility for automatic discharges and eliminate provisions pertaining to reenrollment in a comparable program. We further propose to amend the Direct Loan and FFEL regulations to streamline the regulations governing false certification discharges. We propose to amend the Direct Loan regulations to eliminate interest capitalization in instances where it is not required by statute. Finally, we propose to amend regulations governing Public Service Loan Forgiveness (PSLF) in the Direct Loan program to improve the application process, and to clarify and expand definitions for full-time employment, qualifying employers, and qualifying monthly payments. The proposed changes would bring greater transparency and clarity and improve the administration of Federal student financial aid programs to assist and protect students, participating institutions, and taxpayers.

DATES: We must receive your comments on or before August 12, 2022.

ADDRESSES: For more information regarding submittal of comments, please see **SUPPLEMENTARY INFORMATION**. Comments must be submitted via the Federal eRulemaking Portal at *Regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *Regulations.gov*, please contact Mr. Jean-Didier Gaina, U.S. Department of Education, 400 Maryland Ave. SW, Room 2C172, Washington, DC 20202 or by phone at (202) 453–7551 or by email at *jean-didier.gaina@ed.gov*.

Federal eRulemaking Portal: Please go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under ''FAQ.''

FOR FURTHER INFORMATION CONTACT: For assistance to individuals with disabilities for reviewing the rulemaking record, contact Valerie Lefor at (202) 453–7724 or *valerie.lefor@ed.gov.* For further information related to interest capitalization, contact Vanessa Freeman at (202) 453–7378 or by email at *vanessa.freeman@ed.gov.* For further information related to borrower defenses or pre-dispute arbitration, contact Rene Tiongquico at (202) 453–7513 or by email at *rene.tiongquico@ed.gov.* For further information related to TPD, closed school, and false certification discharges, contact Brian Smith at (202) 453–7440 or by email at *brian.smith@ed.gov.* For further information related to PSLF, contact Tamy Abernathy at (202) 453–5970 or by email at *tamy.abernathy@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Submission of Comments

The Department will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department will not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on *www.regulations.gov* for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to link the information to the third party. If your comment refers to a third-party individual, to help ensure that your comment is posted, please consider submitting your comment anonymously to reduce the chance that information in your comment about a third party could be linked to the third party. The Department will also not make comments that contain threats of harm to another person or to oneself available on *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Executive Summary

Purpose of This Regulatory Action: College affordability and student loan debt have been significant challenges for many Americans. Student loan debt has

risen over the past 10 years as student loan repayment has slowed, while the inability to repay student loan debt has been cited as a major obstacle to entry into the middle class.[1]

This NPRM proposes several significant improvements to existing programs authorized under the Higher Education Act of 1965 (HEA), 20 U.S.C. 1001, *et seq.,* that grant discharges to borrowers who meet specific eligibility conditions. Despite the presence of these discharge authorities for years, if not decades, the Department is concerned that too many borrowers have been unable to access loan relief through these opportunities. In some situations, this has been due to regulatory requirements that have created unnecessary or unfair burdens for borrowers.

These proposed changes relate to discharges available to borrowers in the three major Federal student loan programs: Direct Loans, Federal Family Education Loan (FFEL), and Perkins Loans. The most significant effects would be in the Direct Loan program, which has been the predominant source of all Federal student loans since 2010. In this program the Department makes loans directly to the borrower and then contracts with private companies known as student loan servicers to manage the borrower's repayment experience on behalf of the Department. Several of the components of these proposed regulations, such as interest capitalization, borrower defense to repayment, the ban on the use of mandatory pre-dispute arbitration, the prohibition on class action waivers, and the Public Service Loan Forgiveness program are only related to Direct Loans. Other provisions, such as closed school discharge, total and permanent disability discharges, and false certification discharges, would affect Direct Loans as well as loans previously issued under the FFEL Program and the Perkins Loan Program.[2] In the FFEL program, private lenders issue Federal student loans using their own funds, then receive both a Government guarantee against most of the losses in the case of default and quarterly Federal subsidies. In the Perkins program, institutions of higher education (institutions) issue Federal student loans using a combination of Federal and institutional funds.

Borrower Defense to Repayment, Arbitration, and Class Action Waivers

The proposed regulations for the borrower defense to repayment program, which applies only for Direct Loan borrowers, would expand the current basis for a borrower to receive a discharge for loans obtained to attend a particular institution. As proposed, a borrower defense discharge would occur when the Department determines an institution engaged in substantial misrepresentations or substantial omissions of fact, breached a loan contract, engaged in aggressive academic recruitment, or was subject to a judgment based on Federal or State law in a court or administrative tribunal of competent jurisdiction for any of the above behaviors. The proposed changes to the regulations governing borrower defense discharges are designed to further protect student loan borrowers from the financial effects of certain predatory practices. Where a borrower defense discharge is warranted, the proposed regulations would also enhance the Department's recoupment authorities, making it easier for the Department to hold institutions accountable for costs, reducing the financial impact to taxpayers. It would also include a process for the Department to recoup the cost of these discharges from institutions. The proposed changes are in direct response to numerous instances observed by the Department over time in which students borrow to attend an institution only to find that the institution's promises were untrue, leaving the borrower with a loan for a substandard education and often lacking the ability to obtain the employment they were promised. The proposed changes to the borrower defense regulations would apply to both public and private institutions. To date, much of the concerning evidence of unacceptable institutional practices comes from private for-profit colleges and universities; a large share of whose enrollment is Black students, Latino students, students who are older, students who are working full-time while enrolled in college, and students who did not enroll in postsecondary education directly from high school. However, the regulations would not be limited to only private for-profit schools but would cover conduct at public and private nonprofit institutions as well.

As proposed, the regulations would also prevent institutions wishing to participate in title IV programs from requiring either the use of mandatory arbitration or waiver of class action lawsuits, including prohibiting putting such requirements within the loan contract for a Direct Loan.

Interest Capitalization

The proposed regulations would eliminate most interest capitalization on Direct Loans by removing the current regulatory provisions that require capitalization under circumstances when capitalization is not required by statute.[3] As proposed, accrued interest would no longer be capitalized when: a borrower enters repayment; upon the expiration of a period of forbearance; annually after periods of negative amortization under the alternative repayment plan or the ICR plan; when a borrower defaults on a loan; when a borrower who is repaying under the income-driven repayment Pay as You Earn (PAYE) plan fails to recertify income or chooses to leave the plan; and when a borrower who is repaying under another income-driven repayment the Revised Pay As You Earn (REPAYE) plan fails to recertify income or leaves the plan. These proposed changes would decrease the rate at which a borrower's principal loan balance grows over time.

Public Service Loan Forgiveness

The Public Service Loan Forgiveness (PSLF) program authorizes Direct Loan borrowers engaged in public service to receive a discharge of remaining loan balances after making the equivalent of 10 years of qualifying payments.[4] The Department, however, is concerned that the current regulations around this program are too restrictive, particularly in the requirements for a payment to qualify toward forgiveness. For instance, the Limited PSLF Waiver announced in October 2021 has helped more than 1 million borrowers receive on average an additional year of credit toward PSLF by addressing many of the same challenges in regulations that these proposed regulations would seek to fix. Accordingly, the regulations propose to improve the PSLF application process and allow borrowers to receive credit toward PSLF for months during which they are in certain deferment and forbearance periods while working for a qualified employer.

[1] R. Chakrabarti, N. Gorton, and W. van der Klaauw, ''Diplomas to Doorsteps: Education, Student Debt, and Homeownership,'' Federal Reserve Bank of New York *Liberty Street Economics* (blog), April 3, 2017, *http://libertystreeteconomics.newyorkfed.org/2017/04/diplomas-to-doorsteps-education-student-debt-and-homeownership.html.*

[2] No new student loans are currently issued under either the FFEL and Perkins Loan programs. There have been no new FFEL loans issued since June 30, 2010, and the Perkins Loan program stopped issuing new loans on September 30, 2017.

[3] Currently, accrued interest is added to the outstanding principal balance and the new principal balance is used for future accumulation of interest.

[4] Section 455(m) of the HEA.

Total and Permanent Disability Discharges

The Higher Education Act provides for borrowers to receive a student loan discharge if they have a total and permanent disability. The proposed regulations would allow more borrowers who meet the statutory requirements for one of these discharges to receive a discharge by allowing additional categories of disability determinations by the Social Security Administration to qualify for a discharge. They would also allow additional types of medical professionals to certify that a borrower has a total and permanent disability. The regulations would also allow more borrowers who received a discharge to avoid having their loans reinstated by removing the 3-year income monitoring period that currently exists in regulation. The net effect of these changes would be a program that is simpler for eligible borrowers to access and navigate.

Closed School Discharges

Borrowers whose college closes while they are enrolled or shortly after they have left can receive a closed school discharge so long as they have not graduated. The Department proposes to clarify and streamline the eligibility requirements for closed school discharges by providing more automatic discharges for borrowers within one year of their college closing. The proposed regulations would also clarify existing rules that limit discharges for borrowers who enroll in a comparable program to only apply in instances where a borrower accepts and completes an approved teach-out program.

False Certification Discharges

Borrowers are eligible for a false certification discharge under the HEA if the institution that certifies the borrower's eligibility for the loan does so under false pretenses, such as when the borrower did not have a high school diploma or equivalent and did not meet alternative criteria; when the borrower had a status that disqualified them from meeting legal requirements for employment in the occupation for which they are training; or if the institution signed the borrower's name without authorization. A confusing web of regulations has established different standards and processes for false certification discharges depending on when the loan was disbursed. Furthermore, some borrowers who may be eligible for a discharge have not received it because the requirements are difficult to navigate. The proposed regulations would streamline the false certification discharge process for student loan borrowers by establishing standards that apply to all claims, regardless of when the loan was first disbursed, and providing for a group discharge process.

Summary of the Major Provisions of This Regulatory Action

The proposed regulations would—

- Amend the Direct Loan regulations to establish a new Federal standard for borrower defense claims applicable to applications received on or after July 1, 2023. Applications pending before the Secretary on July 1, 2023 would also be considered under the proposed new standard. In addition, the NPRM would expand the existing definition of misrepresentation, provide an additional basis for a borrower defense claim based on aggressive and deceptive recruitment practices, and allow claims based on State law standards.
- Establish processes for group borrower defense claims that may be formed in response to evidence provided by State requestors or based on prior Secretarial Final Actions identifying conduct that could lead to an approved borrower defense claim under the Department's regulations if application were made. Secretarial Final Actions would include, but not be limited to, program reviews, suspension, or termination actions.
- Stop interest accrual on borrowers' loans 180 days from the initial grant of forbearance or stopped collections if the Department does not make a determination on the borrower defense claim within certain timeframes. Interest accrual would resume once a decision on the claim is made.
- Establish a reconsideration process for review of denied borrower defense claims.
- Require schools to disclose publicly and notify the Secretary of judicial and arbitration filings and awards pertaining to a borrower defense claim.
- Prohibit schools that wish to participate in title IV programs from requiring borrowers to agree to mandatory pre-dispute arbitration agreements or waiver of class action lawsuits.
- Eliminate interest capitalization on Direct Loans where such capitalization is not required by statute to address growth in principal balances.
- Modify the Perkins, FFEL, and Direct Loan regulations to streamline the application process for a TPD discharge by expanding the Department's use of Social Security Administration (SSA) codes beyond ''Medical Improvement Not Expected'' when deciding if a borrower qualifies for TPD discharge.
- Revise the Perkins, FFEL, and Direct Loan regulations to eliminate the 3-year post-discharge income monitoring period for borrowers eligible for TPD discharge to allow borrowers to retain their discharges to retain their discharges without unnecessary paperwork burden.
- Allow borrowers to receive a TPD discharge if the onset of their disability as determined by SSA was at least 5 years prior to the application to better align the regulations with statutory requirements for a TPD discharge.
- Expand the list of health professionals who may certify that a borrower is totally and permanently disabled to include licensed nurse practitioners (NPs), physician's assistants (PAs), and clinical psychologists to help borrowers more easily complete the application for a TPD discharge.
- Amend the Perkins, FFEL, and Direct Loan regulations to simplify the closed school discharge process by expanding access to automatic discharges and eliminating the requirement that borrowers who reenroll in a comparable program lose eligibility for a discharge.
- Streamline the FFEL and Direct Loan false certification regulations to provide one set of regulatory standards that would cover all false certification discharge claims.
- Clarify that the Department would rely on the borrower's status at the time the loan was originated for a Direct Loan, and at the time the loan was certified for a FFEL loan, to determine eligibility for a false certification discharge.
- Revise the regulations for PSLF to improve the application process, expand what counts as an eligible monthly payment, expand the definition of ''full-time'' employment, and provide additional clarifying definitions of public service employment to reduce confusion and to clearly establish the definitions of qualifying employment for borrowers.

Please refer to the *Summary of Proposed Changes* section of this NPRM for more details on the above proposals.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis,* the benefits of the proposed regulations include: (1) a clarified process for borrower defense discharge applications assisted by the creation of a single upfront Federal standard to streamline the Department's consideration of applications, while affording institutions an opportunity to respond to allegations contained in borrower

defense claims; (2) increased opportunities for borrowers to seek relief from institutional misconduct by prohibiting the use of mandatory pre-dispute arbitration and class action waivers; (3) improved school conduct and reduced cost to taxpayers, by holding individual institutions financially accountable for borrower defense discharges and deterring misconduct; (4) increased automated discharges for borrowers and additional flexibilities in establishing eligibility for PSLF and other loan discharges; and (5) improved access to and expanded eligibility for, where appropriate, closed school, TPD, and false certification discharges.

Costs to taxpayers in the form of transfers include borrower defense claims that are not reimbursed by institutions; additional relief through closed school, PSLF, TPD, and false certification discharges to borrowers through programs to which they are legally entitled in the HEA; and the foregone interest where capitalizing interest is not required. The paperwork burden associated with reporting and disclosure necessary to ensure compliance with the proposed regulations represents an additional cost to institutions.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov*.

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

Background

The Department seeks to address longstanding concerns regarding Federal student loan debt by improving, streamlining, expanding, and strengthening regulations governing the title IV, HEA programs. Specifically, we propose to modify the regulations for loan discharge programs to strengthen institutional accountability, expand program access for eligible borrowers, and provide more efficient and borrower-friendly processes overall. After analyzing the public's input provided during public hearings and written comments submitted in response to the notice of our intent to establish negotiated rulemaking committees, the Department identified 12 issues for consideration by a negotiated rulemaking committee. These 12 issues are: improving the process for TPD discharges, improving borrower access to closed school discharges, eliminating interest capitalization where it is not required by statute, improving the PSLF application process, clarifying employer eligibility and full-time employment under PSLF, improving the borrower defense adjudication process, strengthening borrower defense post-adjudication processes, ensuring accountability by recovering borrower defense claims from institutions, prohibiting institutional use of pre-dispute mandatory arbitration clauses or class action waivers, improving borrower access to false certification discharges, creating a new income-driven repayment plan, and establishing regulations for institutions to maintain a prison education program. Proposed regulations addressing 10 of the 12 issues listed above are included in this NPRM. Proposed regulations relating to a new income-driven repayment plan and to establish Pell Grant eligibility for incarcerated individuals enrolled in qualifying prison education programs will be published in a future NPRM or NPRMs.

Throughout this NPRM, the Department is proposing changes that would allow the Secretary to use automated application processes for granting discharges as well as leverage other information available to the Secretary, consistent with regulations and statute governing the use and sharing of borrower data. The proposed regulations would also result in more borrowers receiving discharges for which they are eligible by eliminating the need for individual applications where possible, expand eligibility categories for TPD discharges, authorize use of additional documentation for TPD and false certification discharges, clarify eligibility requirements for PSLF and closed school discharges, and expand and clarify ways in which a borrower can establish a borrower defense claim. Increased discharges reduce repayments from borrowers, resulting in a transfer from taxpayers to the affected borrowers. For some discharges, especially borrower defense and closed school discharges, the Department will seek to recover funds from the institutions involved, but that is not expected to reimburse the full amount. Increased discharges are expected to increase the cost of the student loan programs to taxpayers, as detailed in the Regulatory Impact Analysis. Despite these increased costs in the form of transfers, the Department believes the benefits of these changes exceed the costs. The discharge programs addressed by these proposed regulations were all authorized by Congress. The Department does not believe it would be reasonable to presume that when Congress created those programs, it intended to limit the cost of those programs through the types of operational and administrative barriers the Department is proposing to remove in this notice of proposed rulemaking. The proposed changes would thus make these discharge programs more successful at delivering promised benefits under the HEA.

Public Participation

The Department engaged the public in developing this NPRM through analysis of written comments submitted by the public outside of this NPRM comment solicitation, three public hearings, and three negotiated rulemaking sessions.

On May 26, 2021, the Department published a notice in the **Federal Register** (86 FR 28299) announcing our intent to establish multiple negotiated rulemaking committees to prepare proposed regulations on the affordability of postsecondary education, Federal student loans, and institutional accountability.

The Department developed a list of proposed regulatory provisions for the Affordability and Student Loans Committee (Committee) from advice and recommendations submitted by individuals and organizations in testimony at three virtual public hearings held by the Department on June 21, June 23, and June 24, 2021. Transcripts of the public hearings are

available at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rn.*

In addition to oral testimony, the Department accepted written comments on possible regulatory provisions from interested parties and organizations. You may view the written comments submitted in response to the May 26, 2021 **Federal Register** notice on the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2021–OPE–0077. Instructions for finding comments are also available on the site under ''FAQ.''

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary to involve the public in the development of proposed regulations prior to publication for programs authorized by title IV of the HEA. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must establish a negotiated rulemaking committee and subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process, unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

On August 10, 2021, the Department published a notice in the **Federal Register** (86 FR 43609) announcing its intention to establish the Committee to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for the Committee meetings and requested nominations for individual negotiators to serve on the Committee. In the notice, the Department announced the topics that the Committee would address.

The Committee included the following members representing their respective constituencies:

- Accrediting Agencies: Heather Perfetti, Middle States Commission on Higher Education, and Michale McComis (alternate), Accrediting Commission of Career Schools and Colleges.
- Dependent Students: Dixie Samaniego, California State University, and Greg Norwood (alternate), Young Invincibles.
- Departments of Corrections: Anne L. Precythe, Missouri Department of Corrections.
- Federal Family Education Loan Lenders and/or Guaranty Agencies: Jaye O'Connell, Vermont Student Assistance Corporation, and Will Shaffner (alternate), Higher Education Loan Authority of the State of Missouri.
- Financial Aid Administrators at Postsecondary Institutions: Daniel Barkowitz, Valencia College, and Alyssa A. Dobson (alternate), Slippery Rock University.
- Four-Year Public Institutions: Marjorie Dorime-Williams, University of Missouri, and Rachelle Feldman (alternate), University of North Carolina at Chapel Hill.
- Independent Students: Michaela Martin, University of La Verne, and Stanley Andrisse (alternate), Howard University.
- Individuals with Disabilities or Groups Representing Them: Bethany Lilly, The Arc of the United States, and John Whitelaw, (alternate) Community Legal Aid Society.
- Legal Assistance Organizations that Represent Students and/or Borrowers: Persis Yu, National Consumer Law Center, and Joshua Rovenger (alternate), Legal Aid Society of Cleveland.
- Minority-serving Institutions: Noelia Gonzalez, California State University.
- Private Nonprofit Institutions: Misty Sabouneh, Southern New Hampshire University, and Terrence S. McTier, Jr. (alternate), Washington University.
- Proprietary Institutions: Jessica Barry, The Modern College of Design in Kettering, Ohio, and Carol Colvin (alternate), South College.
- State Attorneys General: Joseph Sanders, Illinois Board of Higher Education, and Eric Apar (alternate), New Jersey Department of Consumer Affairs.
- State Higher Education Executive Officers, State Authorizing Agencies, and/or State Regulators: David Tandberg, State Higher Education Executive Officers Association, and Suzanne Martindale (alternate), California Department of Financial Protection and Innovation.
- Student Loan Borrowers: Jeri O'Bryan-Losee, United University Professions, and Jennifer Cardenas (alternate), Young Invincibles.
- Two-year Public Institutions: Robert Ayala, Southwest Texas Junior College, and Christina Tangalakis (alternate), Glendale Community College.
- U.S. Military Service Members and Veterans or Groups Representing Them: Justin Hauschild, Student Veterans of America, and Emily DeVito (alternate), The Veterans of Foreign Wars.
- Federal Negotiator: Jennifer M. Hong, U.S. Department of Education.

The Committee agreed to add an additional constituency for Departments of Corrections during its second session and approved the membership of Anne L. Precythe of the Missouri Department of Corrections. In addition, there were two non-voting advisors available during the negotiations: Rajeev Darolia, advisor on Economic and/or Higher Education Data, University of Kentucky, and Heather Jarvis, advisor on PSLF Issues, co-founder of FosterUs.

The Committee met to develop proposed regulations during the months of October, November, and December 2021.

At its first meeting, the Committee reached agreement on its protocols and reviewed the 12 issues on the agenda. The facilitators reminded the Committee that consensus means that there is no dissent by any member of the Committee and that consensus checks would be taken issue-by-issue.

At its final meeting in December 2021, the Committee reached consensus on the proposed regulations addressing four of the 12 issues on its agenda: eliminating nonstatutory interest capitalizing events, improving the process for TPD discharges, streamlining the processes for false certification discharges, and establishing a framework for Pell Grant Eligibility for Prison Education Programs. This NPRM includes proposed regulations on the first three of these consensus items, as well as the remaining seven items on the Committee's agenda, summarized generally above. Proposed regulations for the fourth item on which consensus was reached, Pell Grant Eligibility for Prison Education Programs will be included in a later NPRM. We will also include Income-Driven repayment, on which consensus was not reached, in a future NPRM.

The proposed regulations also include technical changes to the regulations that are needed to reflect recent amendments to the HEA and to correct certain technical errors. These types of changes are not normally subject to the statutory requirements for negotiated rulemaking and public notice and comment. However, since these changes affect the proposed regulations, the Secretary included them in the material considered by the Committee to ensure that the Committee evaluated the full scope of the proposed changes.

More information on the work of the Committee can be found at: *https://*

www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rn.

Summary of Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect. Any such change not explicitly mentioned in this summary remains open for public comment.

1. Borrower Defense to Repayment

Background: Section 455(h) of the HEA authorizes the Secretary to specify which acts or omissions of an institution of higher education a borrower may assert as a defense to the repayment of a Direct Loan (*i.e.,* a borrower defense). 20 U.S.C. 1087e(h).

The Department first issued borrower defense regulations in 1994, which went into effect in 1995. The 1994 borrower defense regulation at § 685.206(c) provided that any act or omission of the institution attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided, giving rise to a cause of action against the institution under applicable State law (the ''State law standard''), is a ''borrower defense.''

In response to the precipitous closure of Corinthian Colleges, Inc. (Corinthian) in 2015 and the related influx of borrower defense claims submitted by individuals who attended institutions owned by Corinthian, the Department realized the need to update the borrower defense regulations. The Department developed new borrower defense regulations in 2016 that were supposed to take effect in 2017 to establish a more accessible and consistent borrower defense standard (the ''Federal standard''). We issued the final regulations on November 1, 2016, and those final regulations generally applied to borrowers with new loans that were made on or after July 1, 2017. 81 FR 75926 (Nov. 1, 2016). The new Federal standard clarified and streamlined the borrower defense claim process. While the Federal standard only applied to loans issued after July 1, 2017, the borrower defense claim process applied to loans regardless of their disbursement date. The 2016 regulation also enhanced protections for borrowers and improved the Department's ability to hold institutions financially accountable for their actions and omissions that resulted in loan discharges.

In accordance with the master calendar, the 2016 borrower defense regulations were originally scheduled to be effective on July 1, 2017. However, these regulations did not take effect on their original effective date. After a legal challenge was filed, the Department took several actions to delay the effective date. See, *e.g.,* 82 FR 27621 (June 16, 2017). In addition, the Department initiated a new negotiated rulemaking process to develop new regulations, and on July 31, 2018, the Department published a NPRM (2018 NPRM). 83 FR 37242 (July 31, 2018). Soon thereafter, in September 2018, a Federal court invalidated the Department's actions delaying implementation of the 2016 regulations, and the 2016 regulation went into effect in October 2018. *Bauer* v. *DeVos,* 325 F. Supp. 3d 74 (D.D.C. 2018). *See California Ass'n of Private Postsecondary Schs.* v. *DeVos,* 344 F. Supp. 3d 158 (D.D.C. 2018). Meanwhile, the Department did not withdraw the 2018 NPRM and on September 23, 2019, following consideration of public comments on the 2018 NPRM, the Department published new final borrower defense regulations that applied to loans made on or after July 1, 2020. 84 FR 49788 (Sept. 23, 2019). Those regulations became effective on July 1, 2020, for loans disbursed on or after that date.

The 2019 regulations established a more limited Federal standard for borrower defense claims by (1) requiring borrowers to prove that the institution engaged in a misrepresentation that was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth, (2) eliminating the possibility of using common evidence to adjudicate claims on a group basis, (3) requiring the borrower to document the amount of harm suffered, and (4) setting a 3-year limitation period on filing a claim.[5] The 2019 regulations do not include a reconsideration process. The 2019 regulations only applied to loans first disbursed on or after July 1, 2020.

The three borrower defense regulations are hereinafter referred to as ''1994 regulation,'' ''2016 regulation,'' and ''2019 regulation'' after the respective years in which the final regulations were issued.

The Department believes that the more restrictive standard for approving a borrower defense claim and the relatively narrow statute of limitations for filing claims under the 2019 regulations created a standard that placed burdens on borrowers to obtain relief that were far more onerous than any State standard, and went far beyond evidentiary requirements and argumentation that a reasonable borrower could be expected to provide. In particular, the Department is concerned that expecting a borrower to independently document and corroborate the misrepresentation and specifically show the amount of financial harm they suffered in the manner contemplated in the 2019 regulations would require borrowers to possess a level of data and knowledge about local and national labor market trends that would be unrealistic for an individual to possess, and would result in overly subjective judgments by the Department into how a borrower should conduct a search for employment. Moreover, without being able to rely upon evidence generated from in-depth investigations that other oversight bodies possess, including the ability to demand documents, borrowers face unreasonable set of requirements. The result would be that many borrowers who were subject to misrepresentations or other wrongdoing by their institutions would fail to receive an approved claim and discharge because they were being judged under an unreasonably high standard. The Department's experience reviewing borrower defense applications shows that many of the schools' substantial misrepresentations are made orally, and/or relate to high pressure sales tactics. Additionally, many schools do not provide enrolling or enrolled students with written evidence of the misrepresentations, which could result in the Department denying borrowers' claims due to a lack of documentation, despite the fact that many borrowers do not and cannot keep such documents over years. When the Department issued the 2019 regulations, the Regulatory Impact Analysis with that rule estimated that only 7.5 percent of the volume of borrower defense claims would ultimately be approved. This was a decline from 65 percent under the 2016 regulation. The Department believes that such a significant change in approval amounts suggests that the 2019 regulation would result in denials for too many claims that should have a reasonable prospect of being meritorious

[5] In *New York Legal Assistance Group (''NYLAG'')* v. *Cardona,* Case No. 20–CV–1414 (S.D.N.Y. Mar. 17, 2021), the District Court found that the Department did not comply with rulemaking standards in promulgating the 3-year statute of limitations for affirmative claims and remanded consideration of that rule to the Department for further consideration.

upon consideration of evidence from additional oversight entities. Moreover, the anticipated low approval rate is an added concern because the 2019 regulations did not contain a reconsideration process, meaning that any borrower whose claim was unfairly denied, including through an administrative or technical error, would have to go to court to have their claim properly addressed.

While the 2019 regulations went into effect for new loans disbursed on or after July 1, 2020, the Department has yet to adjudicate any claims under the 2019 regulations. This is due to several factors. First, the Department is still in the process of adjudicating significant numbers of claims covered by the 1994 and 2016 regulations, which represent a larger share of currently pending claims. Second, repayment of and interest accrual on all Federal loans held by the Department have been paused since March 2020, so borrowers who may have been subject to conduct that may give rise to a borrower defense claim may not have felt the need to apply yet because they do not currently have to make loan payments.

Over the last several years, the Department has gained significant experience and expertise through its adjudication of claims and review of evidence. Doing so has put the Department in the best position to understand how to manage the borrower defense program efficiently. This includes identifying areas for improvement and refinement that would not have been apparent in prior rulemakings when the Department had not had as much experience reviewing claims.

In this current NPRM, the Department proposes to build upon the lessons learned from implementation of those previous borrower defense regulations and a review of the 2019 regulation to construct a borrower defense process that is simpler and fairer for all affected parties. This process would maintain what was available to borrowers during the more than two decades between the 1994 and 2016 regulations; build on the clearer processes in the 2016 regulation to ensure more consistency for borrowers; and, incorporate some further refinements of elements from the 2019 regulation such as including institutional responses and clarifying certain types of allegations that would not lead to a valid borrower defense claim. The proposed process would be simpler by establishing a single upfront Federal standard so that borrowers are not subject to differential treatment, varying from a full discharge to a complete denial, for enrollment at the same institution depending solely on the date their loans were issued. The proposed process also would be fairer by establishing claim approval requirements that recognize all possible sources of evidence, including information gleaned from State attorneys general, rather than relying on the borrower to prove their entire case on their own.

While the Department has modified the regulations several times in recent years, based on our ongoing and growing experience reviewing and adjudicating borrower defense claims, we have determined that the current 2019 rules are too limiting to fairly and accurately adjudicate claims, and that further regulations are needed to address issues that have continued to arise during the Department's claim review. The current rules require evidence that is highly unlikely to be available to the borrower, especially within the timeframes following their departure from the institution that the borrower must meet to have their claim considered. The current rules also exclude evidence of school activity in the Department's possession, gleaned from other Department activity, that would support borrowers' claims. These proposed regulations would incorporate additional information about the nature of claims that the Department receives, the types of evidence received from borrowers, and procedural improvements to help ensure timely decisions for borrowers. They would also more clearly establish the importance of the institutional response process and leverage existing procedures used for establishing and collecting liabilities to seek recoupment from institutions.

To achieve these goals, the Department proposes to streamline multiple regulatory requirements, establish a new Federal standard for the initial adjudication of a borrower defense claim that would be easier for borrowers and affected parties to understand, and clarify the conduct that could result in an approved borrower defense claim. The Department believes that this approach, and the proposed use of common evidence, would facilitate a clearer and faster process for adjudication of group claims. The Department also proposes to clarify how discharge amounts will be determined for approved claims, including establishing a rebuttable presumption of full discharge; designing a structured process for reconsidering decisions; eliminating the limitations period for borrowers; and adopting a revised limitations period for institutional recoupment. These proposed regulations would incorporate additional information about the nature of claims that the Department receives, the types of evidence received from borrowers, and procedural improvements to help ensure timely decisions for borrowers. They would also more clearly establish the importance of the institutional response process and leverage existing procedures used for establishing and collecting liabilities to seek recoupment from institutions.

Finally, to protect the title IV programs and ensure accountability, the Department believes it is critical that borrower defense regulations contain a process for the Department to recover the cost to the taxpayer caused by discharging all or a portion of loans associated with approved claims from institutions, separate and apart from the borrower claim adjudication process. The Department proposes to administer this recoupment process through its existing procedures for collecting other institutional liabilities. Separating the recoupment process from the borrower defense approval process also ensures that institutions will not face financial consequences from claim approvals tied to loans issued prior to July 1, 2023, unless the claim would have been approved under the borrower defense regulation in effect at the time the loans were issued.

The recoupment efforts described above complement other executive and regulatory actions contemplated by the Department to increase institutional accountability. The Department anticipates that efforts to dissuade institutions from harmful behavior as well as increases in other forms of oversight would result in a reduction in future conduct that could lead to a borrower defense approval, thus reducing instances in which the Federal taxpayers would assume the costs of discharging loans. These action items include reinstating the Office of Enforcement within the Department's Federal Student Aid office and changes announced earlier this year to increase the frequency with which entities that own institutions are required to sign Program Participation Agreements and thus potentially face financial consequences if there are liabilities against the institution.[6] The Department is also currently in the process of proposing new regulations around the 90/10 rule to implement a requirement included in the American Rescue Plan that proprietary institutions derive at

[6] *https://www.ed.gov/news/press-releases/us-department-education-announces-steps-hold-institutions-accountable-taxpayer-losses-0.*

least 10 percent of their revenue from non-Federal sources.[7] This is a change from previous requirements, which allowed Federal money for veterans and servicemembers to count toward the 10 percent revenue minimum. The inclusion of those benefits had in turn been a contributing factor toward aggressive recruitment of veterans and servicemembers.

During the public hearings and negotiated rulemaking sessions in 2021, the Department heard from a broad range of constituencies on the elements of an appropriate borrower defense framework. At the negotiated rulemaking sessions, negotiators expressed interest in developing a regulation that would provide for fair treatment of borrowers who had been harmed by an institution's act(s) or omission(s). Some negotiators expressed support for reviving the group claims process and establishing a reconsideration process that is fair for all affected parties.

One negotiator expressed concern about the potential reputational harm to institutions from frivolous and unsubstantiated borrower defense claims. This negotiator also did not support recovering funds from institutions when a borrower defense claim is successful.

Areas proposed for negotiation during the negotiated rulemaking sessions included the Federal standard under which a borrower may assert a defense to repayment; the applicable evidentiary standard; creating a group process for the adjudication of borrower defense claims; consideration of adverse Department actions against an institution as grounds for a group borrower defense claim; the ability of individuals to bring borrower defense claims; the borrower's status during adjudication of a claim, including a pause on interest accrual for a borrower with an individual application after 180 days if the Department fails to make a decision on the claim by that time; a defined limitations period for bringing borrower defense claims; an opportunity for the institution to respond to borrower defense claims filed against it; the time frames associated with adjudicating a claim; and issues pertaining to loans made under the FFEL Program.

In the first session, the Department reviewed the issue papers with negotiators and provided a high-level summary of borrower defense issues with proposed solutions. In the second session, the Department provided proposed regulatory text to negotiators. In the final session, the Department provided revised and additional regulatory text based on negotiator feedback and explained the substantive changes made between sessions two and three. By the end of the negotiated rulemaking sessions, most negotiators expressed general support for the proposed changes to the borrower defense regulations. At the final consensus check, 16 negotiators indicated they would agree to the proposed borrower defense regulations, while one negotiator dissented. Because the committee's protocols required agreement from all negotiators, consensus was not reached. Materials from the borrower defense negotiated rulemaking sessions may be found on the Department's website at: *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

Borrower Defense to Repayment—Adjudication (§§ 685.206, 685.222)

Statute: Section 455(h) of the HEA (20 U.S.C. 1087e(h)) requires the Secretary to specify in regulations which acts or omissions of an institution a borrower may assert as a defense to repayment of a Direct Loan, except that the borrower may not recover from the Secretary more than the amount the borrower has repaid on the loan.

Current Regulations: The current borrower defense regulations provide different acts or omissions that could lead to an approved borrower defense claim, depending on when a borrower's loan was first disbursed:

- Claims pertaining to loans first disbursed before July 1, 2017, are adjudicated according to the substantive standard set forth in the 1994 borrower defense regulations in § 685.206(c), and use the State law standard. The 1994 borrower defense regulations do not contain a definitions section.
- Claims pertaining to loans first disbursed between July 1, 2017, through June 30, 2020, are adjudicated according to the substantive standard set forth in the 2016 borrower defense regulations in § 685.222 and uses the regulatory process for claims pertaining to loans first disbursed prior to July 1, 2017. These claims use definitions in § 685.222, which defines the terms ''borrower'' and ''borrower defense,'' and apply the Federal standard.
- Claims pertaining to loans first disbursed after July 1, 2020, are adjudicated under the borrower defense regulations in § 685.206(e), using definitions set forth in § 685.206(e)(1).

Proposed Regulations: Proposed 34 CFR part 685, subpart D would establish a framework for uniform borrower defense discharges based on applications received following, or already pending with the Secretary on, the effective date of these regulations, rather than based on a loan's disbursement date. Under the proposed rules, institutions would not face recoupment for conduct approved solely under the new Federal standard if the conduct occurred prior to July 1, 2023. Nor would they face larger amounts of recoupment if the amount of a discharge is greater than it would have been under the applicable prior regulation.

The scope and purpose section of proposed subpart D is in proposed § 685.400 and would set forth the provisions under which a borrower defense could be asserted. Subpart D would apply to borrower defense applications received on or after July 1, 2023, and to borrower defense applications pending with the Secretary on July 1, 2023. These are the dates the regulation would become effective under the master calendar requirements in the HEA.

Proposed § 685.401 contains the general definitions applicable to subpart D, including definitions for the following terms: ''borrower,'' ''borrower defense to repayment,'' ''Department official,'' ''Direct Loan,'' ''school/institution,'' and ''State requestor.''

Proposed subpart D also includes regulations regarding the adjudication of a borrower defense claim, which are described in greater detail below.

Finally, §§ 685.109 and 685.499 would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: The Department heard from representatives of a broad range of constituencies, including the non-Federal negotiators in the negotiated rulemaking meetings, on what they thought was an appropriate basis for a borrower defense. The Department believes a general definitions section to this new subpart D is critical to ensure clarity in these proposed regulations. For these proposed regulations, the Department incorporates the following terms wholly or in part as those in the 2019 regulations: ''borrower,'' ''borrower defense to repayment,'' and, ''Direct Loan.'' Because these proposed regulations envision a new borrower defense framework, it is necessary to develop some additional new terms. The Department first proposes a definition of ''Department official,'' which would be a senior Department official or their designee to administer

[7] See 90/10 resources under ''Institutional and Programmatic Eligibility Committee'' *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

the borrower defense process. The Department also proposes to expand upon the definition of ''school/institution'' to include principals of the institution, or of an institution under common ownership, who exercised substantial control over the institution. Finally, the Department proposes a definition of ''State requestor'' to clarify which entities may suggest the formation of a group claim as described in other sections of this NPRM.

Direct Loans and FFEL

Section 455(h) of the HEA provides that the Secretary may discharge a loan pursuant to a borrower defense for a loan made ''under this part,'' a reference to the Direct Loan Program. This includes Direct Consolidation Loans made under § 455(g) of the HEA. Under the statute, borrowers may not recover more than they have repaid. During negotiated rulemaking, the Department received inquiries about whether the borrower defense process applies to FFEL Program loans, in which private lenders issued Federal loans using their own funds and receive a Federal guarantee against most losses in the case of default as well as quarterly Federal subsidies. FFEL Program loans are authorized in a different part of the HEA. As the Department noted in the preamble of the 2016 regulations, the HEA generally requires that Direct Loans be made under the same ''terms, conditions, and benefits'' as FFEL Program loans. 20 U.S.C. 1087a(b)(2), 1087e(a)(1). See 81 FR at 75930. In 1995, the Department clarified the relationship between Direct and FFEL Program loans in a Dear Colleague Letter:

> Congress intended that schools participating in either FFEL or Direct Loan programs should receive parallel treatment on important issues, and the Department has already committed during negotiated rulemaking to apply the same borrower defense provisions to [both] the Direct Loan and FFEL programs. Therefore, schools that cause injury to student borrowers that give rise to legitimate claims should and, under these proposals, will bear the risk of loss, regardless of whether the loans are from the Direct Loan or FFEL Program.

Dear Colleague Letter GEN–95–8 (Jan. 1, 1995).[8]

In the 2016 and 2019 regulations, the Department took the position that a FFEL borrower could raise a defense to repayment claim and have that claim reviewed and approved, but that receiving any relief tied to an approval of such a claim would require the borrower to consolidate any FFEL Program loans associated with the approved claim into a Direct Consolidation Loan. However, the time limits on filing a claim in the 2019 regulation plus the terms of the new consolidation loans determining the applicable borrower defense regulation meant that it would be almost impossible for FFEL borrowers to receive any borrower defense relief after July 1, 2020, regardless of when they originally borrowed. For instance, under the 2019 regulation, a FFEL borrower who took out a loan in 2009 and left school in 2010 could have a claim approved today under the standards of the 1994 regulation but would have no way to access the associated relief under that regulation because as soon as they consolidate their claim, they would fall under the 2019 regulation and be denied under the three-year limitations period. The Department is concerned that the 2019 regulation results in the application of a stricter regulation to their claim that was not in effect at the time their original loans were disbursed. Applying the standard proposed in these regulations regardless of disbursement date would both solve this problem going forward and address the inequitable situation that would otherwise exist for FFEL borrowers from July 1, 2020 through June 30, 2023.

The Department is also proposing sub-regulatory improvements beyond the regulations that would help FFEL borrowers more easily receive a discharge for approved borrower defense claims, further streamlining and simplifying the process for borrowers. The Department has the authority to make Direct Consolidation Loans under §§ 451 and 455(g) of the HEA. FFEL borrowers must consolidate their loans into a Direct Consolidation loan to obtain a borrower defense discharge; however, the Department would allow FFEL borrowers to file and receive a decision on their borrower defense applications before their loans are consolidated. The 1994 and 2016 regulations allow borrowers with FFEL Program loans to have their claims reviewed and approved by the Department, but they must consolidate their FFEL Program loans into a Direct Loan through a separate process to receive the benefit of any loan discharges associated with an approved claim. The Department has heard, both from borrowers and from their representatives at negotiated rulemaking, that the separate consolidation requirement creates confusion and roadblocks for borrowers. The requirement also results in unequal treatment for borrowers with different types of loans. To address this concern, the Department proposes to streamline the borrower defense application process by having the application for borrower defense also serve as a Direct Loan consolidation application for borrowers with FFEL and Perkins loans, which would only be executed if the borrower's claim is approved, giving the borrower a streamlined process for receiving discharge of their loans.

State Requestor

State requestors, such as State attorneys general, have been a significant and important source of evidence for many of the Department's approvals of borrower defense claims and the Department anticipates they will continue to be an important source of evidence. For example, while investigating student complaints, State attorneys general may find institutions engaging in patterns of misrepresentation. The Department believes State partners are critical in providing evidence that—as part of an independent assessment by the Department that also includes evidence in its possession, submissions from borrowers, responses from institutions under proposed 485.405, and other relevant sources—could result in approving borrower defense claims. Because this evidence often includes information about widespread institutional policies or practice, evidence from State requestors could be particularly beneficial for decisions around whether to form and/or approve a group borrower defense claim, which is when the Department makes a decision about whether to approve borrower defense relief for a set of similarly situated borrowers, including those who have not applied. These State requestors have fostered, and could continue to foster, a more efficient borrower defense adjudication process by supplying needed evidence to support the potential approval of claims or expanding the Department's ability to quickly develop the facts in cases by identifying systemic issues at an institution resulting in several borrowers potentially being eligible for relief.

To give these State requestors regulatory recognition in the consideration of whether to establish a group process, the Department proposes to define ''State requestors'' to include States, State attorneys general, or State oversight or regulatory agencies with authority from the State (such as a State consumer financial protection agency with civil investigative demand

[8] See *https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/1995-01-01/gen-95-08-direct-loan-program-schools-will-not-face-greater-potential-liabilities-ffelp-schools.*

authority from that State). The Department proposes limiting requestors only to State requestors based on the Department's experience that State parties have been the sources of the highest-quality evidence in past adjudications of borrower defense applications. Additionally, the Department believes that inviting States to share information is consistent with the HEA's expectation that States, accrediting agencies, and the Department will conduct shared oversight through the program integrity ''triad.'' Already, States and the Department share considerable information about institutions through oversight and enforcement work; these established relationships have yielded critical support for the Department's work to ensure institutions comply with Federal laws and regulations, including those that could give rise to borrower defense claims for discharges of Federal student loans.

The proposed position is a change from the Department's conclusions in the 2019 regulation and is based upon the agency's experience in continuing to review and approve borrower defense applications. In 2019, the Department dismissed the importance of State enforcement actions on the grounds that they cover broader issues than what may be allowed under borrower defense. This conclusion discounted the role of evidence from State parties in processing borrower defense claims. The evidence generated from State investigations and enforcement actions has repeatedly given the Department important information to conduct a thorough and rigorous review of borrower defense claims against institutions such as Corinthian Colleges, Inc., ITT Technical Institute, the Court Reporting Institute, Minnesota School of Business and Globe University, and Westwood College.[9] In several of these instances the Department received from State attorneys general internal company documents, presentations, emails, and memos that assisted in establishing that these institutions engaged in misrepresentations. In all these instances, the Department is not proposing to simply accept the State-offered evidence unquestioned and issue approvals based on it. It is recognizing the importance of considering evidence from all available sources and creating a simpler process for receiving such information from States.

Effective Date of Regulations, Claims Covered Under Proposed Regulations

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. Section 410 of the General Education Provisions Act (GEPA) provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. 20 U.S.C. 1221e–3. Under Section 414 of the Department of Education Organization Act, the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. 20 U.S.C. 3474.

Current Regulations: The ''1994 regulations'' at 34 CFR 685.206(c) cover loans first disbursed before July 1, 2017 and became effective July 1, 1995 (see 59 FR 61664, December 1, 1994); the ''2016 regulations'' at 34 CFR 685.222 cover loans first disbursed on or after July 1, 2017 and before July 1, 2020 and became effective July 1, 2017 (see 81 FR 75926, November 1, 2016); and, the ''2019 regulations'' at 34 CFR 685.206(e) cover loans first disbursed on or after July 1, 2020 and became effective July 1, 2020 (see 84 FR 49788, September 23, 2019).

Proposed Regulations: Proposed 34 CFR part 685, subpart D would establish a framework for uniform borrower defense discharges based on applications received following or already pending with the Secretary on the effective date of these regulations, rather than based on a loan's disbursement date. However, institutions would not be subject to recoupment actions for applications that are granted based upon this regulation that would not have been approved under the standard applicable based upon the loan's disbursement date, which could be the 1994, 2016, or 2019 regulations. Institutions would also not be subject to recoupment for amounts greater than what would have been approved under the applicable regulation at the time the loans were disbursed.

Reasons: Tying the applicability of borrower defense regulations to the date of a loan's disbursement can create significant complexity for administering the program and create inconsistent outcomes for borrowers. With regulations tied to a loan's disbursement date, it is possible for a single borrower to submit a single borrower defense to repayment claim that is covered by all three sets of regulations, despite involving the same act or omission at the same institution. The confusion is further exacerbated if a borrower consolidates their loans, since borrowers may have had original loans disbursed under one set of regulations, but the Department treats the date of the consolidation loan as the one used to determine what regulation their claim should be adjudicated under.

To streamline and simplify the process, the proposed regulations provide uniform borrower defense regulations for applications pending with the Secretary on or after the effective date of these regulations. This approach would ensure that all borrowers whose claims are filed or pending within this timeframe are subject to the same regulatory framework. In promulgating the prior borrower defense regulations, the Department did not choose to apply this single standard because it would have changed the types of claims that could be approved in ways that might have left some borrowers worse off than the regulation in place at the time they took out their loan. For example, borrowers with loans issued prior to July 1, 2017 could bring a claim under a State law standard, which includes some instances where a borrower might not have to show they relied upon a misrepresentation depending on the relevant State law being applied. The 2016 regulation, however, included a requirement that a borrower demonstrate reliance on the misrepresentation without a presumption of reasonable reliance for an individual claim. Applying that standard to those prior loans would thus be more restrictive in certain circumstances. The same is true of the 2019 regulation and its effect on loans issued on or after July 1, 2020. That regulation requires borrowers to produce a more individualized documentation of harm and eliminates the prospect of adjudicating similarly situated claims as a group, in contrast to what is available under the 2016 regulation. It would thus not have been feasible to have the 2016 regulation cover claims from loans that would have previously been associated with the 1994 regulation, nor would the 2019 regulation have been able to cover

[9] See U.S. Department of Education press releases: *https://www.ed.gov/news/press-releases/department-education-announces-approval-new-categories-borrower-defense-claims-totaling-500-million-loan-relief-18000-borrowers; https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students; https://www.ed.gov/news/press-releases/department-education-approves-borrower-defense-claims-related-three-additional-institutions.*

claims previously associated with either the 1994 or the 2016 regulations. This proposed regulation would permit borrowers to bring claims under a series of acts or omissions that not only encompasses what would have been available to them under any of the three prior applicable regulations, but also under some additional circumstances. The result is that no borrower would be worse off under this regulation than they would be under the regulation in place at the time they borrowed. Given that, the Department believes it is appropriate to adopt a single standard that applies to all claims pending with the Secretary or submitted on or after July 1, 2023. As discussed in greater detail in the *Recovery from Institutions* section, the Department does not propose to apply this single framework for the purposes of institutional recoupment in all cases. The Department does not think it would be appropriate to hold an institution financially liable when the standard in place at the time the loan was disbursed would not have resulted in an approved claim, since the institution would not have had a way of knowing that certain types of conduct could later lead to financial consequences. The Department believes that this approach would also protect against any concerns institutions might raise related to the reputational consequences of an approved borrower defense claim. The approval of a borrower defense claim concerns the legal interaction between the Department and the borrower, not the institution. Moreover, the Department is unaware of any evidence demonstrating reputational harm to institutions that are still operating resulting from approved borrower defense claims. Given that lack of evidence, the Department believes whatever reputational harms to the institution might occur based on this regulatory change are outweighed by the benefits to the borrower. This is because this proposed change makes the borrower defense program more administrable and therefore overall better able to serve both borrowers and institutions through more efficient and effective adjudication.

While the proposed coverage of this regulation could lead to some increased costs to the Federal Government in the form of greater transfers to borrowers, the Department notes that this regulation is just one component of a larger set of executive and regulatory efforts aimed at increasing institutional oversight and accountability that should deter future conduct that could lead to approved borrower defense claims. These efforts include the re-establishment of an Office of Enforcement within Federal Student Aid, which is tasked with conducting in-depth investigations of institutions. Releasing the results of investigations will teach institutions what types of risky conduct to avoid in the future. The Department also announced earlier in 2022 that it would start increasing the number of entities that sign Program Participation Agreements to include more outside owners of institutions. Doing so will make more entities and individuals responsible for liabilities against an institution, further deterring harmful behavior. The Department is also currently conducting separate rulemaking efforts to implement a statutory change included in the 2021 American Rescue Plan to require private for-profit institutions to derive 10 percent of their revenue from non-Federal sources, not just Federal student aid programs administered by the Department. That change will reduce incentives for institutions to aggressively pursue veterans and service members in particular, which had been a source of aggressive recruitment in the past.

Federal Standard (§§ 685.206, 685.222, & Part 668)

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution a borrower may assert as a defense to repayment of a Direct Loan, except that a borrower may not recover from the Secretary an amount in excess of the amount that the borrower has repaid.

Current Regulations: In the current regulations, three different regulatory standards and limitations periods apply, depending on when a borrower's loan was first disbursed:

- Loans first disbursed prior to July 1, 2017, are addressed under the 1994 borrower defense regulations in § 685.206(c). That section provides that a borrower may assert a defense to repayment under applicable State law. The borrower may bring a claim at any point during the period in which the loan is being collected.
- Loans disbursed between July 1, 2017, and June 30, 2020, are adjudicated under the 2016 borrower defense regulations in § 685.222, which explains the acts or omissions that could give rise to a borrower defense claim are judgments against the institution, breaches of contract, and substantial misrepresentation. Further, the borrower may bring such a claim at any time but may only assert a right to recover amounts previously collected by the Secretary on the grounds of that same breach of contract or substantial misrepresentation within 6 years of the alleged breach or of the date on which the substantial misrepresentation reasonably could have been discovered.
- Loans disbursed on or after July 1, 2020, are adjudicated under the 2019 borrower defense regulations in § 685.206(e), which allow a borrower to assert a defense to repayment if the institution at which the borrower enrolled made a misrepresentation of material fact upon which the borrower reasonably relied, and the borrower was financially harmed by such misrepresentation. Claims adjudicated under these regulations have three years from the date the student is no longer enrolled at the institution to file a claim with the Department.

Proposed Regulations: In proposed § 685.401(b), a claim could be brought on any of five grounds:

- Substantial misrepresentation,
- Substantial omission of fact,
- Breach of contract,
- Aggressive and deceptive recruitment, or
- A Federal or State judgment or Departmental adverse action against an institution that could give rise to a borrower defense claim.

Also, as proposed, a violation of State law could form the basis for a borrower defense claim, but only if the borrower or, in the case of a group claim brought by a State requestor, that State requestor requests reconsideration of the Secretary's denial of a claim. Each is discussed further below. Borrowers would not be subject to a limitations period.

The proposed Federal standard in § 685.401(b) would incorporate the existing description of misrepresentation in part 668, subpart F, which currently defines and sets forth three categories of misrepresentation, each containing examples of violative conduct. However, the Department proposes to expand the examples in those categories, relating to the nature of educational programs, the nature of financial charges, and the employability of graduates. Proposed § 668.75 also would establish a new misrepresentation category in the regulations that separately would give rise to a borrower defense claim under the Federal standard: ''omission of fact.''

Proposed § 668.79 would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

We propose to add a new subpart R to part 668, which would define and prohibit aggressive and deceptive recruitment tactics or conduct

(aggressive recruitment). As proposed, aggressive recruitment would be one of five types of acts or omissions that comprise the Federal standard for borrower defense claims such as: obtaining the borrower's contact information through websites that falsely present themselves as providing assistance with finding a job or obtaining government benefits, falsely claiming that enrollment spots are limited, taking advantage of a student's lack of understanding to pressure the student to enroll, pressuring the student to make an immediate loan decision, discouraging the student or prospective student from consulting with an independent party prior to signing documents, failing to respond to a student's request for additional substantive information on enrollment or loan obligations, using threatening or abusive language, or engaging in repeated unsolicited contact.

Finally, proposed § 668.509 would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: The Department has issued three different sets of regulations in the past on borrower defense: 1994, 2016, and 2019. Those regulations include different acts and omissions as the basis for borrower defense claims and included different processes. Even where some similarities appear to exist across the three regulatory structures—for example, all generally list misrepresentation as a basis for a borrower defense—the regulations set different requirements for what a borrower must prove to have their application approved. For example, in the 1994 regulations, a borrower could have their application approved because their State had a standard for misrepresentation that did not require a demonstration of reliance. That same borrower under the 2016 regulation could also receive an approval due to a misrepresentation but would have to show that they relied upon that misrepresentation in making the decision to enroll. For both the 1994 and 2016 regulations, the borrower's claim could be supported by common evidence in the Department's possession, such as records from a college obtained by a State attorney general and shared with the Department. Under the 2019 regulation, that borrower not only has to show they relied upon the misrepresentation but that the institution had knowledge the misrepresentation was false, misleading, or deceptive, or acted with reckless disregard for the truth. The borrower must also document the specific amount of financial harm suffered. As a consequence, an identical misrepresentation by the same institution could yield different outcomes solely based upon the loan's disbursement date.

In reviewing the hundreds of thousands of claims received from borrowers across the country, as well as different State laws that could be applied to bring a defense to repayment application under the 1994 regulations, the Department has identified other categories of improper actions that it believes should give rise to a defense to repayment, and examples of the types of common misrepresentations that fall within those categories.

As listed above, the proposed Federal standard identifies five categories of acts or omissions as bases for a borrower defense claim: (1) substantial misrepresentation, (2) substantial omission of fact, (3) breach of contract, (4) aggressive recruitment, and (5) State or Federal judgment or Departmental adverse action against an institution that could give rise to a borrower defense claim. For substantial misrepresentations and substantial omissions of fact, the Department proposes to use a presumption of reasonable reliance for both an individual and group claim.

Each element of the proposed Federal standard is discussed in greater detail below.

Substantial Misrepresentation and Omission of Fact

The Department proposes returning to the 2016 regulations' use of substantial misrepresentation where a misrepresentation is defined in 34 CFR 668, subpart F, instead of a standalone definition in the borrower defense regulation. But, as part of adopting that framework from the 2016 regulation, we also propose adopting a presumption of reasonable reliance for all borrowers.

Misrepresentation was a component in both the 2016 and 2019 regulations and has been a common source for approving claims under the 1994 regulation. Substantial misrepresentations constitute most of the claims that the Department has approved to date and have consistently served as a basis for borrower defense discharges across the several sets of regulations.

The Department believes requiring borrowers to prove a substantial misrepresentation occurred is a more reasonable standard to use than the stricter one required in the 2019 regulation that also required a borrower to show that an institution's misrepresentation was made with knowledge that it was false, misleading, or deceptive or with reckless disregard for the truth. In constructing the proposed standard, the Department considered what evidence it sees borrowers regularly provide, based upon its review of hundreds of thousands of claims. This allows the Department to gauge what is a reasonable expectation of borrowers and what types of information that most claims are likely to include. Those reviews demonstrate that even the most detailed and extensive information provided by borrowers rarely if ever includes information on whether an institution had knowledge that a misrepresentation was false or misleading, nor an ability to gauge if the institution acted with a reckless disregard for the truth.

When the Department obtains such information, it generally comes through internal company records that require the authority to require institutions to turn over documents, such as through a civil investigation demand, a lawsuit, or a request by a Federal agency. The use of such a strict standard for a borrower thus exceeds what even the most detailed individual applications received to date are able to include. While the Department has in the past indicated that this standard could be met by showing information provided by employees does not match information in formal marketing materials, the Department is concerned that such an approach does not provide a reasonable path for a borrower subject to the more common situation the Department has found in which the official placement rates are themselves false or calculated in a way that produces a misleading result.

Moreover, the Department does not believe the intent of the institution is relevant when determining whether to provide the borrower with relief due to a misrepresentation. Intentional or not, the actions by the institution have resulted in harm to the borrower and the Department's obligation is to provide relief to ameliorate that harm when the evidence warrants. Issues related to institutional knowledge are better suited for considerations about the extent of the school's liability. As between the school and the borrower, the school is better equipped to prevent, and, where appropriate, to bear the cost of, a misrepresentation that turns out to be inadvertent.

To meet this proposed substantial misrepresentation threshold, the borrower would have to articulate to the Department the misrepresentation made by the institution (*e.g.,* they were told credits would transfer and they did not, they were guaranteed to get a job, they

were told the job placement rate was 90 percent, etc.). That misrepresentation would then have to be one that they would have relied upon to make the decision to take out a Direct Loan. A borrower can achieve that goal by relaying with some detail the story of their recruitment experience or some other interaction with the school.

The Department similarly proposes to remove the requirement that a borrower demonstrate individualized harm from the definition of a misrepresentation and instead to require that the borrower demonstrate that the misrepresentation caused the borrower to take out a loan to their detriment. The Department is concerned that the requirements to demonstrate financial harm in the 2019 regulation created a requirement far beyond what a reasonable borrower should have to do. This concern outweighs the taxpayers' risk that a borrower could receive relief even without significant financial harm, particularly given the Department's statutory obligation to provide access to defenses to repayment for borrowers affected by the acts or omissions of the institutions in which they enroll. For instance, the 2019 regulation requires borrowers to prove that they could not get a job for reasons besides local or national recessions, or the borrower would have to document the quality of their job search and subsequent inability to find employment. The Department does not believe it is reasonable for a borrower to have to act as a labor economist to show they were harmed by an institution's misrepresentations. Moreover, the approach of individualized harm required in the 2019 regulations has the unintended effect of potentially penalizing a borrower who succeeds despite their program. The Department has received many borrower defense applications from individuals who asserted under penalty of perjury that they were more likely to find employment when removing the institution they attended from their resume. Under the 2019 regulations, these individuals would risk having a claim not approved because they did obtain a job, even if the institution was a hindering factor in their ability to do so.

Reliance is the final component of the substantial misrepresentation standard. This requires a borrower to show that they were not only subject to the misrepresentation but that they relied upon it in their decision to take out a Direct Loan. While the Department believes reliance should be an element of a successful borrower defense claim that alleges a misrepresentation, we are concerned that an overly narrow view of what a borrower had to do in order to demonstrate reliance could result in a borrower's application being denied for lack of the use of specific phrasing. In particular, we are worried that there could be instances where a borrower lays out a misrepresentation that from the narrative provided by the borrower was a key factor in their decision to take out a loan but because the borrower did not directly specify they relied upon it their claim is denied. To address this concern the Department proposes that if the claimant does not demonstrate reliance, then the Department would find reasonable reliance if a prudent person would believe and act upon the misrepresentation if told it by another person.

The Department also proposes to use a similar presumption of reasonable reliance for group borrower defense claims. The removal of requirements for borrowers to demonstrate individualized harm and that they could personally prove that an institution engaged in a misrepresentation that the institution made with the knowledge that it was false, misleading, or deceptive or made with reckless disregard for the truth means that the Department can and should consider claims from similarly situated borrowers who attended the same institution as a group. Because the idea behind a group claim is that all the borrowers in the group may have been affected by the same misrepresentation or omission, the Department believes it is also reasonable to use an assumption of reasonable reliance for group members.

The Department has determined based on reviews of claims that, particularly where misrepresentations were especially widespread, the benefits of reduction in burden by presuming reliance, rather than individually determining it, exceed the costs. Efforts to individually evaluate these claims have substantially delayed—by years, in some cases—the provision of relief to borrowers. This has negative ramifications for borrowers whose financial circumstances are affected by their outstanding student loan debt in the meantime.

The Federal Trade Commission (FTC) follows a similar approach to the Department's proposal to allow the Secretary to establish a presumption of reliance, whereby it can establish a rebuttable presumption that all purchasers relied on the defendant's material misrepresentations or omissions if they were widely disseminated and ''were of a kind usually relied upon by reasonable prudent persons.'' *FTC* v. *BlueHippo Funding,* 762 F.3d 238 (2d Cir. 2014); *FTC* v. *Kuykendall,* 371 F.3d 745, 765 (10th Cir. 2004); *FTC* v. *Figgie Int'l, Inc.,* 994 F.2d 595, 605–06 (9th Cir. 1993); *FTC* v. *Sec. Rare Coin & Bullion Corp.,* 931 F.2d 1312, 1316 (8th Cir. 1991). Once the FTC establishes the presumption, courts typically accept the total revenue from the sale of the good or service as the amount of monetary relief. Accordingly, while the Department proposes a substantial misrepresentation standard to bring a successful borrower defense claim, the Department proposes to incorporate a presumption of reasonable reliance into that standard to reflect natural consumer behavior that the reasonable and prudent consumer would ''usually'' rely on.

Substantial Misrepresentation—Definitions

With regard to the specific types of actions that could be considered a misrepresentation, the Department believes using the definition of a misrepresentation in subpart F instead of a separate definition of the term in borrower defense would reduce confusion for both borrowers and institutions and ensure a more consistent approach. In the 2019 regulation, the Department chose to include its own definition of misrepresentation. However, it did so with a non-exhaustive list of 11 items, many of which bear significant resemblance to requirements that already exist in subpart F. This creates unnecessary ambiguity for borrowers and institutions. Since the list in the regulation is non-exhaustive it is unclear whether that would mean anything else in subpart F might also still qualify as a misrepresentation, providing other requirements are met. Using the single consistent definition from subpart F thus removes that ambiguity and ensures that there is a clear message to borrowers and institutions how borrower defense and other oversight and enforcement activities can interact.

In reviewing the definition of misrepresentation in subpart F, the Department has identified other types of misrepresentations that it believes should both serve as potential grounds for approving a borrower defense application as well as possible future enforcement actions. These changes address areas of concern the Department has identified in the course of adjudicating borrower defense claims in recent years.

The Department proposes to revise the regulations in § 668.72, which covers misrepresentation based on the nature of the educational program or

institution. The Department proposes to amend the leading text by adding the phrase ''which may be included in the institution's marketing materials, website, or communications to students,'' to clarify where misrepresentation could occur and to ensure congruence with the other types of misrepresentation in § 668.73 and § 668.74. The Department also proposes to remove sub-section (h) in § 668.72, which relates to misrepresentations of the nature and availability of equipment needed for educational programs, because that element is effectively incorporated into § 668.72(f), which addresses facilities and equipment. The Department proposes to remove sub-section (j) in § 668.72, related to the availability of employment or other financial assistance, because that element would be effectively covered in § 668.73, which governs misrepresentations related to the nature of financial charges.

In new § 668.72(m), the Department proposes to add false, erroneous, or misleading statements concerning institutional selectivity rates or rankings as a form of misrepresentation, because it has observed institutions leveraging false data reported to widely recognized national rankings that result in a higher institutional or program rank than they would otherwise have received, inducing enrollment under false pretenses. Accordingly, the Department believes it is in the public interest to include misrepresenting selectivity rates or rankings or misrepresenting the data underlying the selectivity rates or rankings, as a form of misrepresentation.

In new § 668.72(n), the Department proposes to add misrepresenting the classification of the institution as nonprofit, public, or proprietary for purposes of its participation in the title IV programs as another basis for a borrower defense claim. An institution would be deemed to misrepresent its classification if it leads students or parents to believe that its status for purposes of title IV participation is something other than the institution's official classification on file with the Department for purposes of the title IV programs. The Department believes that obfuscating the classification of the institution for purposes of the title IV programs should be considered a misrepresentation because there are meaningful distinctions between the governance and treatment of revenue in excess of expenses at for-profit and nonprofit businesses. A student who chooses a college that markets itself as nonprofit may believe they are entering into a transaction in which additional revenue will be reinvested in the college and that those leading the institution do not have a direct financial stake in it. Institutions may not represent to students that they are a nonprofit institution for purposes of title IV when they have not met the applicable legal standards for nonprofit status. This also would apply to institutions that are in the process of converting from for-profit to nonprofit status; such an institution may not represent itself as nonprofit until the Department has confirmed it meets the standards for a nonprofit institution and memorialized that determination in the classification on file with the Department. An institution that acts inconsistently with this requirement would have misrepresented its classification for purposes of a borrower defense claim.

In new § 668.72(o), the Department proposes to add misrepresenting the existence of certifications or other approvals for the institution and/or its programs that were not actually obtained, and the institution's failure to remove such certifications or approvals from marketing materials after they are revoked or withdrawn. These certifications and other approvals include approvals from the State to offer certain programs, such as approval to offer a nursing program. They also include certifications for occupations such as medical assisting where a license may not be required but there are certifications that carry greater labor market value. The Department has observed that some institutions lagged in updating their marketing materials with the latest certifications or approvals or promised students that they would obtain certain certifications or approvals by the time the student graduated but where the institution never in fact obtained these items. The result is that when the student went to find employment, they discovered they were either unable to find a job or would be less competitive in the workforce than they expected to be when they enrolled in the program.

Similarly, the Department proposes to add new § 668.72(p), which would address misrepresentations about student externships or other similar opportunities, because the Department has observed that some institutions have made false promises about the availability of externships for their students or falsely represented that they held contracts with externship sites. The Department has observed that students relied on these marketing materials to inform their decision about whether to enroll at the institution.

The last two proposed changes to § 668.72 are new § 668.72(q), misrepresentation about the institution offering assistance to obtain a high school diploma or General Education Development certificate (GED), and new § 668.72(r), misrepresentation about the pace of completing the program or the time it would take to complete the program contrary to the stated length of the educational program. With the rise of eligible career pathway programs and use of ''ability to benefit'' mechanisms to provide for title IV aid eligibility for qualifying students without a high school diploma or its recognized equivalent, the Department has observed an increase in the number of institutions making false promises of assistance to obtain a high school diploma or GED, including through program reviews and other oversight mechanisms in which a large number of students at the institution make similar allegations. Finally, the Department has seen that some institutions engage in widespread substantial misrepresentations about the time it would take to complete an educational program, including misrepresentations related to programs that require completion of an externship or similar program, and programs that are self-paced and rarely completed in the advertised time. These institutions wrongly characterize the necessary pace or time commitment, such as presenting program cost over four years when it takes 5 years to finish under the schedule set by the institution. Accordingly, the Department believes it is in the public interest to include these additional misrepresentation elements because greater enforcement and oversight of institutions' unlawful practices would both ensure such behavior is investigated and ended more quickly and provide borrowers with clearer regulations governing the borrower defense discharge standards and, at least in some cases, better evidence. Including these misrepresentations in the regulations would also ensure that borrowers have more accurate information about the costs of their programs.

We also propose changes to § 668.74. In the course of adjudicating borrower defense claims, the Department has persistently seen misrepresentations about the employability of graduates. These include job placement rate (JPR) misrepresentations, which are reflected in § 668.74. The Department is explicitly including, as a form of JPR misrepresentation, placement rates that are inflated through manipulation of data inputs. This would help ensure that students have access to accurate information about the employability of graduates and provide access to relief

when they do not. These additions highlight the Department's concerns about how institutions calculate job placement rates, which students often rely on in making an informed decision about enrolling in an institution or program.

The Department sought input from negotiators as to whether our proposed language addressed known examples of JPR manipulation and how the proposed language could interact with existing placement rate requirements used by accreditors and/or States. One negotiator supported a required disclosure of information regarding graduate employability but expressed concern that there is no standardized metric for institutions to use. To be clear, the Department does not propose to create a standardized JPR metric. Instead, we outline examples of past problematic institutional JPR calculations because they were misleading to students. These include institutions that, for example, excluded students who were searching for work from the denominator of the placement rate calculation if those students did not conduct a job search in the exact manner set by the institution, or published a JPR that included large numbers of students who obtained employment well before graduating from the institution, many of whom likely found such employment or were already employed even before enrolling. These also include institutions that disclosed an employment rate, as required by their State or accreditor, but calculated the rate in a manner inconsistent with the applicable State or accreditor methodology. Proposed § 668.74 also contains a provision that allows the Department to verify that an institution correctly calculated its JPR; an institution must furnish to the Secretary documentation and other data that was used to calculate the institution's employment rate calculations.

Substantial Omission of Fact

The 2019 and 2016 regulations included an omission of fact as a component within the definition of misrepresentation, meaning that either false information provided or true information omitted could give rise to an approved borrower defense claim.

The Department proposes to continue allowing omissions to give rise to a borrower defense claim, but to expressly provide it in a separate category by adding § 668.75 to address substantial omissions of fact. Doing so recognizes that omissions of fact have the same misleading effect on borrowers as other forms of misrepresentation, except that it occurs through the absence of information that would otherwise have affected the borrower's decision to enroll or take out loans. The Department proposes to list it separately from misrepresentation to assist borrowers and institutions in better understanding the Federal standard for initial adjudication, but because it would remain closely tied to misrepresentation, we propose adding it within subpart F.

The addition of more text to clarify an omission of fact allows the Department to provide borrowers and institutions greater clarity about what must be disclosed to avoid an omission of fact. The Department proposes moving to ''substantial omission of fact'' in place of the 2019 treatment of omission of fact for the same reasons we are proposing to shift from misrepresentation to substantial misrepresentation as outlined above. Similar to substantial misrepresentation, an omission of fact would be substantial if a borrower would not have otherwise enrolled at the institution, obtained a loan, or chosen that program. We believe that omissions of fact should include a reliance requirement to identify whether an omission is serious enough to have influenced a borrower's decision to enroll. As with substantial misrepresentations, we propose to include a presumption of reasonable reliance, which ensures that claims by borrowers—who relied in fact on the omission—are not denied simply because their applications fail to include the specific statement that the borrower relied upon the omission. We propose to apply this presumption of reasonable reliance to both individual and group claims.

The Department derives its definition of omission of fact, in part, from the 2016 amendments to § 668.71(c), where the Department refers explicitly to the ways in which omissions are considered in the regulations. See 81 FR at 76072. The Department also sought feedback last year from negotiators on the parameters of omission of fact, including a review of States' unfair, deceptive, and abusive acts or practices (UDAP) laws. The Department also consulted with the FTC and thoroughly analyzed Federal laws on UDAP that could help inform the Department's formation of a definition of an omission of fact. The Department consulted with FTC because of that agency's long-standing enforcement work regarding unfair and deceptive acts and practices under Sec. 5 of the Federal Trade Commission Act (FTC Act). After considering the States' use of omission of fact in consumer protection contexts, and the FTC's authorizing statute under the FTC Act, the Department is proposing to adopt language that appears in similar forms in Delaware, Illinois, Iowa, and New Jersey consumer laws. These States have the most comprehensive language related to omission and state that the ''concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission'' is an unlawful act.[10] We propose to adopt, in part, that concept of omission of fact, but without the elements of ''intent,'' which appears in all the states' statutes cited above; or ''knowing,'' which is only included in New Jersey's statute. As discussed earlier in justifying the movement away from the 2019 definition of misrepresentation that included a requirement that the borrower show the institution had knowledge that a misrepresentation was false, deceptive, or misleading or given with a reckless disregard for the truth, the Department is concerned that it is unreasonable to expect a borrower to be able to document the intent or knowledge possessed by an institution. While there are circumstances where a borrower could potentially meet this bar if the information provided by a recruiter, such as placement rates, is different from information provided in other public materials, the Department has seen to date that most circumstances where an institution misrepresents student outcomes such as placement rates it does so in such a way that all the public numbers used are wrong and only the private internal numbers reflect the actual results. That type of information would only be obtainable through some way of accessing institutional employees or records, which is something that takes years of work by Federal and State regulators to acquire.

The 2019 regulations required that misrepresentations were those ''made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth'' (see 34 CFR 685.206(e)(3)). Upon further consideration of these policies and their

[10] This language is taken from Delaware's definition of an unlawful practice, but the phrasing is similar for the other states with minor wording changes. Delaware Code Ann. Title 6, § 2513 *https://delcode.delaware.gov/title6/c025/sc02/index.html;* 815 Illinois Comp. Stat. Ann. § 505/2), from Ch. 121 1/2, par. 262, *https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2356&ChapterID=67;* Iowa Code § 714.16, *et seq. https://www.legis.iowa.gov/docs/code/714.16.pdf;* New Jersey's Consumer Fraud Act, New Jersey Statutes Annotated. 56:8–2 *et seq. https://www.njconsumeraffairs.gov/Statutes/Consumer-Fraud-Act.pdf.*

implications both for borrowers and taxpayers, the Department does not believe that misrepresentations or omissions that are made without knowledge or a reckless disregard should be exempt from the Department's oversight. Borrowers who relied on such misrepresentations, even if they were made unintentionally, may still have experienced the harm of attending a particular institution or borrowing Federal student loans on the basis of untruths or omissions. Similarly, institutions are not permitted under Section 487(c)(3) of the HEA to make misrepresentations, even if unintentional. And an unintentional omission of fact still can result in harm for the borrower.

As proposed, the definition of omission of fact would include a non-exhaustive list of examples that could amount to an omission of fact in the borrower defense context. Examples include, but are not limited to, concealing, suppressing, or failing to provide material information regarding the entity that is actually providing the educational instruction; the availability of slots, or requirements for obtaining admission, in a program where the institution places students in a preprogram at the time of enrollment; and factors that would prevent an applicant, for reasons such as a prior criminal record or preexisting medical condition, from qualifying to meet requirements that are generally needed to be employed in the field for which the training is provided. In its oversight and compliance work, the Department has found some institutions omitted material information about the nature of their educational programs that, if disclosed upfront, could have resulted in a different outcome for the student and forgone the need for a defense to repayment. The Department invites comments on this proposed definition and whether the proposed definition is sufficiently expansive to address known types of omissions in which some institutions engage.

Finally, the Department believes that each of the proposed borrower defense provisions discussed in this NPRM pertaining to misrepresentation serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families; to the public, taxpayers, and the Government; and to institutions separate from, and in addition to, the value provided by the other requirements. In particular, we believe that including more examples of misrepresentations in the regulations would more accurately reflect the Department's experiences in overseeing institutions; and would inform institutions about their obligations, as well as provide clearer indications to borrowers about what may constitute a borrower defense claim. If the Department is able to cite to these additional regulatory provisions in its enforcement work, it will also be able to protect taxpayer interests and end unlawful behavior more quickly and effectively. To best serve these purposes, we propose including an administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Breach of Contract

The 2019 regulations removed breach of contract as an element that could give rise to an approved borrower defense to repayment application even though it was included in the 2016 regulation. The 2019 regulation argued that the majority of defense to repayment applications submitted to the Secretary did not allege breach of contract, concluding that the borrower defense standard should be tailored to the types of claims borrowers alleged. See 84 FR 49810–12. The 2019 regulations further rationalized that a standard breach of contract claim was potentially overbroad, and thus inappropriate as a basis for relief since it is not necessarily limited to the provision of educational services.

With the benefit of reviewing additional borrower defense claims, and considering additional input from negotiators, including a request from a negotiator to be more definitive as to what constitutes breach of contract,[11] for the reasons discussed below the Department believes that breach of contract should be restored as a part of the Federal borrower defense standard. As an initial matter, the 2019 concern with overbreadth is inapplicable, because the Department proposes to clarify in new § 685.401(a) (the definition of ''borrower defense to repayment'') that an act or omission supporting a borrower defense must be related to the making of a Direct Loan or the provision of educational services for which the Direct Loan was intended. With that appropriate qualification, inclusion of a breach of contract is appropriate. As explained in 2016, breach of contract may be an appropriate basis for borrower defense relief when an institution fails to fulfill a specific contractual promise to provide certain training or courses. 81 FR 39341 (June 16, 2016). Breach of other terms of the contract that relate to the making of a Direct Loan or the provision of educational services may also serve as an appropriate basis for borrower defense relief. The Department would grant relief commensurate with the specific contractual injury alleged. For example, the Department is aware of students bringing loan-related breach of contract claims against postsecondary institutions or for provisions of educational services for which those loans were intended. See, *e.g., Supplee* v. *Miller-Motte Bus. Coll., Inc.,* 768 S.E.2d 582 (N.C. Ct. App. 2015); *Eckols et al.* v. *Earle et al.,* No. 2016CI18165 (37th Jud. Dist., Bexar County), Pltfs.' Orig. Pet., Applic. for TRO and Applic. for Temp. Inj. at 10 (Oct. 18, 2016). This type of claim would clearly be appropriate for borrower defense adjudication if the breach is related to the making or provision of educational services intended for the Direct Loan but may not fall under the other four elements of the Federal standard depending on the nature of the contract and its breach. Moreover, even if there is some overlap between the types of conduct that would constitute a breach of contract and would otherwise constitute a basis for a borrower defense claim, in some instances, borrowers may be able to allege breach of contract claims more readily. The Department would investigate and adjudicate claims related to breaches of contract to determine whether a claim meets the requirements for a defense to repayment.

Aggressive Recruitment

The Department is also proposing to add a new category related to aggressive and deceptive recruitment to capture other types of acts it believes should serve as a basis for a borrower defense claim. While this category was not included in the 2019 regulation, the Department considered aggressive recruitment as a factor in the 2016 regulations in determining whether a misrepresentation was substantial enough to merit approval. It was not, however, conduct that could lead to approval on its own in that regulation. In other words, the conduct had to be a substantial misrepresentation in the form of aggressive recruitment to qualify for relief pursuant to the 2016 rule.

The Department first raised the proposal for aggressive and deceptive recruitment during negotiated rulemaking. Some negotiators agreed

[11] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nov3pm.pdf.*

with including aggressive recruitment as a basis of a borrower defense claim and indicated that some institutions aggressively recruit certain specific groups of vulnerable students, such as students who are older, are the first in their families to attend postsecondary education, are attending while working full-time and or caring for families, or who come from low-income backgrounds. To date, the Department has received applications from well over 100,000 borrowers who have made allegations relating to admissions and urgency to enroll. This includes allegations that institutions recruited students who lack the basic tools needed to succeed in their courses, such as recruiting students for online programs who have no access to the internet because they are homeless. The Department has also seen institutions discourage students from consulting family and friends for additional information if they raise concerns about enrolling by calling them ''dreamkillers.'' And, it has received allegations detailing situations where recruiters tried to shame borrowers into enrolling by criticizing them for not providing more for their families.

Because many existing State consumer protection laws include this sort of claim in different forms, the Department reasoned that including it in the Federal standard would ensure a more comprehensive Federal standard and ensure equitable treatment for borrowers regardless of where they live.

In developing its proposed definition of aggressive recruitment, the Department incorporated negotiators' proposals and language from the 2016 regulations. The Department also consulted with the FTC and thoroughly analyzed Federal laws on UDAP. The Department consulted with FTC because of that agency's long-standing enforcement work regarding UDAP under Sec. 5 of the FTC Act. Similar to the Consumer Financial Protection Bureau (CFPB) and other Federal banking regulators, the Department remains convinced that UDAP can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. The FTC Act has also helped other Federal banking regulators in crafting their oversight and enforcement activities over UDAP. Thus, the Department believes that consulting with the FTC which has applied its standards through case law, official policy statements, guidance, examination procedures, and enforcement—actions could help inform the Department's work regarding UDAP, to include elements of aggressive recruitment.

Most negotiators supported the idea of including aggressive recruitment in the Federal standard. Some negotiators, however, expressed concern with the potential subjectivity of the concept and the risk of sweeping in innocuous encouragement or other similar recruiting contact by admissions representatives, enrollment management professionals, or other contractors engaged by an institution. These negotiators indicated that in the course of an admissions representative's day-to-day work, contact with prospective students may include something as simple as reminding them of a May 1 enrollment deadline, and there was some concern that such a reminder may be considered a form of aggressive recruitment. The Department believes the clarity of this definition demonstrates that isolated instances of well-intentioned recruiter behavior would not result in an approved claim. Rather, this definition would capture the types of sustained and aggressive behavior the Department has seen across more than 100,000 borrower defense applications.

The Department is proposing to include aggressive and deceptive recruitment as its own category that could lead to an approved borrower defense claim because it captures an important type of behavior that the Department has seen institutions engage in where the way a borrower is coerced into enrolling is so aggressive that even if the information presented to them was accurate and without omissions the borrower is not able to make a full and informed choice. The result of that is often a borrower enrolling in a program that is not providing them what they were expecting—such as a certificate in an allied health field when they wanted to become a nurse—or comes at a price that they cannot possibly afford and did not freely and fairly take on. The Department has seen instances, discussed above, where these aggressive recruitment tactics prevented or strongly discouraged students from being able to make an informed choice. Other Federal regulators have also seen instances where students were affected by aggressive recruitment practices that played a role in borrowers' decisions to take out private educational loans.[12] Borrowers were told not to worry about concerns that they voiced, such as whether they would graduate or get a job. They were pressured to enroll either through artificial time constraints (such as falsely claiming there were a limited number of seats or the only opportunity to enroll would expire in just a few days) or by exploiting the borrower's lack of experience with higher education. Because the recruiter has greater information at their disposal than the potential borrower and is acting in a position of authority and power, the recruiter is in a position to influence the prospective student's decision to enroll. In these circumstances, even absent a misrepresentation, such as a falsified job placement rate, the entire recruitment experience can impede the ability of the borrower to understand and appreciate what they are signing up for and the financial and educational implications of their decision.

The Department also thinks it is important to include aggressive recruitment in order to clarify the interaction between what a recruiter may tell a prospective student who later enrolls, and the information the student may receive in written form. All institutions are required to disclose various information (see §§ 668.41, 668.47, and 668.164, among others) providing students with disclosures and information when they enroll, including through course catalogs. These printed or digital materials may contain factually accurate statements that differ from what prospective students have been told by a recruiter—such as a more accurate presentation of job placement rates, the role of accreditation, the ability to transfer credit, or other issues that would be important to prospective students and their families. In responding to the allegations in borrower defense claims, some institutions have asserted that written statements, even if buried in material provided to the students, are sufficient to correct inaccurate information from recruiters. The Department disagrees with this view. As a practical matter, the recruiter is providing personal support to the borrower. The recruiter is often the borrower's first interaction and gateway to apply for and eventually obtain Federal student aid, including Federal student loans. Even if the borrower examines the written disclosures closely before enrolling, the information from the recruiter may overshadow the disclosures.[13] Given the information asymmetry between the recruiter and the borrower, and that perceived relationship of trust, the aggressive tactics of the institution may

[12] *https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/.*

[13] *https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf.*

themselves constitute a valid claim for borrower defense.

Moreover, the Department acknowledges that the statutory ban on incentive compensation for recruiters or admissions employees has not fully achieved the intended result which was to protect students from the harms of aggressive recruitment. The incentive compensation rule bans incentive payments to recruiters based on their enrollment success because such payments might lead recruiters to mislead students in order to earn a financial bonus. 20 U.S.C. 1094(a)(20). Aggressive recruitment continues to proliferate in institutions as the pressure for increased enrollment, and in turn, receipt of Federal student assistance, drives institutions' continued use of such tactics. The Department believes enrollment that stems from such tactics should provide a path to an approved borrower defense claim as a form of aggressive recruitment.

The Department is aware of instances where institutions will, either directly or through a third party, falsely appear to help individuals seeking Federal, State or local benefits. For example, in the FTC's action against Career Education Corporation (CEC), CEC obtained individuals' contact information from websites where the institution presented itself, through lead generators, as a portal for receiving other government benefits, such as unemployment insurance, or for job seeking.[14] These individuals unwittingly provided their personal information to the lead generator believing submission of their information was a portal for government benefits. Those individuals, in some cases, later enrolled at the institution after providing their information under the guise that they would obtain government benefits. An individual could not reasonably be expected to understand that such websites were lead generators that the institution used to increase their enrollments.

The Department considered including an aggressive recruitment provision in the 2016 regulations, but at that time was concerned about the potential difficulty of developing clear, consistent standards for aggressive conduct. 81 FR at 39343. The 2016 regulations did, however, include aggressive recruitment as an aggravating factor in determining whether a borrower relied, or reasonably would have relied, on a misrepresentation, an indication of the Department's degree of concern about such behavior and its likelihood that borrowers' decisions would be affected by it. *Id.* After five more years of receiving borrower defense claims, and addressing concerns raised by non-Federal negotiators during negotiated rulemaking,[15] the Department is confident that an appropriate standard can be articulated and enforced in the borrower defense context and that such an element is a necessary addition to address gaps in the Federal standard. Additionally, as described above and through program reviews, audits, and other investigations, the Department has seen that institutions engage in aggressive tactics. Such tactics include imposing pressure on potential students to make enrollment or loan decisions immediately, taking advantage of a student's lack of understanding of the process, stifling efforts for the borrower to consult with a third party, persistent and unsolicited contact with a prospective student, and other actions under which an institution exerts unreasonable pressure to induce a student to enroll or obtain Federal student financial aid. These abuses have been well documented and result in findings against the institution under State or Federal laws,[16] but they currently do not meet the standards for a borrower defense claim. In light of the Department's discovery of extensive acts of aggressive recruitment and the harm to students, the Department is proposing to include aggressive recruitment in the Federal borrower defense standard.

The Department modeled the proposed aggressive recruitment provision in part 668, subpart R, after the misrepresentation regulations in part 668, subpart F, because the subpart F framework was the most logical structure already in place: it had a definitions section and outlined a non-exhaustive list of factors that could lead to a misrepresentation. In defining the types of aggressive recruitment under the subpart, § 668.501, the Department balanced the need to establish specific guidelines to curb institutions' exertion of unreasonable pressure on prospective students with the need for general standards that broadly cover other forms of aggressive recruitment. Placing the standard for aggressive recruitment in its own subpart instead of within borrower defense also would ensure the Department applies consistent standards for aggressive recruitment across its other oversight and compliance work, which could in turn result in an approved borrower defense claim. Additionally, this increased oversight and compliance may help to deter such behavior from institutions going forward, helping to ultimately reduce the need for borrowers to submit defense to repayment claims.

To ensure that institutions and the public have clear standards for what constitutes aggressive recruitment, for purposes of borrower defense, the Department seeks the public's input on how the Department can identify the extent to which an institution engages in any form of aggressive recruitment and the means to document this misconduct through program reviews and audits. Policies and procedures that law enforcement uses to curb these actions would be especially helpful. The Department also provides a non-exhaustive list of acts that could warrant an aggressive recruitment claim in proposed § 668.501.

Finally, the Department believes that each of the proposed provisions discussed in this NPRM pertaining to aggressive recruitment serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families; to the public, taxpayers, and the Government; and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Judgments Against Institutions and Department Actions

In the 2016 regulations, the Department included as a basis for a borrower defense claim a nondefault, contested judgment obtained against an institution based on any State or Federal law, whether obtained in a court or in an administrative tribunal of competent jurisdiction. Under those regulations, the borrower has a defense to repayment if the borrower was personally affected by the judgment; that is, the borrower must have been a party to the case in which the judgment was entered, either individually or as a member of a class that obtained the judgment in a class action lawsuit, and the act or omission must have pertained to the making of a Direct Loan or the provision of educational services to the borrower. The Department believes retention of

[14] *Federal Trade Comm.* v. *Career Educ. Corp., et al.,* Case No. 1:19–cv–05739 (N.D. Ill. Eastern Dist. Oct. 9, 2019).

[15] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/transc103pm.pdf.*

[16] See, for example, *https://www.ftc.gov/news-events/news/press-releases/2019/08/operator-colorado-technical-university-american-intercontinental-university-will-pay-30-million.*

this provision is in the public interest for the reasons discussed below.

We believe the Department did not fully consider the importance of the lawsuits students brought against institutions when it removed this provision in the 2019 regulation. Although judgments are not as common as allegations of misrepresentation, they are a clear finding by a court that the institution engaged in misconduct. See, *e.g., Supplee* v. *Miller-Motte Bus. Coll., Inc.,* 768 S.E. 2d 582 (N.C. Ct. App. 2015).

In its rationale to include a judgment against an institution as part of the Federal standard, in 2016 the Department stated that including judgment against an institution would allow for recognition of State law and other Federal law causes of action, but would also reduce the burden on the Department and borrowers of having to make determinations on the applicability and interpretation of those laws. See 81 FR 39340–41. To ensure that the scope of the judgment relates only to borrower defense claims, the favorable judgment against an institution would still be required to relate to the making of a Federal student loan.

Finally, the Department proposes to include Departmental final actions as part of a judgment against an institution standard. Institutions that participate in the title IV programs sign a Program Participation Agreement (PPA) with the Secretary. If the Secretary or auditor identifies through Final Program Review Determination (FPRD) or Final Audit Determination (FAD), for example, that an institution breached its PPA, a borrower who was impacted by that final action could have a defense to repayment claim.

It is important for the Department to consider all information available to it, including its own prior investigation and oversight work, to reach findings. FPRDs are not only the result of the Department's own findings, but schools would have also had an opportunity to respond to the findings therein. But more importantly, where the Department has evidence that schools have engaged in conduct that constitutes the basis for a borrower defense, the Department would act on its own evidence rather than requiring borrowers to independently produce this information, which is not available to them.

State Law Standard (§§ 685.206, 685.222)

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution a borrower may assert as a defense to repayment of a Direct Loan, notwithstanding any other provision of State or Federal law, except that a borrower may not recover more from the Secretary than the amount that the borrower has repaid on the loan.

Current Regulations: In the current regulations, three different regulatory standards and limitations periods apply, depending on when a borrower's loan was first disbursed:

- Loans first disbursed prior to July 1, 2017, are addressed under the former 1994 borrower defense regulations in § 685.206(c). That section provides that a borrower may assert a defense to repayment under applicable State law.
- Loans disbursed between July 1, 2017, and June 30, 2020, are adjudicated under the former 2016 borrower defense regulations in § 685.222, which does not provide for any adjudications under applicable State law.
- Loans disbursed on or after July 1, 2020, are adjudicated under the current borrower defense regulations in § 685.206(e), which does not allow any adjudications under applicable State law.

Proposed Regulations: In proposed § 685.401(b), a violation of State law could form the basis for a borrower defense claim, but only if the borrower, or a State requestor in the case of a group claim brought by a State requestor, requests reconsideration of the Secretary's denial of a claim.

Reasons: Achieving the goal of a uniform Federal standard that could be applied to all claims pending or filed after July 1, 2023 requires crafting a regulation that covers all borrower defense claims that are pending as of that date and claims that could be filed in the future. However, claims filed under the 1994 regulation are based upon violations of State law. To ensure that no borrower risks losing access to the State law standard as a result of the uniform Federal standard, the Department proposes allowing borrowers to seek reconsideration of a claim under a State law standard if their initial claim is denied or approved only for a partial discharge. This approach covers the range of acts or omissions that the Department has determined should form a basis for a valid borrower defense to repayment application. It also ensures institutions are not unfairly subject to the costs of approvals for conduct that occurred prior to this regulation by indicating that the Department may only seek to recoup the cost of claims that would have been meritorious under the borrower defense regulation that would have been in effect at the time of the conduct that led to the approval.

Limitations Period (§§ 685.206, 685.222, & Part 668)

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan, except that a borrower may not receive more relief than the borrower has repaid.

Current Regulations: In the current regulations, three different limitations periods apply, depending on when a borrower's loan was first disbursed:

- Loans first disbursed prior to July 1, 2017, are addressed under the former 1994 borrower defense regulations in § 685.206(c). The borrower may bring a claim at any point during the period in which the loan is being collected.
- Loans disbursed between July 1, 2017, and June 30, 2020, are adjudicated under the former 2016 borrower defense regulations in § 685.222. The borrower may bring such a claim at any time but may only assert a right to recover amounts previously collected by the Secretary on the grounds of that same breach of contract or substantial misrepresentation within 6 years of the alleged breach or of the date on which the substantial misrepresentation reasonably could have been discovered.
- Loans disbursed on or after July 1, 2020, are adjudicated under the current borrower defense regulations in § 685.206(e), which require borrowers to file a claim within 3 years from the date the student is no longer enrolled at the institution to file a claim with the Department.

Proposed Regulations: The Department proposes that borrowers with outstanding loans would not be subject to a limitations period.

Reasons: The Department proposes to remove the limitations period for a borrower to assert a borrower defense claim under these regulations or to receive refunds of amounts previously paid on loans still outstanding. This is a change from the 2019 regulation, which required borrowers to file claims within 3 years of the date the borrower left the institution. The 2019 regulation imposed this limit primarily because of the time period institutions would be expected to keep records. However, the U.S. District Court for the Southern District of New York held that the 3-year limitations period for claims that were subject to a collections proceeding (referred to in the 2019 regulation as ''defensive claims'') was not a logical outgrowth of the rulemaking and

remanded that provision to the Department.[17]

The Department believes removing any limitations period on loans that are still outstanding is appropriate for several reasons. First, as discussed in the section on record retention, the records limitation discussed by the Department in the 2019 regulation relates to specific financial aid records that are unlikely to be relevant to the allegations most borrowers raise based upon what the Department has seen in applications for borrower defense to date. Most borrower defense applications to date relate to allegations around what an institution promised during the recruitment process and how that aligned with either the education the borrower ultimately received, such as whether they were able to get a job, if they could transfer credits, or if key data provided during the recruitment process such as job placement rates were accurate. The typical financial aid records that have a three-year retention requirement would not have any bearing on those allegations since they do not include records of recruitment activities, but rather cover items like the disbursement record of aid. Similarly, the Department does not believe it would be appropriate to set statutes of limitations on loans that are still outstanding the way many State laws do by tying them to the date that a borrower knew or could reasonably have been expected to know the misconduct occurred. As noted in the 2019 regulation, properly enforcing such a statute of limitations is administratively burdensome. It would entail information that may not be included in a borrower's application and could also rely on other factors such as when a State opened an investigation or publicized its findings. Moreover, the concept of limitations tied to when a borrower could reasonably have known about misconduct would not align with the Department's proposal to allow group claims. Since one of the purposes of a group claim is to not require an individual application, the Department would not be receiving information from a borrower about when they knew about misconduct.

The Department also considered whether it would be appropriate to establish separate statutes of limitations for forgiving balances that are still outstanding versus refunding amounts previously paid on loans that are still outstanding. The Department does not believe it would be appropriate to place a limitation on discharging remaining loan balances. Since there is no statutory time limit on repayment or collections activity, the Department does not want to create a situation where a borrower is still obligated to repay a loan on which the Department has concluded that the borrower should have received a discharge due to the institution's misconduct solely because the individual did not fill out an application in time. Such an approach is not in keeping with any of the Department's other discharge authorities, such as closed school discharge, false certification discharges, or total and permanent disability discharges, none of which require borrowers to apply for a discharge within a set period of time.

Similarly, the Department does not believe it would be appropriate to set a separate statute of limitations for refunding amounts previously paid on loans that are still outstanding. None of the Department's other discharges limit the refunding of amounts previously paid based on when a borrower applies, and the statute does not specify a separate treatment for borrower defense. There are no limitations on the issuing of refunds when a borrower receives a closed school discharge. Other discharges limit refunds to the point at which the borrower became eligible for the discharge, which is also not tied to applying within a certain period. For false certification, refunds are limited to the point after the borrower meets the eligibility criteria for a discharge, though in essentially all cases this means refunding all payments since most borrowers meet the eligibility criteria for a discharge prior to taking out a loan. Similarly, a borrower may receive refunds when approved for a TPD disability discharge back to the date the borrower's eligibility for a discharge was established. Refunds for PSLF and Income-Driven Repayment, meanwhile, are provided for payments made beyond the 120, 240, or 300 qualifying payment threshold, depending on the program. Finally, applying a statute of limitations only to refunds of amounts paid would create significant operational challenges for the Department.

Exclusions

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution a borrower may assert as a defense to repayment of a Direct Loan, except that a borrower may not receive more relief than has been repaid.

Current Regulations: The 1994 borrower defense regulations do not explicitly address the acts or omissions that are excluded from a borrower defense to repayment claim. The 2016 regulations at § 685.222(a)(3) explicitly provide that an institution's violation of the title IV regulations alone does not constitute a basis for a borrower defense claim unless that violation would fulfill one of the bases for a borrower defense claim. Similarly, under the 2019 borrower defense regulations at § 685.206(e)(5), the Department explicitly excludes an institution's violation of an HEA requirement or Department regulation as a basis for a borrower defense claim unless the violation would otherwise constitute the basis for a successful borrower defense to repayment. Under current regulations, misrepresentations related to civil rights violations are not a basis for a borrower defense claim.

Proposed Regulations: Proposed § 685.401(d) would provide exclusions that would not constitute a basis for a borrower defense claim. Specifically, an institution's violation of institutional eligibility or compliance rules under the HEA or other laws would not form the basis for a defense to repayment claim unless the violation would constitute a defense to repayment under the Federal standard and occurred in connection with the making of a loan or provision of educational service for which the loan was intended. For example, an institution's failure to meet the Constitution Day requirements in 36 U.S.C. 106 would not form the basis for a borrower defense to repayment claim.

Reasons: The Department's consistent position since 1994 has been that the Department will acknowledge a borrower defense to repayment only if the act of omission of the institution directly relates to the loan or to the institution's provision of educational services for which the loan was provided. See 60 FR 37768, 37769 (July 21, 1995); 81 FR at 75941, 75944.

As a result, the Department consistently has not considered claims such as personal injury torts, harassment, or a violation of Federal civil rights laws to be grounds for alleging a defense to repayment. In the 2019 regulations, the Department provided a non-exhaustive list of circumstances that would not constitute, in and of themselves, borrower defenses to repayment that were directly related to the borrower's loan or the provision of educational services. This list included, among others, slander or defamation, property damage, and allegations about the general quality of the student's education or the reasonableness of an educator's conduct in providing

[17] *New York Legal Assistance Group (''NYLAG'')* v. *Cardona,* Case No. 20–CV–1414 (S.D.N.Y. Mar. 17, 2021).

educational services. See 84 FR at 49802, 49824. The Department emphasizes that, although the current regulations and the proposed regulations exclude a violation of civil rights as a basis for alleging a borrower defense to repayment, the Department's Office for Civil Rights (OCR) enforces several Federal civil rights laws related to education, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990. Individuals who believe that a recipient of Federal funds or a public entity that is subject to Title II has violated these Federal civil rights laws can file a complaint with OCR. OCR's authority includes obtaining reimbursement of tuition and other costs for injured parties when appropriate. The availability of this form of relief encourages individuals to file promptly with OCR. The Department believes that OCR's enforcement authority is better suited to addressing civil rights harms than including them as a new basis for a borrower defense to repayment.

The proposed regulations reflect these positions.

Group Process and Group Timelines

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution a borrower may assert as a defense to repayment of a Direct Loan, except that a borrower may not receive more relief than has been repaid.

Current Regulations: The current borrower defense regulations under § 685.206 require an individualized review of every borrower defense application and thus do not permit a group review process. Under the 2016 standard, § 685.222(f) outlined a process for evaluation of a group claim. Upon consideration of factors including, but not limited to, common facts and claims, fiscal impact, and the promotion of compliance by the institution or other title IV, HEA program participant, the Department could initiate a process to determine whether a group of borrowers identified by the Secretary, has a borrower defense. Members of the group may be identified from individual applications or from any other source. The Department may consolidate applications that have common facts and claims and resolve the borrowers' claims as group claims. The Department established separate group process procedures with respect to loans made by institutions that have closed in § 685.222(g) and for those that remain open in § 685.222(h). The 1994 regulations did not specify a group process, though the Department did employ a group process using those regulations, including in granting a group claim for students who attended American Career Institute in early 2017.

Proposed Regulations: The Department proposes two processes for pursuing group claims in new § 685.402. Under the first process, in proposed § 685.402(a) and (b), the Department reserves the right to determine if a group of borrowers it identifies have a common defense to repayment at the same institution, including multiple campuses of the same institution. Under such a Department-initiated group process, the Department would have the discretion to create a group based on any of the following borrower defense basis: actions by the Federal Government, State attorneys general or other State agencies/officials or law enforcement activities; class action lawsuits related to educational programs at one institution; or State or Federal judgments against institutions awarded to several borrowers for reasons related that could give rise to a defense to repayment claim; or a group of individual borrower defense claims.

Under the second process, in proposed § 685.402(c), the Department may initiate a group process upon request from a State requestor, on the condition that the State requestor submit an application and other required information to the Department to determine if it should form a group. Such an application ensures the Department has a consistent and clear process for addressing requests to form a group but does not confer the ability of the State requestor to otherwise represent the group during the Department's process of reviewing and adjudicating the claims. The Secretary would further be able to consolidate multiple group applications related to the same institution or institutions. The proposed provision would require the Department to respond to a materially complete State requestor's submission within 365 days. That response would indicate whether the Department decided to form the requested group and, if not, would provide the State requestor an opportunity to seek reconsideration of the group formation decision. In both group processes, the Department would include any individual claims submitted by a borrower under new proposed § 685.403 if that borrower is deemed part of the group. That borrower's claim would then be treated as part of the group claim, including with respect to timelines for adjudication.

If the Department agrees to form a group under this proposed section, the Department would designate a Department official to adjudicate the borrower defense claim.

For group claims, the Department proposes placing those loans in forbearance if they are in repayment and stopping collection activity if they are in default. While every effort would be made to identify the group members during the initial group formation stage, in some cases that may not be possible. Any borrower who was not initially identified [18] could opt into the group, however, and would be granted forbearance or stopped collection, as appropriate. The Department would retroactively apply forbearance or stopped collections to the loans of any such borrower, and no other consequences would apply to any borrower that the Department adds to a group after the group's initial formation.

Reasons: Upon its review of all three borrower defense regulations the Department believes it is better to return to allowing group processes, as was permissible for more than two decades under the 1994 regulation and explicitly allowed under the 2016 regulation. The 2019 regulation excluded the ability to conduct a group process on the grounds that each borrower defense claim had to be subject to a highly individualized review. This included requiring a borrower to prove that a misrepresentation was made with the knowledge that the statement was false, deceptive, or misleading, or made with reckless disregard for the truth. It also required the borrower to make an individualized showing of harm. As already discussed under the *Substantial Misrepresentation and Omission of Fact* section, the Department is proposing to remove both of those requirements for a misrepresentation out of concerns that expecting a borrower to prove knowledge of a misrepresentation's falsity or disregard for the truth sets a bar that would be essentially impossible for any reasonable individual to meet because they are not going to have inside knowledge of the way an institution was operating. Similarly, the

[18] It may not be possible to initially identify the full number of borrowers in every potential group due to data limitations. For example, the Department does not have reliable data on program-level enrollment prior to the 2015–16 financial aid award year. That means the Department would not be able to accurately identify all members of a group claim based on enrollment in a specific program prior to that year. In situations where data quality prevents the Department from identifying all group members, for example, the Department would make every effort to identify all members of the group and would reserve the opportunity for individuals who the Department could not initially identify to be included in an opt-in basis.

Department is concerned that the harm documentation as required in the 2019 regulation risks penalizing borrowers for success achieved regardless of their education or to prove a level of employment analysis best reserved for labor economists.

Removing these two components of the definition of a misrepresentation allows the Department to then determine the effects of a misrepresentation across a group of borrowers as opposed to an individual approach. While the Department does not believe that every instance of an alleged type of behavior that may result in an approved claim should be reviewed for a group of borrowers, the flexibility to do so when appropriate would result in a process that is more efficient for borrowers, institutions, and the Department.

As discussed in the 2016 final regulations, Congress authorized the Department to determine subordinate questions of procedure for borrower defense cases, including but not limited to the scope and nature of alleged acts or omissions that satisfy borrower defense requirements, how to process borrower claims, and whether claims should be heard successively or as a group. See 81 FR at 75965 (generally citing *FCC* v. *Pottsville Broad. Co.,* 309 U.S. 134, 138 (1940)). The Department thus has general authority to adjudicate claims as a group.

The Department believes that, where appropriate, the most efficient way to evaluate borrower defense claims is to jointly adjudicate the claims of similarly situated borrowers that are based on common evidence. This is consistent with how the Department has adjudicated and approved claims to date under the 1994 and 2016 regulations. Considering the applications of similarly situated borrowers as a group rather than reviewing all of them individually allows addressing the conduct that is often pervasive and affects many borrowers at once. At the same time, a group process may benefit the institution by allowing it to present its response to the same allegations by a group of borrowers once rather than having to respond to numerous individual claims.

The Department is mindful of the privacy of borrowers' financial information. Under these proposed regulations, information about a borrower's individual financial circumstances would not be shared with other borrowers that are part of the group claim. Many negotiators supported the Department's creation of a new group process for considering borrower defenses to repayment claims. They asserted that groups of borrowers who were all subject to the same act or omission by an institution should have their defenses considered as a group, and that a group process would be more efficient and result in more equitable treatment of similarly situated borrowers.

In the 2016 regulations, the Department reserved the sole right to form groups for purposes of borrower defense adjudication. Although the Department welcomed cooperation and information from non-Federal partners, including State attorneys general and legal assistance organizations, the Department did not extend the right to request group formation to these external entities. The Department's recent experience with borrower defense, however, particularly the influx of individual borrower defense applications, has convinced the Department that State partners can provide critical assistance in assessing borrower defense claims. For instance, every set of approved borrower defense to repayment findings to date except for those at Marinello Schools of Beauty and DeVry University was based at least in part on evidence provided by a State attorney general. The Department has also found that allowing for the formation of a group process without a formal process for applications has led to confusion where States are not told what would be useful information to submit and are not given a timeline for a response. The more structured process would address this confusion and make it easier for the Department to successfully administer the borrower defense program. For these reasons, the Department proposes to create a framework where ''State requestors'' may request the formation of a group borrower defense claim. This process would allow requestors to share their evidence with the Department. The requestors however would not represent the group in Department proceedings and the Department would retain the sole responsibility to adjudicate the claim.

The Department initially considered allowing legal assistance organizations to also submit a group request and would have referred to this process as a ''third-party group request.'' However, on further consideration, the Department believes that it is best to limit this process to State requestors. The Department has consistently and repeatedly received information from States that played a key role in approving borrower defense applications. This evidence often comes from multi-year investigations that included the State entity obtaining internal institutional records through its investigatory tools. To date, the investigatory authorities granted to State attorneys general have yielded the type of high-quality evidence that the Department needs to fully evaluate a claim. Limiting this process to State requestors also ensures the Department would administer this process by working with a more limited group of entities. However, nothing in this approach precludes legal assistance organizations from working with State requestors and the Department encourages them to collaborate and share any additional evidence they may possess that could be of use for a group request.

To further ensure the potential effectiveness of group claims, the Department would require that all State requestor group process applications include several items to be considered materially complete. These items include the necessary identifying information to define the group, such as the institution, campus or campuses involved, the time period, and the type of allegation. The Department also proposes requiring that any group application contain evidence beyond sworn borrower statements. While borrower statements are a crucial form of evidence, the Department has found that additional evidence brought by third parties such as training materials, internal communication, statements of former staff of the institution, or evidence of policies and procedures have been among the most effective ways of demonstrating that conduct was widespread.

In accepting these group claim applications from State requestors, the Department changes the position it took in the 2019 regulation, in which it suggested that State attorneys general should work with their own State authorizing and regulatory entities when they are concerned about an institution rather than coming to the Department. While the Department agrees that State attorneys general should pursue matters within their own States as appropriate, failing to accept evidence that may assist the Department in its own efforts to administer the borrower defense program would be an unnecessary limiting of the triad of the Department, States, and accreditors. While each part of the triad has its own unique area of responsibilities, the whole system is more effective when it engages in collaboration and information sharing; and, it would be a disservice to students, institutions, and taxpayers for the Department to ignore evidence it could easily obtain that would help it make fair and accurate

determinations as to the validity of a borrower defense application.

Finally, the Department proposes that any individual claim filed under new § 685.403 that is also part of a group claim be adjudicated with the group claim, to allow the Department to more easily apply any additional evidence used to form the group to that individual borrower's claim. If the group claim is ultimately denied, individual claims that were included in a group would then be adjudicated as individual claims. Treating an individual claim as part of a group until the group process is concluded ensures that borrowers are not subject to multiple simultaneous processes and the Department believes this approach would give borrowers a greater likelihood of approval.

Evidentiary Standard

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan, except that a borrower may not recover from the Secretary an amount in excess of the amount that the borrower has repaid.

Current Regulations: Under both the 2016 and 2019 borrower defense regulations, the Department uses a preponderance of the evidence evidentiary standard. The 1994 regulations do not include an evidentiary standard.

Proposed Regulations: Under the proposed regulations, the Department would continue the practice in the 2019 and 2016 regulations of using a preponderance of the evidence standard in resolving individual and group borrower defense claims, as set forth in proposed § 685.401(b).

Reasons: The Department believes that it is appropriate to use the preponderance of the evidence standard to adjudicate all borrower defense claims pending or filed after July 1, 2023. The adoption of this standard is consistent with both the 2016 and 2019 regulations, as well as the Department's practice in other proceedings regarding borrower debt issues. See § 34.14(b), (c) (administrative wage garnishment); § 31.7(e) (Federal salary offset). During negotiated rulemaking sessions, the Department proposed to continue using the preponderance standard, and almost all negotiators expressed support for this position. One negotiator believed that the Department should use a stricter clear and convincing evidentiary standard. The Department declined to accept this suggestion as it would be a higher bar than the Department uses for any other similar process, including what is used in the 2016 and 2019 regulations.

Forms of Evidence

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan, except that the borrower may not recover from the Secretary an amount in excess of the amount that the borrower has repaid.

Current Regulations: The 1994 regulations do not specify the types of evidence acceptable to the Secretary in order to adjudicate a claim. The 2016 and 2019 borrower defense regulations specified some types of evidence that could be considered but did not address whether borrower defense applications themselves (attestations from the affected borrower) would be considered evidence.

Proposed Regulations: As to evidence the Department official might consider in adjudicating a group claim, § 685.406(b)(1) specifically would permit consideration of: evidence submitted as part of the group application; evidence submitted in connection with individual claims that are part of the group; evidence within the Department's possession; evidence or other information from the institution; and other relevant information. The Department official would also consider the group and individual applications as evidence.

Reasons: Under the proposed regulations, the Department would consider information on the application (and other information appended to the application package) as a form of evidence to foster a more uniform and fair adjudication process. Because each borrower defense claim will depend on the circumstances, the Department does not want to provide an explicit list that limits what could constitute evidence. Doing so might inadvertently exclude some type of evidence that is relevant in some applications. Instead, the proposed regulations make clear that the application itself, including the borrower's sworn statement, is a form of evidence. The proposed regulations also list other items that could be considered evidence, such as information about the institution in the possession of the Secretary that are material to the borrower defense claim, evidence or other information provided by the institution during the institutional response process, and any other relevant information that the Department official may obtain to adjudicate the claim. Using a broader definition of evidence would take any unique circumstances into account and would avoid concerns that prior rules were not sufficiently clear that a borrower's sworn statements are a form of evidence. Borrowers may often have first-hand knowledge of the alleged act or omission, and the information they furnish through a borrower defense application may provide supporting evidence in areas that the Department does not regularly review in a routine program review or audit.

The Department proposes in this NPRM to allow institutions to provide other relevant information for the Department official's consideration during the adjudication of the borrower defense claim, because other information from the institution could help the Department official determine the veracity of the borrower defense claim and to ensure a fair process. The only exception to this process would be for claims approved based upon final Secretarial actions, which are other oversight and enforcement actions taken by the Department for conduct that also could support a borrower defense claim such as findings in a final program review determination that an institution engaged in misrepresentations, or other actions to fine, limit, suspend, or terminate an institution, and other actions that result in a loss of title IV eligibility. In those cases, the institution would have already had an opportunity to provide its evidence to the Department through the appropriate processes.

Institutional Response Process

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan, except that a borrower may not recover from the Secretary an amount in excess of the amount that the borrower has repaid.

Current Regulations: The 1994 borrower defense regulations do not include a process for an institutional response to a borrower defense claim.

Under the 2016 regulations, the Department designates a Department official to conduct a fact-finding process to adjudicate the borrower defense claim and considers any additional information, including any response or submission from the institution. The Department official notifies the institution of the borrower defense application and of any opportunity for the institution to respond. Upon request, the Department will provide the borrower any available information about the borrower defense claim

(including information that the Department has about the institution).

The 2019 borrower defense regulations at § 685.206(e)(10) contain a more detailed process. Upon receipt of a borrower defense to repayment application, the Department notifies the institution of the pending application and provides the institution with a copy of the borrower's request and any supporting documents, a copy of any evidence otherwise in the possession of the Secretary, and a release of information signed by the student permitting the institution to provide the Department with information from the student's education record relevant to the defense to repayment claim to the institution. The institution is given at least 60 days to respond, and the borrower is given at least 60 days to reply to the institution's response.

Proposed Regulations: In proposed § 685.405, the Department proposes to continue to provide for an institutional response process but to clarify the role of an institutional response in the adjudication of a borrower's claim, give institutions more time to respond, and ensure institutional responses are held to the same standards as what is expected of borrowers. Under the proposed regulations, the Department official would notify the institution of the borrower defense claim, and the institution would have 90 days to respond. With its response, the institution would be required to execute an affidavit confirming that the information contained in the response is true and correct under penalty of perjury, the same requirements that are placed on the borrower's application. If the institution fails to respond, the Department would presume that the institution does not contest the allegations in the borrower defense claim. If the institution has closed, the Department would use the best contact information it has for the former owners or operators to notify the institution of the claim and give it a chance to respond; however, the Department would not continue to notify former owners or operators after repeated instances of nonresponse. As discussed further below, the limitations period would not apply if the Department provided notification to the institution of a claim prior to the end of the limitations period (see *Time Limit for Recovery from Institutions* section).

Reasons: The Department believes it is vital to give institutions an opportunity to respond to allegations in a borrower defense claim. An institutional response would give the Department a more complete record on which to evaluate the borrower's application. At the same, the Department is concerned that prior regulations that included an institutional response process did not provide sufficient clarity about how the response would factor into the Department's adjudication process. Nor did those prior regulations specify that responses would be held to the same standards as the submission made by the borrower.

To timely adjudicate a claim, the Department proposes to give institutions 90 days to respond. The Department chose to give institutions 30 days beyond what was afforded in the 2019 regulation to align it with the maximum response time afforded to institutions in the program review process. This is a similar situation in which the Department seeks feedback from an institution in response to identified issues with its administration of the Federal financial aid programs. Before issuing a Final Program Review Determination (FPRD), the Department affords institutions an opportunity to respond to the Program Review Report (PRR) in writing within 30 to 90 days (see 6–2 of the 2017 *Program Review Guide*).[19] The program review process bears a lot of similarities to the borrower defense process. In both situations, the Department reviews evidence related to an institution. In the case of borrower defense, this comes from applications by a borrower or State requestor or evidence in the Department's possession. In the case of program reviews, it is based upon the Department's review of the institution's student records, policies, and procedures. For program reviews, the Department then seeks a response from the institution to clarify or challenge the findings reached by the Department. The institutional response process here fulfills a similar role in giving the institution an opportunity to review the borrower defense claim and provide its own evidence to the contrary. Accordingly, giving institutions the same amount of time to respond to a borrower defense application that they receive at the maximum for a program review is reasonable. In addition to this initial institutional response, the Department may seek additional information from an institution later if it deems it necessary. The institution would also have a separate opportunity to respond to a claim during any recoupment proceeding.

[19] *https://fsapartners.ed.gov/sites/default/files/attachments/programrevguide/2017ProgramReviewGuide.pdf.*

Process Based on Prior Secretarial Actions

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan, except that a borrower may not recover from the Secretary an amount in excess of the amount that the borrower has repaid.

Current Regulations: The 1994 and 2016 borrower defense regulations do not specifically provide for a process for adjudicating borrower defense claims based on prior Secretarial actions, which are other oversight and enforcement actions taken by the Department for conduct that also could support a borrower defense claim. These include FPRDs; actions to fine, limit, suspend, or terminate an institution; and other actions that result in a loss of title IV eligibility. The fact-finding adjudication process in § 685.222(e)(3)(i) that is applicable in both sets of regulations includes consideration of Department records, however, which could include prior Secretarial actions, and so these changes make clearer the process for considering prior Secretarial actions rather than adding a new basis for a borrower defense claim.

The 2019 borrower defense regulations, § 685.206(e)(9)(ii), permit the Department to consider information in its possession, which could include prior Secretarial actions, if the institution and the borrower have an opportunity to review the evidence and submit additional evidence.

Proposed Regulations: Proposed § 685.404 would establish a process by which the Department could consider prior final Secretarial actions against an institution in the context of determining whether to form and approve a group borrower defense claim. Such final action could include a FPRD or final audit determination (FAD); an institution's failure to meet the administrative capability requirements that relate to the provision of educational services; an institution's loss of eligibility due to, for example, a high cohort default rate (CDR); a fine, limitation, suspension, or emergency action relating to an institution's misrepresentation or aggressive recruitment; or other final Departmental actions. Because any action the Department would consider in this context is already ''final,'' the institution would not have another opportunity to provide an additional response to the allegations, beyond the ample opportunities already afforded it

in the prior context, before the Department makes a decision on the group claim.

Reasons: The Department conducts a significant amount of oversight and compliance work to ensure compliance by institutions with various accountability provisions in the HEA. Some of these actions may uncover or relate to acts or omissions that also would provide a basis approving borrower defense claims. These oversight and compliance processes include multiple opportunities for institutions to appeal or challenge the findings. In the context of a program review, for example, an institution may respond to program review findings before the Department issues a final determination. Similarly, institutions have options for appealing actions to fine them or otherwise limit, suspend, or terminate their participation in the Federal student aid programs.

The Department proposes in § 685.404 to codify a process that better integrates such oversight and compliance work with borrower defense adjudication, by allowing findings generated in the course of other Departmental action to directly lead to the approval of borrower defense claims. Doing so minimizes duplication of work for the agency as well as the need for the institution to respond multiple times to the same set of findings. For example, if an FPRD or FAD reveals that an institution misrepresented job placement rates to students in a particular program, the Department may use those FPRD or FAD findings to form a group and eventually grant borrower defense discharges to affected borrowers assuming the findings also give the Department grounds to presume reasonable reliance for the members of the group. In the case of findings based upon a FPRD or FAD, the institution will have already had opportunities to respond to the findings before they are final, as well as appeal any liabilities to the Office of Hearings and Appeals as well as the Secretary. Because of those existing response and appeal opportunities the institution would not be given an additional opportunity to respond during the adjudication process.

Note that the group process determination is distinct from the process of collecting the amount of discharged loans from an institution, which is discussed below. If the Department initiated an action to collect the amount of the discharged loans from the institution, the institution would have the opportunity to explain why it should not be liable. As also noted below, an institution would only be subject to a recoupment action if the claim would have been approved under the borrower defense regulation in place at the time the loans that are being approved were disbursed. That means an institution would not be subject to a recoupment action for loans disbursed prior to July 1, 2023, under this section unless those claims also would have been approved under the 1994, 2016, or 2019 regulations, as applicable.

Record Retention

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. Moreover, Section 443 of GEPA (20 U.S.C. 1232f) provides that each recipient of Federal funds under a Department program is required to keep records that disclose ''the amount and disposition of those funds,'' and to ''maintain such records for three years after the completion of the activity for which the funds are used.

Current Regulations: The three sets of borrower defense regulations are silent as to record retention periods, but since all the loan programs eligible for borrower defense claims are derived from title IV regulations, the record retention regulations for purposes of title IV apply. This means an institution must retain certain records related to the management of its financial aid program in accordance with the timeframes prescribed in § 668.24, which is generally three years unless otherwise directed by the Secretary.[20] The same provision also contemplates longer retention periods, as appropriate, for all records involved in any loan, claim, or expenditure questioned in connection with a title IV, HEA audit. Any such records must be retained until the later of the record retention period or until the questioned claim has been resolved.

Proposed Regulations: The Department does not propose new record retention periods.

Reasons: The Department believes that existing record retention provisions are adequate. During negotiated rulemaking, some negotiators expressed concern about whether the three-year retention requirement in § 668.24 was compatible with the potentially longer timeframes contemplated for borrowers to submit borrower defense claims. Negotiators were concerned that, if an institution no longer has access to student records, it might be unable to adequately defend itself from a borrower defense claim.

Current regulations establish a minimum for records retention, not a maximum period. And, the Secretary has the discretion to order a longer time as appropriate. In circumstances involving open claims, moreover, the regulations require institutions to retain records until the claim is resolved.

Moreover, the records affected by the three-year limitations period are unlikely to be the most relevant records to a defense to repayment claim. To date, approved defense to repayment claims have centered on evidence related to institutional promises made to borrowers about the ability to transfer credits or obtain a job, or how many former students were successfully placed. The records supporting these types of claims would likely be based on administrative training manuals, marketing materials, call logs between admissions representative and borrowers, internal secret shopping programs, and other centralized documentation rather than the financial aid records of individual borrowers which are covered by § 668.24.

Other elements of the proposed regulations would protect institutions from concerns about a lack of relevant records to respond to a borrower's claim. First, institutions would not be subject to any recoupment activity not related to a Federal or State judgment that occurs outside of the 6-year limitations period, which is discussed elsewhere in this NPRM. That means the institution would be aware of any claim for which it might have to repay the Department within 6 years after the borrower's last attendance at the institution. Because institutions would receive formal notification of the claims against them through the institutional response process, they would be informed about the effects of the tolling of the limitations period. This formal notification would provide institutions with sufficient notice to retain pertinent records while protecting taxpayers and the Department's ability to recuperate funds from an institution.

Second, as noted elsewhere in this document, the Department would not conduct a recoupment process against an institution for any claims approved under this regulation that would not have been approved by the relevant borrower defense regulation that was in place at the time the loans associated with the approved claim were disbursed. That further limits the likelihood that the lack of relevant records would result in financial consequences for the institution.

[20] As provided in 20 U.S.C. 1232f, each recipient of Federal funds under a Department program is required to keep records that disclose ''the amount and disposition of those funds,'' and to ''maintain such records for three years after the completion of the activity for which the funds are used.''

Borrower Status During Adjudication

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. Furthermore, Section 432(a)(6) of the HEA authorizes the Secretary to enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption (settlement and compromise authority).

Current Regulations: When a borrower files a borrower defense claim, the 1994 and 2016 regulations in § 685.222(e), and the 2019 borrower defense regulations in § 685.206(e)(8), provide for forbearance on any of the borrower's nondefaulted loans that are associated with the borrower defense claim. The 1994 and 2016 regulations, in addition, cease collection activity on defaulted loans that are associated with the borrower defense claim. The 2019 regulations do not include a pause on collections activity for defaulted loans on which a borrower has submitted a defense to repayment application.

Proposed Regulations: Proposed §§ 685.402(d)(2) and 685.403(c)(3) would provide that, during adjudication of a borrower defense claim, all of the borrower's title IV nondefaulted loans would be placed in forbearance and all title IV loans in default would be placed in stopped collection status, regardless of whether they are associated with the borrower defense claim.

Reasons: The proposal to pause all a borrower's loans instead of just those associated with the claim would align the regulations with the practice the Department has used for borrowers who apply for other types of discharges or forgiveness that have been in place for years without material consequences. While the 2016 and 2019 regulations only require the Department to pause loans associated with the borrower defense claim, the Department has found that there are significant issues with data accuracy related to who owned different institutions at various points in time, as well as ensuring that enrollment and loan data align. Servicers would also have to manually pause relevant loans, adding another opportunity for error. The Department can ensure it only discharges appropriate loans when approving claims because doing so requires an individualized review of a borrower's loans, but it is concerned that doing such a review on the front end would take significant time that would be better spent on the review and adjudication of the borrower's claim. Pausing all loans thus reduces the likelihood of errors that would harm a borrower and allows the Department to devote its resources to rendering timely decisions on applications.

The Department is concerned that a partial pause would create confusion for borrowers who do not understand that they still owe payments on some loans but not others. It is also possible that a borrower would file a defense to repayment claim that pertains to some but not all of the loans underlying in a Federal Direct Consolidation Loan, in which case there is no way to offer borrowers a partial pause pertaining only to the loans related to the borrower defense claim. Placing all of a borrower's loans in forbearance or stopped collection status would allow the Department to automate the adjudication process more easily.

The Department recognizes that any interest-free pause for a borrower with an individual claim increases the cost to the Government in the form of foregone payments and interest accumulation. At the same time, the Department is concerned that borrowers with potentially valid claims may be dissuaded from applying for borrower defense because they are concerned about how much interest could accumulate during the months, if not years, it takes to review a claim. Implementing in the regulation a benefit it has already been providing to cease interest accrual after an individual claim has been pending for a set period balances the increased costs to the Government from pausing interest with the concerns about dissuading potentially strong claims. Allowing interest to accumulate for some time would provide an incentive for borrowers to file strong claims but not face overly punitive consequences if the Department needs multiple years to decide a claim. Providing such a benefit also minimizes the amount of harm a borrower may suffer from the time their claim is pending.

Under current practice, the Department ceases interest accrual once a claim has been pending for one year. In § 685.403 the Department proposes to reduce this time to 180 days from the initial grant of forbearance or stopped collections for an individual borrower if the Department does not make a determination on the borrower defense claim within that timeframe. This practice also helps institutions with approved claims because it means any ultimate liability would not also include months or years' worth of additional interest. The Department believes the 180-day period is appropriate because it is concerned that making all borrowers face a year of interest accumulation could be too strong a disincentive for a borrower to file an application for fear of the potential added interest costs. The Department also believes this time frame is appropriate because it anticipates it could need multiple years at least at first to review a pending claim and a borrower would thus face less potential harm from the Department's own administrative limitations. The Department chose 180 days because the Department does not believe it would be reasonable to charge interest on a borrower's loans for the entirety of the time needed to review a claim, which could be longer than a year depending on the complexities.

To avoid accruing interest during adjudication, individual borrowers would have the option to decline forbearance and continue making payments, including making payment through an income-driven repayment plan or, for borrowers in default, declining the stopped collection on those defaulted loans and making voluntary payments to rehabilitate a defaulted loan. Borrowers who decline the forbearance or pause on collections would also continue normal interest accumulation policies. The Department believes it is critical to build in advantageous treatment of borrowers' Federal student loans during adjudication, while also giving borrowers the choice to decline ceased payment options, so that borrowers do not forego filing a borrower defense claim for fear of facing higher accrued interest after adjudication.

Unlike individual borrowers, identifiable borrowers who are covered by group claims would have their loans placed in an interest-free forbearance or stopped collections activity, as applicable, upon group formation. The Department believes it is appropriate to also provide these borrowers an opt-out forbearance upon group formation because it does not want borrowers to have to continue to make payments in situations where a claim might be approved and a borrower would then receive a discharge. This also ensures that a borrower currently in repayment would not fall into delinquency or default while the Department is reviewing the group claim. The Department proposes different treatment for these borrowers in a group claim as to interest accumulation, because it would be pausing the loans of someone who had not applied for borrower defense and thus not been presented with a choice to pause their loan payments and interest. The Department is concerned that it would unfairly harm

borrowers if it paused a borrower in a group's loans without also ceasing interest accumulation. Ceasing interest accumulation for these borrowers immediately thus ensures the Department does not cause a borrower's loan balance to grow when they have not explicitly asked to be removed from active repayment. This treatment of group claims also reduces the potential ultimate liability for an institution if the group claim is approved. Were the Department to continue to allow interest to accrue, then the total cost of a full or partial discharge, and any resulting liability, would be larger.

Timelines To Adjudicate

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Current Regulations: None of the current borrower defense regulations imposes a timeline for adjudicating a borrower defense claim.

Proposed Regulations: Proposed § 685.406 includes timelines for adjudicating borrower defense claims. Group claims formed in response to a State requestor would be adjudicated within two years of the point at which the Department notified the State requestor that it would be forming the requested group. Individual claims would be adjudicated within 3 years from the submission of a materially complete application package. These adjudication timelines, however, would not apply to a reconsideration request or an additional review under a State law standard. A borrower who submitted an individual claim that was then included in a group claim that was only partially approved or denied would have their 3-year timeline paused while the group claim is under consideration. The timeline for reviewing that individual borrower's application would not have any effect on the timeline for adjudicating the group claim. Under the proposed regulations, the Department would commit to providing interim updates one year after the commencement of the adjudication, with expected timelines. The Department's failure to render a decision by the end of the timeline would render the loans unenforceable. An institution would not face a recoupment action for the cost of a loan being deemed unenforceable under this requirement because it would not be viewed as having received an approved borrower defense claim.

When an individual claim is subsequently included in a group process, the processing timeline for that individual claim would convert to the group timeline. The individual adjudication timeline and notification requirements would pause until the group claim is resolved.

Reasons: The Department is concerned that in the past, borrowers have not received decisions on their borrower defense application in a timely fashion. While properly reviewing the evidence around a borrower defense application is not something that can happen immediately, the Department believes it is important to provide clearer expectations for borrowers about how long it may take to process their claim.

Many negotiators strongly supported the Department's proposal to codify adjudication timelines in the regulations. The proposed regulation generally imposes a two-year timeline to adjudicate a borrower defense claim under a group process, and a 3-year timeframe for an individual claim. The Department chose two years for group processes because this is customarily the time it takes to conduct a program review. This two-year adjudication period would be separate from the decision whether to form the group, which could take up to one year, thus giving group claims the same overall 3-year period afforded to individual claims. Individual claims would be subject to a longer adjudication timeframe because they may include case-specific research on the merits.

Timelines and the progress update after one year would give borrowers greater confidence that their defense to repayment claims are receiving prompt and serious review. The proposed timelines also make clear, however, that thorough review of a claim cannot be achieved in a few weeks. Finally, to hold itself accountable and give institutions some closure during the adjudication process, the Department would forego collection actions against an institution if the Department does not meet adjudication deadlines. The Department would forgo recoupment in this situation because the borrower would not have an approved borrower defense to repayment claim and thus there is no borrower defense liability to seek from the institution.

The Department recognizes that failing to decide a claim within the set period would increase costs for the Government. The Department's goal is that this provision would never result in any added costs because it will continue to engage in regular and thorough reviews of borrower defense claims.

The Department proposes to toll the adjudication timeline and notifications requirements for individual claims that are included in a group process so that a borrower is not subject to two separate review timelines. The Department believes that group processes would generally be better for borrowers as they are likely to be supported by additional evidence, including potential submissions from third parties. If a group claim is denied, then the borrower's claim would be considered separately and the pause on the adjudication timelines and notification requirements would end.

Process To Adjudicate Borrower Defense Claims

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan except that in no event may a borrower recover from the Secretary more than the borrower repaid.

Current Regulations: The 1994 regulations establish that borrowers may assert a defense to repayment during proceedings which are available to the borrower when the Department initiates certain collection actions on a Direct Loan. The 2016 regulations in § 685.222(e), (f), (g), and (h) establish the general procedures to adjudicate a borrower defense claim based on whether the claim was an individual claim, group claim in an open school, or a group claim in a closed school.

The 2019 regulations at § 685.206(e)(9) provide the consideration of the order of objections and of evidence in possession of the Secretary to adjudicate a borrower defense claim.

Proposed Regulations: Under proposed § 685.406(a) through (d), the Department would adjudicate the borrower defense claim in accordance with these subsections. If the claim is a group claim, under proposed § 685.406(b), the Department official considers evidence related to the claim, materials in the group application, individual claims that were part of the group, evidence within the Department's possession, and evidence or other information from the institution as well as any other relevant information. In adjudicating the group, the rebuttable presumption would be that everyone in the group was affected. Under proposed § 685.406(c), the Department official adjudicates an individual claim based on the information available to the official. The Department official considers materials in the individual application, evidence within the Department's possession,

evidence or other information from the institution as well as any other relevant information. Finally, under proposed § 685.406(d), if the Department official requires additional information in order to adjudicate the claim, an institution must respond to a Department official's request within 90 days of the request and an individual must respond within a reasonable timeframe.

Reasons: During negotiated rulemaking, the Committee discussed the general process to adjudicate borrower defense claims. The Department proposes to codify the general process to adjudicate the borrower defense claim based on whether it is a group claim or an individual claim to make it clear that the Department would adjudicate the borrower defense claim. In both a group or individual claim, in general, the Department official considers evidence within the Department's custody and other relevant information in order to adjudicate the claim. This is a streamlined approach compared to the 2019 regulations, which included both an initial institutional response and an additional required round of borrower responses to whatever materials the institution sends the Department. See 34 CFR 685.206(e)(10). Because adjudication of a borrower defense claim is an administrative proceeding, and not a judicial proceeding that generally affords parties rights to cross-examination, the Department proposes that upon receipt of an application and an institutional response (if any), the Department should immediately begin adjudicating the borrower defense claim.

Should the Department official require information from the institution, the Department proposes to give the institution 90 days to respond. The Department believes this is an adequate timeframe for response while promoting expeditious adjudication of the borrower defense claim. After a program review is conducted and, for example, the Department generally affords institutions 30 days to respond to a Department request for information prior to the Department's issuance of a Program Review Report.

Decision Letters

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Current Regulations: The 1994 and 2016 regulations in § 685.222 establish that, after adjudication, the Department issues a written decision approving or denying the claim. The Department official's written decision is final as to both the claim and any relief granted.

The 2019 regulations at § 685.206(e)(11) require the Secretary to issue a written decision informing both the borrower and the institution of the decision and its basis, as well as the relief provided to the borrower, if any. Under § 685.206(e)(13), the Department official's decision is final.

Proposed Regulations: Under proposed § 685.406(e), the Department would issue a written decision on the outcome of an adjudication. If the Department official approves some or all of the borrower defense claim, the written decision would reflect the discharge amount and that the borrower's loans associated with the claim would be placed in, or continue in, an interest-free forbearance until the Secretary discharges some portion or all of the loans. If the Department official denies the borrower defense claim, the written decision would include the reasons for the denial, the evidence relied upon, the loans that are due and payable to the Department or that would return to the loan's prior status, and the timeframe by which the Department's collection action would resume (90 days). The written decision also would describe the process for the borrower to request reconsideration of the decision. The written decision would be made available to an individual or member of a group and, to the extent practicable, the institution.

Reasons: During negotiated rulemaking, some negotiators recommended that the regulations require more specificity in communication to borrowers, citing court cases that expressed concern with the information provided in the Department's communications in the past. The Department agrees that decision letters should provide sufficient information to borrowers so they can understand the decision and make an informed decision about whether to pursue reconsideration of their claims. As set forth above, proposed § 685.406(e) outlines the information that would be provided in the Department's written decision letters, including the reasons for the decision, its effective date, and information about next steps, including reconsideration where applicable. The Department believes giving borrowers this information would ensure that borrowers have the details to decide their next steps, including a request for reconsideration, while balancing the Department's need to keep borrowers informed and resolve claims in a timely manner. The Department also believes its proposed 90-day period before resuming collections provides borrowers adequate time to return to repayment or to request reconsideration as discussed in the *Reconsideration* section.

Borrower Cooperation & Transfer of Recovery Rights

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan and that in no event may a borrower recover from the Secretary an amount in excess of the amount the borrower repaid on their Direct Loan.

Current Regulations: The 1994 regulations do not address borrower cooperation and the transfer of a borrower's recovery rights to the Secretary. The 2016 regulations in section 685.222(j) establish that the borrower must reasonably cooperate with the Secretary in a borrower defense proceeding. Section 685.222(k) provide that borrowers transfer to the Secretary their rights to recover from a third-party.

The 2019 regulations at section 685.206(e)(14) establish that the Secretary may revoke any relief granted to a borrower who refuses to cooperate with the Secretary, and those regulations provide a non-exhaustive list of what cooperation could entail. Section 685.206(e)(15) provides that borrowers transfer to the Secretary the borrower's rights to recover from a third-party.

Proposed Regulations: Under proposed § 685.410, a borrower would be required to reasonably cooperate with the Secretary in any proceeding under subpart H. Under proposed § 685.411, the borrower would be deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund.

Reasons: When a borrower files a borrower defense claim, the Department would require the borrower's cooperation to determine the facts of the claim and provide the institution with due process, as appropriate. Absent this cooperation, the Department could be unable to successfully resolve the borrower's request for relief. Rather than specifying what would constitute cooperation, as was done in the 2019

regulations, the Department believes a general statement requiring reasonable borrower cooperation would be wholly sufficient. As discussed in the preamble to the 2019 regulations, the Department defined cooperation to include (but was not limited to) providing testimony regarding any representation made by the borrower to support a borrower defense claim and producing, within timeframes established by the Secretary, any documentation available to the borrower. The Department argued that the regulatory text would help to ensure that the Department receives the borrower's cooperation in any proceedings against the institution. See 83 FR 37263, July 31, 2018. The Department now disagrees that defining cooperation would assist the Secretary in recovering from the institution. Just as borrower defense claims are adjudicated on their own merits, the Department can also assess whether the borrower cooperates based on the circumstances of the case. Accordingly, the Department need not be prescriptive on what constitutes cooperation.

The HEA clearly articulates that in no event may a borrower recover from the Secretary an amount in excess that the borrower has repaid. For the Department to ensure compliance with this statutory provision, it is necessary that these proposed regulations contain a provision to prevent double recovery from the Federal Government. Although the 2016 and 2019 regulations allow the Secretary to reinstate a borrower's obligation to repay for amounts that the borrower received relief from a claim made to a third-party (*e.g.:* a borrower successfully receives funds from a State tuition recovery fund), the Department is convinced that this provision is no longer necessary. In the borrower defense application, the Department asks the borrower to attest to any attempts made to recover from a third-party, and asking this question upfront adequately protects the Federal Government from a borrower seeking double recovery. In the Department's experience, after the borrower defense claim is approved and the case is considered closed, it is nearly impossible to determine if a borrower made a claim to a third-party. Therefore, the Department believes its proposal serves a twofold purpose: it requires borrower cooperation and preserves its right to recover from third parties to mitigate loss to the Federal taxpayer investment.

Borrower Defense to Repayment Post-Adjudication—Reconsideration Process

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan except that in no event may a borrower recover from the Secretary more than the borrower repaid.

Current Regulations: Some of the Department's borrower defense regulations provide for a reconsideration process. The 1994 and 2016 regulations in § 685.222(e)(4) and (5) make reconsideration available for borrower defense claims denied wholly or in part, based on new evidence, and provide that the Secretary can reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. The 2019 regulations in § 685.206(e)(13) provide that the Department's written decision is the final decision of the Department and is not subject to appeal within the Department. There is, thus, no reconsideration process under the 2019 regulation.

Proposed Regulations: Proposed § 685.407 sets forth the circumstances under which a borrower may seek reconsideration of a Department official's decision on their borrower defense claim. The Department official's written notice would be final, but if the borrower's claim is denied in full or in part, that individual borrower or, for a group claim, a State requestor, would be able to request reconsideration. Permissible bases for a reconsideration request would be limited to administrative or technical errors; the availability of new evidence; or a request by the borrower (for an individual claim) or a State requestor (for a group claim) for reconsideration under a State law standard.

While individuals would be able to request reconsideration of their claims, for group claims the Department proposes to limit requests for reconsideration to State requestors, which would include a State, a State attorney general, or a State regulatory agency. Individual members of the group would not be able to request reconsideration on behalf of the entire group or for any individual borrower.

An individual borrower who is part of a group that is denied in full or in part would not be able to seek reconsideration until they received a final decision from the Department official on a separate individual application. If the individual had not already done so before group formation, the individual could submit an individual borrower defense application in accordance with § 685.403 after a final decision from the Department official that resulted in a full or partial group denial.

Group reconsideration requests could be made for the same reasons as an individual request, but a request for reconsideration under State law would require additional documentation, including an analysis of the applicable State law standard and why it would lead to an approved borrower defense claim. Any reconsideration request, whether from an individual or on behalf of a group, must be made no later than 90 days from the date of the Department official's written decision.

To adjudicate a reconsideration request, the Department would designate a different Department official than the official who conducted the initial adjudication. When the reconsideration request is received, the borrower or group members would be placed in forbearance or stopped collections. The Department would have the option to request an additional response from the institution under the same procedures as described in new § 685.405. There would be no set timeline for the Department to issue a decision on a reconsideration request.

Finally, in new § 685.407(f)(1) the Secretary would be able to reopen at any time a borrower defense application that was partially or fully denied.

Reasons: The Department expects that borrowers or State requestors would include their best available evidence at the time that they file their original claims. Additional evidence may become available at a later time, however, especially from ongoing investigations by State attorneys general and other entities. The Department is also cognizant that if it made an error in its review of the claim, the borrower should have a method for asking that error to be addressed by the agency instead of needing to go to court to challenge the denial.

Allowing a reconsideration process is a change from what the Department concluded in the 2019 regulation, in which it said all decisions would be final. It took that position partly out of concerns about resources to adjudicate claims and concerns about borrowers seeking repeated opportunities to have a claim be approved.

Upon further consideration and further experience adjudicating claims, the Department disagrees with the conclusions reached in the 2019 regulation. We believe the specific instances in which a borrower could seek reconsideration would limit the ability to ask for the same allegations to be reviewed repeatedly. Instead, they would be receiving a second look at their application when additional

evidence suggested it, when they could demonstrate an error that the Department should correct, or when they wish to have a review under a different standard than the one originally used by the Department.

The Department acknowledges that allowing for a reconsideration process would be more work for the staff that reviews borrower defense applications, but it believes that the benefits from permitting this approach on net outweigh its exclusion. Without a reconsideration process the Department would risk having to address errors made in decisions through court proceedings rather than a second review. Litigation is more resource-consuming for the Department than reconsideration, and reconsideration is also more efficient and less expensive for borrowers. The Department also believes the ability to move all claims under a single upfront Federal standard would provide very significant operational simplification and consistency in decision-making that would on net make the program easier to administer.

Allowing for a reconsideration process is consistent with other positions taken by the Department in the past. As explained in the 2016 final regulations, the Department believes it is important to allow a borrower to submit new evidence that he or she may have only recently acquired. The Department acknowledged that there should also be finality in the borrower defense process as well. See 81 FR at 75963. Providing a pathway for borrowers to have their borrower defense claim reconsidered, under the limited circumstances set forth in § 685.407, brings the borrower closer to finality in their borrower defense claim and such reconsideration process within the Department's borrower defense framework mitigates the need for complex litigation through the court system. In addition, as part of establishing a single consistent set of rules that apply regardless of when a borrower's loans were disbursed, the Department is proposing to allow all borrowers to request reconsideration based on State law to reflect the standard in the 1994 regulations. As noted earlier in this NPRM, one of the Department's goals is to provide a single upfront Federal standard for reviewing all claims pending and received after the effective date of this regulation's final rule. To accomplish that, the Department must ensure that no borrower is presented with a narrower standard under the proposed rule than what they would have had under the prior regulation that would have previously applied to their claim. Including the State standard thus ensures that no one whose claim would have been originally subject to the 1994 regulation is worse off. The Department is proposing to make this option available to all borrowers, including not just those who would have been covered by the 1994 regulation. The Department is doing so because of concerns that varying reconsideration treatment by the disbursement date of the loan results in a process that is overly confusing for the borrower and is more administratively complex to administer. While providing the State law option to more borrowers adds some administrative burden, the Department believes that burden is more than offset by the efficiencies gained from the upfront review process.

The Department believes that limiting the reconsideration process to new evidence, administrative errors, or State law review would result in only looking at an application for the second time when there might be a meaningful difference that could change the outcome of the first review. While it takes additional Department resources to implement this reconsideration process, the Department believes that is more efficient than needing to review an entirely new application or engaging with the borrower in the court system.

The Department believes that providing an opportunity for individual claimants or State requestors to request reconsideration would expedite final adjudication of a borrower defense claim. Non-Federal negotiators initially proposed that State law standards be included in the initial adjudication, as one element of the Federal standard. The Department believes such an upfront analysis would be unduly burdensome and delay the ability to provide relief to borrowers. Adjudication under a State law standard could yield the same outcome as under the Federal standard but would require additional time for the Department to analyze the State law in question. Reserving State law reviews for reconsideration after a full or partial denial ensures that they are conducted only when there is a possibility that the State law standard could yield a better result for the borrower than the Federal standard.

The Department considered and rejected the proposal to allow an individual borrower that is part of a group claim to request reconsideration of a claim under a State law standard on behalf of the group. The Department believes State partners, such as State attorneys general, would be the most knowledgeable about their respective State laws. State attorneys general are charged with enforcing the laws of their states and in some states regulating pursuant to those laws. In these roles they are the foremost parties to interpret and enforce State statute and regulation. They would also be the ones who furnished the evidence and request that led to the initial approval of the group. These entities also are recognized to have the authority to represent the residents of their States in certain circumstances. Moreover, a State requestor's analysis of their own State law could be considered persuasive authority on that State's standard. The Department does not believe the same conditions apply to an individual. And while an individual could produce high-quality analyses of State laws, their analyses would not be entitled to the same persuasive status. Accordingly, an individual borrower who wants to seek reconsideration would have to do so on their own behalf when they have a decision rendered on their individual claim. The Department believes an individual application is the proper route for these borrowers because it is possible that an individual who is part of a group may have stronger evidence related just to themselves than what the Department has for the group of borrowers. This approach allows the Department to consider that individual evidence. The Department also believes that the work required of the borrower to provide their own individualized allegations in this situation will would yield more useful information to review.

The Department determined that giving borrowers 90 days to seek reconsideration—and keeping loan repayment and collection activity paused during that time—provides a sufficient balance for borrowers to make a thorough decision about whether to seek reconsideration without allowing their loans to be paused indefinitely. Pausing Department loan collection activity to allow time to seek reconsideration is similar to the Department's process in debt collection proceedings, such as administrative wage garnishment under § 488A of the HEA. There, collection activity does not commence if the borrower has requested a pre-offset hearing to review the existence or amount of the debt (analogous to a reconsideration request here). See 34 CFR 32.10. In this regulatory package the Department is also trying to ensure a consistent time period for borrowers to act if their initial applications for discharge on various programs or qualifying payment counts for Public Service Loan Forgiveness are denied, and the Department believes a consistent 90-day standard would result

in consistent procedures for the Department.

Finally, in new § 685.407(f)(1) the Department proposes limiting when the Secretary may reopen a borrower defense application. We propose that the Secretary only be allowed to reopen a borrower defense application that was partially or fully denied. Although this should be a rarely used provision, limiting the Secretary's ability to reopen cases only when there was a full or partial denial lessens the disadvantage to the borrower; for borrower defense claims that receive full approval, these borrowers can be assured that there would be finality to their cases. Thus, a borrower only stands to benefit from the Secretary reopening a borrower defense application that was fully or partially denied.

Amounts To Be Discharged/ Determination of Discharge

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan except that in no event may a borrower recover from the Secretary an amount in excess of the amount the borrower has repaid.

Current Regulations: Section 685.212 establishes the general conditions under which the Department discharges a borrower's obligation to repay a loan, or a portion of a loan, under various discharge provisions of the HEA, including borrower defense to repayment.

The 1994 and 2016 regulations in § 685.222(i) provide that the borrower may be granted full, partial, or no discharge. In general, to determine the amount of relief, the Department issued examples in Appendix A to part 685, subpart B, but also, when calculating discharge for a group, can consider information derived from a sample of borrowers from the group. Any discharge cannot exceed the amount of the loan and is reduced by the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense. Nonpecuniary damages, such as inconvenience, aggravation, emotional distress, or punitive damages, are not part of the Department's calculation of harm nor the relief provided.

The 2019 regulations in § 685.206(e)(12) state that the Department determines the amount of relief, which is limited to the monetary loss the borrower incurred as a consequence of a misrepresentation. In determining the amount to be discharged, the Department considers the borrower's application, which includes information about any payments received by the borrower, such as funds from State judgments that the borrower is expected to put toward their loans, and the financial harm alleged by the borrower.

Proposed Regulations: The Department proposes applying a rebuttable presumption that the borrower or group of borrowers with an approved claim should receive a full discharge of the loans they received for attendance at the institution that is the subject of the claim, unless a preponderance of the evidence demonstrates that the discharge should be a lower amount and one of three specific criteria is met.

The three criteria proposed for use by Department staff when recommending other than full discharge are:

1. Where the harm to the borrower resulted from an action that is easily quantifiable, such as failing to provide promised supplies or materials that have a fair market value of $200 or less.

2. When the basis for approval of the borrower defense claim is based entirely on actions that did not involve promises by the institution about educational outcomes or the quality of educational services delivered.

3. Where an institution provides false or inaccurate data unrelated to educational outcomes (for example, relating to the test scores or grade point averages of incoming students) to an organization that produces widely recognized rankings of institutions or programs, resulting in a ranking higher than what that institution or its program's true position should be.

The proposed regulations provide examples of the limited circumstances under which that presumption would be rebutted. These circumstances would include situations where the misconduct that resulted in an approved borrower defense claim relates to an easily quantifiable sum, such as the cost of a free supplies kit that was promised and not delivered; substantial misrepresentations, substantial omissions, breaches of contract, or aggressive recruitment that do not relate to the education delivered by the institution or the outcomes of such education; or substantial misrepresentations related to widely recognized rankings of institutions or programs as a result of the submission of false data not relating to the outcomes of the education.

Under proposed § 685.408, for an approved claim not receiving a full discharge, the Department official would recommend to the Secretary a discharge amount for a borrower or group of borrowers. All borrowers within an approved group claim would receive the same recommended discharge, either in amount or as a percentage of their loans. In cases where the presumption of full relief is rebutted, the Department official would recommend the alternative amount, which may be an amount equal to the full harm suffered by borrowers if such sum is easily quantifiable, or 50 percent of the outstanding loan balance of the loans associated with the borrower defense claim if the amount of harm is not easily quantifiable. Although the Department official determines the amount of the discharge, the Secretary renders the final decision on the discharge based on the Department official's recommendation and the records available.

Reasons: The Department proposes that an approved borrower defense to repayment claim should result in relief equal to the lesser of the full amount of harm to the borrower or the full amount of the Federal student loans covered by their claim, including amounts previously paid. We recognize that there may be circumstances in which the financial harm experienced by a borrower is less than the amount of a full loan discharge. The Department believes the circumstances in which a borrower has an approved claim but receives a partial discharge would be limited.

In moving to the presumption of full discharge except for specific circumstances, the Department is changing the position it took with respect to discharge amounts in the 2019 regulation. As discussed in the section concerning the standards for misrepresentation, the Department is concerned that the 2019 rule's requirement for a borrower to demonstrate individual harm and the standards associated with that proposal could have the unintended consequence of providing lesser amounts of relief for a borrower who succeeded despite their program. For instance, connecting relief amounts to periods of unemployment that appear to not be attributable to local or national labor market conditions, or considering the borrower's effort to find a job could result in no relief for a borrower who did manage to find employment despite no assistance from the institution, even as otherwise similar borrowers receive larger assistance. The Department is also concerned that the criteria for

considering harm in the 2019 regulation are overly subjective or confusing. The Department is not equipped to pass judgment on the quality of a borrower's search for employment, and the 2019 rule is insufficiently clear as to how the Department should factor underlying labor market conditions into the way it then calculates harm. The Department is concerned that such ambiguity could lead to inconsistent determinations of discharge amounts.

In removing the requirement for individualized harm determinations, the Department is also changing its position to allow it to pursue group borrower defense claims, as was explicitly authorized in the 2016 regulation and permissible under the 1994 one. For group claims, the Department believes that awarding the same percentage or dollar amount of relief to all similarly situated borrowers would be appropriate. Given that the concept underlying the group claim is that borrowers were subject to the same substantial misrepresentations, substantial omissions, breaches of contract, aggressive recruitment, or judgments or Department actions the Department is concerned that trying to then establish separate relief determinations for those borrowers would risk inconsistent determinations that would treat similarly situated borrowers differently.

When it comes to determining the amount of a discharge, the Department is cognizant that it can only make judgments about the value of an institution or program, not its quality, and that the amount of any relief cannot exceed the full amount of the loan balance and any amounts previously paid. The Department is also concerned that when past regulations were less specific about how to determine the proper amount of a discharge the Department ended up using formulas that resulted in borrowers receiving lesser amounts of a discharge than they should have, including mathematical impossibilities such as requiring average earnings for a group of borrowers to be below $0.

The Department believes that the clearer framework proposed in these regulations would result in consistent decision-making and a clearer process for the Department to decide not only when a partial discharge may be appropriate, but also how to calculate such a discharge.

This framework would replace the methods for determining the discharge amount that existed under the prior three borrower defense regulations. However, the Department believes that the rebuttable presumption of full discharge and the clearer structure around partial discharges means that no borrower whose claim was pending or filed after the effective date of the regulations would be worse off than they would have been under the regulation that would previously have covered their claim based on their loans' disbursement date. Relatedly, the Department would ensure that institutions are not subject to a recoupment effort from a claim that would not have been approved under the regulation that would otherwise have been applied to the claim based upon the loan's disbursement date. This consideration would also apply to the discharge amounts in that if the claim would have been approved under a prior regulation but for a lower amount than is approved under this regulation then the institution would not be subject to the higher recoupment amount.

The move to a rebuttable presumption of a full discharge is a change from the 2019 regulation, but not a change in practice from the relief provided on borrower defense approvals to date. As of May 2022, all approved borrower defense discharges have been for full discharges. There were some approved claims that were initially subjected to two different partial relief formulas issued by the previous administration, but both formulas were challenged in court. The previous Administration withdrew the first formula, and this Administration withdrew the second out of concern that it was not accurately using data and was resulting in insufficient relief for borrowers who were harmed.

The Department believes a rebuttable presumption of a full discharge would address the past problems around properly determining the amount of discharges for approved claims. It addresses the concerns the Department has about inconsistent decision-making for similarly situated borrowers. It also acknowledges that the act of calculating a specific level of harm for a borrower is a challenging task that prior efforts by the Department to address have resulted in legal challenges. The proposed list of instances in which a partial discharge may be appropriate also captures what the Department anticipates the likeliest instances in which a partial discharge may provide the most appropriate amount of relief for a borrower even without this framework.

The proposed regulations include principles and examples of how to calculate a partial discharge amount. The Department anticipates that the examples would guide initial decisions as the Department reviews discharge amounts for approved claims.

In proposing a framework that addresses the challenges with determining harm and strives for consistency in decision-making, the Department identified three specific circumstances that it believes should merit consideration for a partial discharge. The Department identified these three circumstances based upon allegations it has seen in claims, as well as public reports of instances where colleges have engaged in high-profile misrepresentations. The first is where the harm to the borrower is easily quantifiable, such as failing to provide promised supplies or materials that have a fair market value of a clear dollar amount. The Department believes this situation would make sense for a partial discharge because the harm is easily calculable and thus the concerns about inconsistency of decision-making and the use of flawed formulas would not apply.

The second circumstance is when approval of the borrower defense claim is based entirely on actions that did not involve promises by the institution about educational outcomes or the quality of educational services delivered. This would apply, for example, when an institution misrepresents the profile of its incoming class, but the classroom instruction and the outcomes of that instruction match what was otherwise anticipated and marketed. The Department proposes to highlight this type of action as a candidate for partial discharge because, while it is reasonable to expect a student to enroll based upon the false statements, those statements did not affect the value of the education that was delivered or the outcomes that students experienced.

The second partial discharge circumstance would not apply to statements made solely in the institution's marketing materials if they pertain to program outcomes. That is, materially false statements about the institution's rates of completion, passage rate on examinations necessary for licensure, or job placement would not rebut the presumption of full discharge because it is reasonable to believe a borrower or borrowers would have relied on those false statements and would not have achieved the inflated outcomes presented. For the same reason, misrepresentations in marketing materials about the educational services delivered also would not rebut the presumption of full discharge. For instance, evidence that an institution promised its classes in a nursing program would all be taught by

registered nurses when in fact none of the instructors were would lead to an approved borrower defense claim with the presumption of full discharge because students were enticed to enroll and take out a loan and the institution failed to provide the advertised instruction.

The third circumstance in which the presumption of a full discharge could be rebutted is where an institution provides false or inaccurate data unrelated to educational outcomes, such as inflated test scores or grade point averages of incoming students, to an organization that produces widely recognized rankings of institutions or programs, resulting in a ranking higher than what that institution or its program's true position should be. The Department is concerned about repeated instances in which institutions have submitted false data to major national rankings organizations, resulting in schools or programs given unfairly high rankings for several years. But the Department believes that the harm caused to the borrower by relying upon such a marginally inflated ranking does not rise to the level of a full discharge. Many of the institutions or programs that have engaged in such behavior would have been highly ranked otherwise, still reject far more students than they accept, and have not been subject to allegations of low program quality or other misrepresentations that would support a claim for full discharge. Under these circumstances, partial relief could be appropriate.

Past borrower defense regulations have cited additional examples of partial relief that the Department does not include here because it does not believe they would result in an approved borrower defense claim. One example was where an institution claimed to have an award-winning professor, but that individual was on sabbatical while the borrower enrolled, or the individual had left the school and the marketing materials remained outdated. The Department does not contemplate any discharge for such a situation in the proposed regulations, because we do not believe it is reasonable to assume that the borrower would be guaranteed a space in the professor's class or relied on the particular misrepresentation, the presence of a specific professor, to their detriment when deciding to enroll and take out a student loan.

Instances where the Department official rebuts the presumption of a full discharge also would require a determination of the partial discharge amount a borrower or group of borrowers should receive. This amount may be expressed in dollar or percentage terms, depending on the harm experienced by the borrower or group of borrowers. For example, a breach of contract with an easy-to-calculate effect on the borrower might be expressed as a set dollar amount for all borrowers, while a more complex instance could be expressed as a share of the loan amount. The Department also recognizes that there could be situations in which the level of harm is not clear. This could include instances where the Department official may need to make judgments about the value of educational services delivered that are too difficult to define and quantify. In situations where the Department is not able to calculate the value of the education, the Department proposes borrowers receive a discharge equal to 50 percent of the loan associated with the borrower defense claim. The Department chose this threshold because it evenly divides the uncertainty of quantifying the harm between the taxpayer and the borrower after the Department has determined that the presumption of a full discharge has been rebutted. A borrower would then have an option to ask for reconsideration of this amount and furnish different information that might support a higher discharge amount. The Department seeks feedback on its proposal for borrowers to receive a discharge equal to 50 percent of the loan associated with the borrower defense claim in situations where the Department is unable to calculate the value of the education.

To clarify how partial and full discharges would be considered under the proposed regulations, the Department offers in this preamble the following examples:

1. A school represents in its marketing materials or in an enrollment contract that students will receive a supplies kit as part of their enrollment that has a value of $150. A student chooses that program instead of a comparably priced program that does not provide the supplies kit. The institution ends up charging the borrower for the supply kit instead of providing it for free. The Department does not find any other basis for a discharge.

Adjudication result: The borrower should have an approved borrower defense claim with a discharge amount of $150. The institution breached its contract with the student. However, the harm from the breach of contract is clearly calculable because it stemmed from the cost of a specific item that did not carry significant value.

2. An individual wishes to enroll in a highly selective graduate program. The school gives inflated data to a school ranking organization regarding the 25th and 75th percentile scores on the GRE of recent entrants and includes those inflated data in its own marketing materials. These inflated data raise the place of the program in the ranking organization's published rankings. Degrees from the program continue to serve as an effective, well-regarded credential.

Adjudication outcome: The borrower should receive no discharge or a minimal discharge. The institution made a false statement that a borrower reasonably could have relied upon to choose that program instead of another one that is similarly ranked. However, it was made to an organization that publishes widely recognized rankings and primarily concerned false data not related to the outcomes of the education. The Department official would rebut the presumption of full discharge. The exact amount of the discharge would depend on a few factors. One would be the program's inflated ranking versus what should have been its accurate ranking, which may be ascertained by looking at its ranking prior to the provision of inflated data. If the program still would have been among similarly ranked programs with accurate data with no other evidence that the education delivered is different than what was promised, then the Department official would likely recommend no discharge due to a lack of evidence that the reliance upon the misrepresentation was to the detriment of the borrower. They attended a highly ranked and highly selective program and programs in that category can move around in annual rankings anyway. If the inflated data significantly raised the program's rank then a small discharge may be appropriate.

3. An individual wishes to enroll in a highly selective graduate program. The school gives significantly inflated data to a school ranking organization regarding the rate at which its graduates obtain jobs. These inflated data raise the program's rank in the organization's publications. The institution features both the inflated placement rate data and the inflated ranking data in a national ad campaign and in its marketing materials.

Adjudication outcome: The borrower should receive a full discharge. The institution misrepresented the employability of graduates in a program, which is a key factor under consideration for students, who often cite getting a job as one of the primary goals of an education. Even though the institution reported the falsified data to a national ranking organization, it also

featured that data in marketing materials. As a result, if the claim is approved the Department official would be unlikely to rebut the presumption of a full discharge.

Related examples: The same analysis would apply to misrepresentations with significantly inflated data related to the rate at which students passed required examinations to obtain State licensure, the rate at which students complete the program, earnings of graduates, or other indicators that speak to the outcomes of the education.

4. A school represents to prospective students, in widely disseminated materials, that their educational program will lead to employment in an occupation that requires State licensure. The program does not, in fact, meet minimum education requirements in any State to enable its graduates to sit for the exam necessary for them to obtain licensure.

Adjudication outcome: Borrowers should receive a full discharge. As a result of the school's misrepresentation, the borrowers cannot work in the occupation in which they reasonably expected to work when they enrolled. Accordingly, borrowers received limited or no value from this educational program.

Related examples: A similar analysis would apply if the institution had said it would provide required internships, clinicals, or externships that were not in fact provided to the students because this affects students' ability to work in the fields for which they are trained. Borrowers would have similar outcomes if a law school lacks accreditation by the American Bar Association (ABA) and fails to inform students that the lack of such accreditation means that they cannot sit for the bar exam in specific States or omits the fact that only a small fraction of graduates of the institution passes the bar exam in the limited number of States in which a student may take that exam without graduating from an ABA accredited law school.

5. A school states to a prospective student that all of the faculty in its nursing program are nurses or physicians. The borrower enrolls in the program in reliance on that statement. In fact, none of the program's teachers, other than the director, is a nurse or physician. The teachers at the school are not qualified to teach medical assisting and the student is not qualified for medical assistant jobs based on the education received at the school.

Adjudication outcome: The borrower should receive a full discharge. None of the program's teachers have the promised qualifications. In contrast to reasonable students' expectations, based on information provided by the school, the typical borrower received no value from the program.

6. A school represents in its marketing materials that three of its undergraduate faculty members in a particular program have received the highest award in their field. A borrower choosing among two comparable, selective programs enrolls in that program in reliance on the representation about its faculty. However, although the program otherwise remains the same, the school had failed to update the marketing materials to reflect the fact that the award-winning faculty had left the school.

Adjudication outcome: The borrower's claim would not be approved. Although the institution made a misrepresentation to the borrower and should update its marketing materials, it is unreasonable to presume that a borrower would have relied upon this misrepresentation to enroll. The mere presence of award-winning faculty on a university's staff does not guarantee that the borrower would have been able to take classes from them. Many universities employ well-known faculty who have minimal teaching responsibilities. A student may have ultimately not chosen to major in the field in which the instructor teaches or the class might have had limited enrollment.

7. An individual interested in becoming a registered nurse meets with a school's admissions counselor, who explains that the school does not have a nursing program, but incorrectly states that completion of a medical assisting program is a prerequisite for any nursing program. Based on this information, the borrower enrolls in the school's medical assisting program rather than searching for another nursing program, believing that completing a medical assisting program is a necessary step toward becoming a nurse. After one year in the program, the borrower realizes that it is not necessary to become a medical assistant before entering a nursing program.

Appropriate relief: This borrower should receive a full discharge. Because it is not necessary to become a medical assistant prior to entering a nursing program, the borrower has made no progress toward the career they sought, and in fact has received an education that cannot be used for its intended purpose.

In all of the above scenarios, the discharge recommendation reached by the Department official would be presented to the Secretary, who would choose whether to accept, reject, or modify the Department official's recommendation. The Department seeks feedback on these examples of the discharge recommendation reached by the Department official.

Borrower Defense to Repayment—Recovery From Institutions

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. Section 454(a)(3) of the HEA requires the institution to accept responsibility and financial liability stemming from its failure to perform the functions set forth in its program participation agreement—the document institutions must sign to participate in the Federal financial aid programs where they agree to abide by the rules and requirements governing the programs.

Current Regulations: Under § 685.206(e)(16), the 2019 regulation provides that Secretary uses the procedures under 34 CFR part 668 subpart G to collect the amount of a discharged loan associated with an approved borrower defense claim from an institution for loans first disbursed on or after July 1, 2020. In 2017, the Department codified the process for the Secretary to initiate recovery proceedings through the Office of Hearings and Appeals (OHA), primarily through its regulations at § 668.87. See 82 FR 6253, January 17, 2017. Under this section, claims under either the 1994 or 2016 regulations are presented to a hearing official who renders a decision on both the approval of the claim(s) and the establishment of any resulting liability for the institution.

Proposed Regulations: The Department proposes to remove § 668.87 in its entirety. In its place, the Department proposes to include in proposed § 685.409 a general framework under which the Department would attempt to recover from institutions the amounts that the Secretary discharges for both individual and group borrower defense claims and to leverage the procedures already in place at part 668, subpart H, which govern how the Department pursues liabilities related to program reviews. The Department would have the option to forego recovery proceedings under these proposed regulations in situations such as where the cost of collecting would be more than the amount to recover or recovery would be outside of the six-year limitations period.

Newly proposed § 668.100 in subpart G to part 668 would make clear that, if any part of the proposed regulations is

held invalid by a court, the remainder would still be in effect.

Reasons: The Department proposes to separate the process of reviewing and approving borrower defense applications from the recoupment process. As part of that change, the Department would handle the process of recoupment through the same existing procedures we currently use to assess program review liabilities. This means institutions would not have to go through a process they might be less familiar with to address liabilities from borrower defense. The Department is concerned that the requirements in § 668.87 that connect the review and potential approval of group borrower defense applications directly to recoupment proceedings is out of keeping with the Department's practices for other similar discharge programs and could result in extensive delays in resolving group claims. Under § 668.87, the approval of a group claim and the establishment of the institutional liability stemming from it are connected through a single process that is conducted before a hearing official. The Department is concerned that such an approach conflates two different concerns—the interaction between the Department and the borrower and the interaction between the Department and the institution. For instance, the processes for discharges related to closed schools or false certification have separate mechanisms for approving discharges for borrowers and then seeking any recoupment from an institution. This ensures that borrowers are able to receive the assistance they are guaranteed under the Higher Education Act while also preserving the due process rights of institutions, which can take months if not years to fully exhaust. The connected processes in § 668.87 have the added disadvantage of creating an entirely new and separate process for group claims that is different from any other process for assessing a liability than institutions currently face. Instead of using the procedures in § 668.87, the Department proposes to recover from institutions the amounts discharged for group claims as outlined in the program review process [21] authorized under §§ 498 and 498A of the HEA. This includes the procedures for institutions to respond to the allegations to establish a liability against the institution. The institution could then contest the liability through the procedures laid out in that section. Consistent with those procedures, the Department would generate a Program Review Report (PRR) based upon the evidence in its possession, evidence from borrower defense applications, any institutional response, any other relevant information, and the amounts that the Secretary discharged. This PRR would include a liability amount. The set of procedures for contesting liabilities through program reviews is long-established and many institutions will be familiar with this method. It includes ample opportunities for responding to the liability, as well as a process for contesting the liability through the Office of Hearings and Appeals, appealing to the Secretary, and then going to Federal district court. As a result, institutions will would not have to learn a new process.

The suggested approach better balances the interests of borrower defense claimants, the Department, taxpayers, and institutions than the current structure of § 668.87. Borrower defense claimants would receive faster answers on group applications by having the Department conduct its review process separate from recoupment. Taxpayers and the Department would still preserve a process for seeking recoupment for liabilities from an institution. And the institution would be subject to a familiar, long-established process that already affords significant due process rights before a liability can become final.

In establishing this process, the Department also recognizes that there may be circumstances where recovery is not feasible. Institutions would only face recoupment for conduct that would have been approved under the regulation that governed the conduct at the time it occurred in the amount that would have been granted under that regulation. In other words, for loans first disbursed in 2018 that are part of an approved claim, the institution would only face a recoupment action if the claim would have been approved under the 2016 regulation. And, if the claim would have resulted in a partial discharge under the prior regulation but received a full discharge under these proposed rules, then the Department would only seek recoupment for the partial amount. If the claim would have been approved under the 1994, 2016, or 2019 regulations, however, the Department would seek recoupment under the applicable regulation.

The Department also proposes that it would have the option to not seek recoupment in circumstances where doing so would not make financial sense, such as where the cost of collecting on the claim would exceed the amount of the claim. The Department would also not seek to recoup on a claim that falls outside the six-year limitations period. Finally, the Department believes that each of the proposed provisions discussed in this NPRM serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families; to the public, taxpayers, and the Government; and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Time Limit for Recovery From the Institution

Statute: Section 454(a)(3) of the HEA provides that the institution accepts responsibility and financial liability stemming from the institution's failure to perform its functions pursuant to its program participation agreement.

Current Regulations: For loans first disbursed on or after July 1, 2020, § 685.206(e)(16) provides that Secretary may initiate a proceeding to collect the amount of a discharged loan associated with an approved borrower defense claim from an institution within 5 years of the final determination to approve the claim. This applies to loans disbursed on or after July 1, 2020.

Under § 685.222(e)(7), the 2016 regulation provides that the Secretary may initiate a proceeding to collect the amount of a discharge loan associated with an approved borrower defense claim within 6 years of when the borrower discovers or could have reasonably discovered a substantial misrepresentation or 6 years of when the institution breached its contract with the student, or at any point for a claim approved due to a judgment. The 6-year limit does not apply if at any point during that time the institution is notified of the claim by the borrower, a representative of the borrower or the Department; a class action complaint; or written notice from a Federal or State agency with the ability to investigate the institution for issues that could relate to a borrower defense claim.

For loans first disbursed before July 1, 2017, the 1994 regulations in § 685.206(c) provide that the Secretary

[21] For an overview of the program review process, please see the 2017 Program Review Guide for Institutions: *https://fsapartners.ed.gov/sites/default/files/attachments/programrevguide/2017ProgramReviewGuide.pdf.*

may initiate recovery proceedings that align with the record retention period, unless the institution did not receive notice of the claim during that period.

Proposed Regulations: Under proposed § 685.409(c), the Department would adopt a six-year limitations period to recover the amount of borrower discharge from the institution for loans disbursed on or after July 1, 2023. This period would start on the date the institution reported that the borrower graduated or withdrew or at any time if the act or omission was a judgment against an institution. The Department proposes the six-year limit would not apply if during that period the institution received notice of the claim from the Department; a class action lawsuit; or written notice from a Federal or State agency with the ability to investigate the institution for issues that could relate to a borrower defense claim. These time limits would apply for both individual and group claims. The Department official's notification to the institution of a borrower defense claim before the end of the limitations period would toll the 6-year limitations period.

Reasons: The Department believes it is critical for it to use the authority granted to it by Congress in Sec. 454(a)(3) of the HEA to recoup the cost of approved borrower defense claims from institutions rather than having taxpayers bear all the expenses. To do so, the Department proposes to create a framework for recouping from institutions the cost of discharges associated with an approved borrower defense claim for loans disbursed on or after July 1, 2023, that is similar to what was included in the 2016 regulation, but with a simpler way of measuring the length of the time during which the Department could seek to recoup.

During negotiated rulemaking, some negotiators expressed concern about the lack of a limitations period for borrowers to file claims, which they believed could pose significant difficulties for institutions that may be financially liable for approved claims. The Department believes that the proposed notice of claims and limitations period on recoupment provides adequate protection for institutions while preserving financial remedies for the Department. The Department proposes to shift away from a time limit on recoupment tied from the date of the final determination as was used in the 2019 regulation to one from the date the institution reported that the borrower graduated or withdrew. The 2019 rule's approach worked within its overall framework because there was an overall limit that required claims to be submitted within 3 years of a borrower's last date of attendance at the institution. Because the Department is proposing to remove that limitations period the Department does not believe a date tied to when the claim is approved would be appropriate since that could mean seeking to recoup from an institution for an approved claim that relates to behavior from many years earlier. The Department also considered the structure used in the 2016 regulation of basing the time period on when a borrower knew or could have known about a misrepresentation or when the institution breached the contract.

The Department, however, is concerned that it would be very difficult to properly establish such a date because it would require working with the borrower to ascertain the appropriate date or otherwise inferring one from instances such as public filing of lawsuits. Moreover, because the Department is not proposing a limitations period for the borrower, the question of when the borrower became aware of the misrepresentation or the breach of contract occurred become less relevant for the borrower. Accordingly, the Department believes that using a period tied to the last date of the borrower's attendance at the institution would be simpler to administer and for the institution to track and follow.

The Department believes having a defined limitations period for recoupment from institutions is important. By law, many Federal enforcement and collection actions are subject to a defined limitation period. 28 U.S.C. 2462, for example, provides a five-year limitation period for certain Federal enforcement, fine, and forfeiture actions. The 2019 regulations also incorporate a five-year limitations period against institutions. The Department reviewed various States' limitations periods for consumer protection claims. Some States have a limitations period for claims relating to consumer protection that is six years long. This includes States such as Maine (14 M.R.S. § 752), Minnesota (Minn. Stat. § 541.05), and New Jersey (N.J.S.A. 2A:14–1). Given the different uses of a five- or six-year limitations period, the Department seeks feedback on which period would be better to use for borrower defense recoupment proceedings.

While the limitations period generally restricts how long after a given date the Department may initiate a recoupment action, the Department believes that period should be suspended when the institution receives formal notice of the allegations related to the claim. Such notice would make the institution aware of the issue and the possibility of related action, essentially alleviating the concerns that a limitations period is meant to address. Receiving such formal notice would result in the institution needing to maintain relevant records and thus addresses any concerns about institutions no longer retaining any relevant records. The Department proposes to define formal notice that could cause the limitations period to no longer apply as: being notified by the Department of borrower defense claims; a class action complaint asserting relief for a class that may include the borrower and that may form the basis of a borrower defense claim; or written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, for underlying facts that may form the basis of a borrower defense claim. Including class actions and written notice tied to investigations captures major instances in which an institution would be made aware that there is alleged conduct that could relate to a borrower defense claim. Moreover, both of those processes also require the institution to maintain records, which avoids the concerns about lacking sufficient information to respond to older allegations.

The Department also proposes that the limitations period should not apply to Department actions to recoup claims approved as a result of a judgment. As we reasoned in the 2016 NPRM, the availability of evidence for a borrower defense that is based on a judgment in a court or administrative tribunal is not a concern, as the only evidence required is the judgment itself. In that NPRM, we proposed no limitations period. See 81 FR 39344. We therefore find it compelling to adopt a similar approach of no limitations period for judgments against an institution.

2. Pre-Dispute Arbitration Agreements—General Background

In 2016, the Department amended the Direct Loan Program regulations in § 685.300 to condition an institution's participation in the Direct Loan Program on its PPA not to utilize pre-dispute mandatory arbitration agreements or class action waivers that (1) are related to the making of a Direct Loan or the provision of educational services for which the Direct Loan was provided, and (2) could form the basis of borrower defense claims. This limitation was consistent with the HEA, which allows

institutions to participate in the Federal Direct Loan program and allow their students to borrow funds through that program, subject to certain terms and conditions. In 2019, the Department removed the prohibition of mandatory pre-dispute arbitration and class action waivers from the regulations and instead provided that institutions that required borrowers to sign a mandatory pre-dispute arbitration agreement or class action waiver as a condition of enrollment to make plain language disclosures about the use of such agreements. The Department argued that disclosures about institutions' use of these agreements would allow students to make informed decisions about their enrollment (see 84 FR 49879).

Pre-Dispute Arbitration Agreements and Class Action Waivers

Statute: Section 454 of the HEA authorizes the Secretary to impose conditions on institutions that wish to participate in the Direct Loan Program. Institutions that participate in the Direct Loan Program must enter into a PPA with the Department. 20 U.S.C. 1087d. Section 454(a)(6) of the HEA authorizes the Secretary to include in that PPA ''provisions as the Secretary determines are necessary to protect the interest of the United States and to promote the purposes of'' the Direct Loan Program.

Current Regulations: If institutions use a pre-dispute mandatory arbitration agreement or class action waiver, they are required to make disclosures and issue notices to borrowers about the terms and conditions of those agreements.

Specifically, in § 668.41(h) institutions are required to disclose information about these agreements in a plain language disclosure, available to enrolled and prospective students and to the public, on the institution's website where admissions and tuition and fees information are made available. Further, in § 685.304(a)(6)(xiii) through (x)(v) institutions must include in their required entrance counseling information on the institution's internal dispute resolution process and who the borrower may contact regarding a dispute related to educational services for which the Direct Loan was made. Institutions are required to review with the student borrower the pre-dispute arbitration or class action waiver agreement and when it will apply, how to enter into the process and who to contact with questions.

Proposed Regulations: The Department proposes to prohibit the use of mandatory arbitration or class action waivers as discussed below. Under the proposed rules at § 685.300(d), as part of the PPA, each institution would have to agree, as a condition of participating in the Direct Loan Program, that it will not require students to use an internal dispute resolution process before the student pursues a borrower defense claim. As proposed, this provision would apply to all PPAs executed after the rule is effective.

In addition, in proposed § 685.300(e), under the PPA, institutions would be prohibited from relying on a mandatory pre-dispute arbitration agreement, or any other mandatory pre-dispute agreement with a student who obtained or benefitted from a Direct Loan, in any aspect of a class action related to a borrower defense claim, until the presiding court rules that the case cannot proceed as a class action. The proposed regulations include a non-exhaustive list of what would constitute reliance on a mandatory pre-dispute arbitration agreement with respect to a class action, including seeking dismissal, deferral, or stay of a class action; excluding a person or persons from joining a class action; avoiding discovery; and/or filing an arbitration claim. Finally, the Department proposes to require that certain provisions regarding class action bans be included in any agreement with a student who receives a Direct Loan to attend the school or who for whom a Direct PLUS Loan was obtained.

Proposed § 685.300(f) would provide that, as part of the PPA, the institution would agree that it will not enter into a mandatory pre-dispute arbitration agreement to arbitrate a borrower defense claim or rely in any way on a pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim. The proposed regulations include a non-exhaustive list of what would constitute reliance on a pre-dispute arbitration agreement, including seeking dismissal, deferral, or stay of a judicial action; avoiding discovery; and/or filing an arbitration claim. Finally, the Department proposes to require that certain provisions relating to notices and the terms of the pre-dispute arbitration agreements be included in any agreement with a student who receives a Direct Loan to attend the school or for whom a Direct PLUS Loan was obtained.

Under the proposed rules at § 685.300(g) and (h), institutions would be required to submit certain arbitral records and judicial records connected with any borrower defense claim filed against the school to the Secretary by certain deadlines. The Department would maintain a centralized database of these records that would be accessible to the public.

Finally, the proposed rules at § 685.300(i) provide a general definitions section. This includes a revised definition of ''borrower defense claim'' that maintains congruence with definitions elsewhere in the title IV regulations. The Department achieves this by cross-referencing the definition of ''borrower defense claims'' as defined in the 1994, 2016, 2019, and new subpart D to part 685.

Reasons: These proposed regulations would add limitations pertaining to arbitration and class action waivers. Section 454(a)(6) of the HEA authorizes the Secretary to include in the PPA ''provisions as the Secretary determines are necessary to protect the interest of the United States and to promote the purposes of'' the Direct Loan Program. From compliance reviews, reports from the public, and a review of institutions' enrollment agreements, the Department has seen instances when institutions have compelled borrowers to arbitrate a borrower defense claim, required an internal dispute process prior to filing a borrower defense claim, and prohibited a class of affected borrowers from filing borrower defense claims. These restrictive provisions in students' enrollment agreements stymie a borrower's ability to fully reap the rights and benefits of the Direct Loan Program by hindering their rights to pursue a borrower defense claim or unduly delaying when a borrower defense claim was filed or could be filed. As discussed in the 2016 NPRM (see 81 FR 39381), for these Direct Loans to be repayable, the loans must be enforceable obligations of borrowers. Acts and omissions that give rise for a borrower to assert a defense to repayment frustrate the purposes of the Direct Loan Program—financing students' postsecondary expenses and obtaining repayment. Mandatory pre-dispute arbitration agreements and class action waivers further impede borrowers' ability to file borrower defense claims and receive appropriate relief and discharges. Absent these proposed regulations, borrowers in distress would likely default, institutions would be insulated from recovery actions, and the risk and liabilities would be transferred to the Federal taxpayer. For these reasons, these proposed regulations would protect the interests of the United States for borrower defense claims asserted on Direct Loans, while ensuring the successful financing of postsecondary education by providing loans repayable by current recipients of this Federal public benefit.

In the preamble of the NPRM published on June 16, 2016, we described the concerns regarding

mandatory arbitration and class action waiver requirements. 81 FR at 39380–86. The preamble to the June 16, 2016, NPRM described how Corinthian Colleges used the mandatory arbitration and class action waiver provisions in its student enrollment agreements to shift the cost of its misrepresentations from the company to the Federal taxpayers. 81 FR at 39382–83. Moreover, the NPRM noted that there was a lack of transparency both to students and the public regarding the outcome of arbitrations, the results of which are generally not public. See generally 81 FR at 39381–85. The 2019 regulations took a different approach and concluded that the general Federal policy in favor of arbitration outweighed the particular issues of mandatory arbitration and class action waivers in the context of the Department's Federal student financial aid programs.

The Department has taken another look at mandatory arbitration and class action waiver requirements as they relate to the Federal Direct Loan Program. The Department reviewed both the 2016 NPRM and the 2019 final rule. The Department has determined that the lack of information for students cited in the 2016 NPRM remains a concern and makes it extremely difficult for current and prospective students to judge the potential burdens and risks they are assuming when they choose to attend an institution that includes mandatory arbitration and class action waivers in its enrollment agreement.

The 2019 regulations removed the restrictions on the use of mandatory arbitration agreements and class action waivers, based on the general Federal policy in favor of arbitration and a view that arbitration is generally less costly for the parties and results in more timely resolutions. The Department specifically cited the Supreme Court's decision in *Epic Systems Corp.* v. *Lewis,* 138 S. Ct. 1612 (2018), and Congress' disapproval of regulations issued by the Consumer Financial Protection Bureau that would have limited mandatory arbitration and class action waivers. See 84 FR at 49839–40.

Both the 2016 and 2019 regulations note that the Federal Arbitration Act (FAA) reflects the Federal policy favoring arbitration. In issuing the 2016 regulations, the Department specifically acknowledged that the agency lacks ''the authority, and does not propose, to displace or diminish the effect of the FAA.'' 81 FR at 76023. The Department also specifically noted that the 2016 rule ''does not invalidate any arbitration agreement, whether already in existence or obtained in the future.'' *Id.* Instead, the 2016 regulations conditioned an institution's future participation in the Federal Direct Loan Program on its agreement not to impose mandatory arbitration and class action waiver requirements relating to borrower defense claims on borrowers of Federal Direct Loans. As noted by the District Court in *California Ass'n of Private Postsecondary Sch.* v. *DeVos,* 436 F. Supp. 3d 333, 344 (D.D.C. 2020), *vacated as moot,* No. 20–5080, (D.C. Cir. Oct. 14, 2020), ''if a school wants to participate in a federal program and to benefit from the many billions of dollars that the United States distributes in Direct Loans every year, it must agree to abide by the conditions that the Secretary reasonably determines are necessary to protect the public and the integrity of the program.'' [22] In that case, the court concluded that the Department's 2016 regulations were consistent with the Secretary's authority under the HEA and did not conflict with the FAA.

The 2019 regulations permit institutions to include pre-dispute arbitration agreements or class action waivers in enrollment agreements with their students or in other documents that must be signed by the student as a condition of enrollment. The student often has little or no say in the selection of the arbitrator, the choice of venue, or the ability to appeal, among other factors.

As the court cases above demonstrate, the decision reflected in the 2019 regulations to permit institutions to include these required provisions was based on an incorrect understanding of the interplay between the HEA and the FAA and the mistaken conclusion that the FAA undercut the policy reflected in the 2016 regulations. The 2019 regulations also failed to adequately balance the costs and benefits of arbitration, focusing too heavily on the conclusion that arbitration provides speedier results and failing to take into account the protection of the interests of the United States, whose funds are at stake for borrower defense claims asserted on Federal Direct Loans.

As discussed in the preamble of both the 2016 and 2019 regulations, there have been a variety of studies regarding the relative costs and benefits of arbitration versus litigation, with mixed conclusions. 81 FR 31982 (2016 NPRM); 84 FR at 49841–49844 (2019 Final Rule). Moreover, no study the Department is aware of has addressed arbitration in the context of higher education and student loans. Therefore, in proposing regulations regarding arbitration and class actions in the borrower defense context, the Department is relying on its experience in the student loan area. As discussed in depth in the preamble to the 2016 NPRM, 81 FR at 39382–83, the Department's experience with Corinthian Colleges and other institutions demonstrates that, had class actions been permitted, borrowers may have been able to directly pursue relief from the institution rather than relying on recovery from the Federal taxpayer through borrower defense discharges of their student loans. The impediment to class actions and the institutions' ability to force students into arbitration removed a significant deterrent threat. When students have the option to pursue class action relief, they have the chance to recover compensation for the damages they may have suffered, including the costs related to their loans.

Moreover, we note that, to prevent double recovery, and as discussed more fully in the *Borrower Cooperation & Transfer of Recovery Rights* section of this NPRM, Sec. 455(h) of the HEA provides that in no event may a borrower recover from the Secretary relief in excess of the amount such borrower has repaid on their Direct Loan.

The Department also is concerned that the use of arbitration clauses or class action waivers in enrollment agreements would stifle students' ability to bring complaints to the attention of oversight bodies, leaving taxpayers to assume the financial risk if those borrowers fail to repay their loans. As discussed in the 2016 NPRM, 81 FR at 39380, agreements that bar relief by class action lawsuits remove the financial risk to an institution because the institution is insulated from the acts or omissions that gave rise to the borrower defense claim for which the taxpayers would assume the losses associated with the discharge. Moreover, class action waivers could impede borrowers from obtaining compensatory relief for themselves and further prevent borrowers from obtaining injunctive relief to compel an institution, in a timely manner, to desist from the conduct that caused them injury and could continue to cause other borrowers, injury in the future. Class action waivers effectively allow an institution to perpetuate misconduct with much less risk of adverse financial consequences than if the institution

[22] We note that regulations issued by the U.S. Department of Health and Human Services in 2019, which barred health care facilities participating in the Medicare and Medicaid programs from requiring residents to agree to binding arbitration as a condition for admission, were similarly upheld based on the agency's authority to condition participation in those programs. *Northport Health Servs. of Arkansas* v. *U.S. Dep't of Health and Human Servs.,* 14 F.4th 856, 866–69 (8th Cir. 2021).

could be held accountable in a class action lawsuit. 81 FR at 39382.

As discussed in the 2016 NPRM, Corinthian Colleges included explicit class action waiver provisions in enrollment agreements, and used those, with mandatory pre-dispute arbitration clauses, to resist class actions by students. Suits brought against Corinthian Colleges were dismissed, and taxpayers were left to assume the financial losses resulting from the institution's misconduct. 81 FR at 39383.

The Department reiterates its 2016 position that regulating institutions' use of these agreements is necessary to ''protect the interests of the United States and to promote the purposes'' of the Direct Loan Program under § 454(a)(6) of the HEA, 20 U.S.C. 1087d(a)(6). 81 FR at 76022. By using these agreements, institutions could evade accountability, curtail borrowers' rights to bring a borrower defense claim to the Department, and leave the Federal taxpayer on the hook for the institution's misconduct.

Another issue that impedes the Department's oversight of institutions' use of these mandatory arbitration agreements is that arbitral records are often shielded from public view. Borrowers and prospective students are unable to access records reflecting the outcomes of arbitration proceedings and their potential impact on the borrower's enrollment at the institution, as these records are not required to be made available publicly. Prospective students may not be able to make informed choices about their decision to attend a postsecondary institution or obtain a Direct Loan without public knowledge of these arbitration and judicial records. The opacity of these arbitral records under current regulations also weakens the Department's ability to exercise oversight over institutions and to ''protect the interests of the United States,'' by hampering the Department's ability to identify patterns of abuse and wrongdoings and take appropriate corrective action. Moreover, allowing arbitration but requiring notice to the Department when such arbitration was initiated undermines the deterrent effect that these proposed regulations would have: to prevent and discourage institutions' wrongdoing upfront, rather than waiting until an institution engages in wrongdoing.

We note that the prohibition on institutions' use of mandatory arbitration and class action waiver provisions regarding borrower defense claims in their enrollment agreements was in effect between July 1, 2017, and July 1, 2020. At no time during that period or during the negotiated rulemaking hearings or committee meetings that preceded this NPRM did institutions identify any significant problems or issues from removing such provisions from their student agreements or otherwise complying with the regulations. On the other hand, since issuance of the 2019 regulations, the Department has heard from borrowers, advocates representing students, State attorneys general, and the public about problems stemming from these mandatory pre-dispute arbitration agreements and class action waivers and the lack of transparency regarding arbitral records. Collectively, these constituency groups highlighted the difficulties these agreements or class action waivers present in bringing a lawsuit based on the type of institutional conduct that would give rise to a borrower defense claim, as well as concerns that institutions may try to use internal dispute processes to dissuade the filing of a borrower defense claim.

In light of the constituency groups' concerns that institutions foreclosed on borrowers' right to bring a lawsuit and created challenges to filing a borrower defense claim, the Department revived the issues surrounding pre-dispute arbitration agreements and class action waivers. During the negotiated rulemaking sessions, the Department proposed to prohibit institutions that participate in the Direct Loan program from obtaining, through the use of contractual provisions or other agreements, a pre-dispute agreement for arbitration to resolve claims brought by a borrower against the institution that could form the basis of a borrower defense claim. The Department proposed to restore prohibitions on institutions obtaining from a borrower, either in an arbitration agreement or in another form, a waiver of their right to initiate or participate in a class action lawsuit regarding such claims, and from requiring students to engage in internal dispute processes before contacting accrediting or government agencies with authority over the institution regarding such claims. Institutions would be required to notify the Department and to disclose to students the institution's use of arbitration on acts or omissions related to the making of a Direct Loan or the provision of educational services for which the Direct Loan was provided, and to provide certain arbitral records and judicial records connected with any borrower defense claim filed against the school to the Department, which would be shared with the public.

All but one non-Federal negotiator supported the Department's reinstatement of the requirements in the 2016 regulations; the one dissenting non-Federal negotiator opposed the reinstatement of the restrictions on pre-dispute arbitration agreements and class action waivers. Some of the negotiators suggested that the Department should expand the limitation by defining a borrower defense claim for this purpose as any unlawful act or omission by the institution. Other negotiators urged the Department to extend the prohibition on mandatory pre-dispute arbitration to include private loans. Some negotiators also suggested that the regulations should include a specific enforcement provision that would require the Secretary to enforce the provisions of the PPA. Other negotiators suggested that the disclosure and notice requirements should ensure the language in the disclosures meet students at their level, as these students often get lost in the ''legalese'' of the documents they are required to sign as a condition of enrollment.

One negotiator disagreed with the Department's proposal. This negotiator generally agreed that transparency relating to arbitration and class action waivers is important but argued that alternative dispute resolution processes such as arbitration are less costly for students and more efficient in resolving complaints. This negotiator noted that the Department already has an FSA Feedback System to address Federal student aid complaints and, for institutions that participate in Department of Veterans Affairs (VA) educational programs, the VA has a complaint resolution system that provides aggrieved servicemember-students a path for lodging complaints affecting VA programs. The negotiator who disagreed with the Department's proposal also expressed concern over cybersecurity and student privacy regarding reporting and disclosure of arbitral and judicial records related to borrower defense claims. The Department discusses these provisions below.

After hearing from the negotiators and carefully reviewing the current regulations, the Department proposes a prohibition against the use of pre-dispute arbitration agreements and class action waivers for the reasons discussed above.

General—Applicability to Direct Loans

During negotiated rulemaking, the Department proposed limiting the prohibition against pre-dispute arbitration agreements to agreements related to the making of a Direct Loan or provision of educational services for which the Direct Loan was intended.

Some negotiators requested an expansion of the prohibition to include other actions taken by agents of the institution, including online program managers (OPM). These negotiators reasoned that an OPM should also be subject to the prohibition against pre-dispute arbitration agreements. One negotiator argued that the Department's authority under 20 U.S.C. 1094(a)(27) to regulate preferred lender arrangements would allow the Department to extend the reach of the prohibition.

Consistent with the Department's position since 1995, see 60 FR at 37769, the Department's authority with respect to the terms and conditions of the institution's PPA with the Secretary only pertains to the making of a Direct Loan or the provision of educational services for which the Direct Loan was intended. OPMs may be covered under these regulations only to the extent they are providing services that are part of the borrower's educational program for which the Direct Loan was intended.

Pre-Dispute Arbitration Agreements—Agreements Currently in Force

The Department acknowledges that many existing loan agreements include mandatory arbitration provisions or class action waivers or may be executed prior to the effective date of the final regulations. In that circumstance, similar to the Department's approach in developing the 2016 regulations, 81 FR at 39386, the proposed regulations would prohibit a participating institution from attempting to exercise such agreements and would require a participating institution to either amend the agreements or notify the students who executed those agreements that the institution will not attempt to exercise those agreements in a manner proscribed by the regulations. Note that in September 2018, a Federal court invalidated the Department's actions to delay implementation of the 2016 regulations, including the provisions on the prohibition of the pre-dispute arbitration agreements and class action waivers, and those rules went into effect in October 2018. The Court held that the rule did not have retroactive effect. *California Ass'n of Private Postsecondary Schs.* v. *DeVos*, 344 F. Supp. 3d 158, 173 (D.D.C. 2018).

It is important to note that these regulations would not invalidate those past contracts. These regulations would simply condition the institution's future participation in the Direct Loan program on the institution not enforcing of certain provisions in those contracts going forward. As discussed in the 2016 regulations (see 81 FR 76024, November 1, 2016):

> Regulations commonly change the future consequences of permissible acts that occurred prior to adoption of the regulations, and such regulations are not retroactive, much less impermissibly retroactive, if they affect only future conduct, and impose no fine or other liability on a school for lawful conduct that occurred prior to the adoption of the regulations. The regulations do not make an institution prospectively ineligible because it has already entered into contracts with arbitration provisions. The regulations impose no fine or liability on a school that has already obtained such agreements. The regulations address only future conduct by the institution, and only as that conduct is related to the institution's participation in the Federal Direct Loan Program.

The PPAs that institutions enter into with the Secretary provide notice to institutions that they must comply with all statutory provisions of or applicable to title IV of the HEA, and all applicable regulatory provisions, including new regulations that go into effect during the institution's participation. See 34 CFR 668.14(b)(1). And as discussed in 2016, the HEA gives the Secretary authority to modify the terms of the PPA as needed to protect Federal interests and promote the objectives of the Direct Loan program. See 81 FR 76023.

Pre-Dispute Arbitration Agreements—Public Disclosure of Agreements and Judicial Proceedings

Some negotiators expressed privacy concerns for individuals, or the institution, if the regulations required public disclosure of arbitration agreements and judicial proceedings related to borrower defense claims. They argued that these records contain confidential information. These negotiators also raised the potential of a cybersecurity incident if these records are made publicly available.

The Department notes that institutions are already required to furnish other sensitive information to the Department, some of which is made public, including Tier 1 and Tier 2 arrangements under the cash management regulations at part 668, subpart K; and Clery Act campus safety and security reports, among others. Under the proposed regulations and to protect privacy, the Department expects institutions to submit arbitral and judicial records with personally identifiable information redacted. The Department would subsequently disclose these redacted records publicly. Separate and apart from this proposed provision, the Department maintains its general authority to request information from institutions, including original, unredacted versions of arbitral or judicial records that relate to Direct Loans or the educational program for which a Direct Loan was intended.

The Department remains committed to protecting students' information to the extent permissible under applicable privacy laws, such as the Family Educational Rights and Privacy Act (FERPA), while ensuring compliance with requirements under the Freedom of Information Act (FOIA).

Pre-Dispute Arbitration Agreements—Definitions

The Department proposes to align the definition of ''borrower defense claim'' for purposes of the prohibition on mandatory arbitration and class action waivers with the definition in the applicable borrower defense regulations. The Department believes that referencing the applicable borrower defense regulations themselves would make the meaning of ''borrower defense claims'' clear for each set of regulations.

In *Young* v. *Grand Canyon Univ.,* 980 F.3d 814 (11th Cir. 2020), the court considered a mandatory arbitration agreement that forced a borrower to arbitrate his borrower defense claims rather than file a lawsuit. The institution moved to compel arbitration pursuant to the agreement, which the student signed as part of his application for admission. The district court granted the institution's motion to compel, holding that the borrower's claims for misrepresentation and breach of contract were not ''borrower defense claims'' as defined in the Department's regulations prohibiting mandatory pre-dispute arbitration agreements.[23] The Court of Appeals for the 11th Circuit reversed, concluding that the plain language of the pre-dispute arbitration regulations contemplated such claims, and thus that the borrower could not be compelled to arbitrate them. The court noted, however, that the definition of ''borrower defense claim'' for purposes of the pre-dispute arbitration prohibition could have been written more clearly.

A negotiator urged the Department to add a definition of ''provision of educational services'' in the regulations addressing mandatory pre-dispute arbitration agreements. However, the Department believes that this concept is sufficiently defined in the borrower defense regulations, under the existing regulations in § 685.20€)(1)(iv) and in proposed § 685.401(a).

[23] *Carr et al.* v. *Grand Canyon Univ., Inc. et al.,* Case No. 1:19–cv–01707–TCB (N.D. Ga. Aug. 19, 2019).

Pre-Dispute Arbitration Agreements–Technical Conforming Changes

Section 668.41(h) provides that institutions that require pre-dispute arbitration agreements and/or class action waivers as a condition of enrollment must make certain plain language disclosures to enrolled students, prospective students, and the public about the use of such agreements. The plain language disclosure must state that the institution cannot compel a student to use an internal dispute process and cannot require the student to waive their right to file a borrower defense claim with the Department. The disclosure also must confirm that arbitration tolls any limitation period for filing such claims. The format of the plain language disclosure must be in at least 12-point font and must be on the institution's website or in the college catalog. Institutions are prohibited from relying solely on an intranet site to provide such disclosures and notices to prospective students or the public. Finally, § 668.41(h)(2) defines ''class action'', ''class action waiver'', and ''pre-dispute arbitration agreement'' for purposes of this section.

For loans first disbursed on or after July 1, 2020, current § 685.304(a)(6) requires certain additional written disclosures if an institution requires a student to sign a pre-dispute arbitration agreement or a class action waiver as a condition of enrollment. Specifically, if an institution requires either form to be signed, § 685.304(a)(6)(xiii) requires the institution to provide a written description of its dispute resolution process and who the student may contact at the school if the student has a dispute relating to Direct Loans or the educational services for which the loans were provided. With respect to pre-dispute arbitration agreements, § 685.304(a)(6)(xiv) requires the institution to provide a written description of how and when any pre-dispute arbitration agreement applies, how such arbitration agreement functions, and whom the student may contact with questions. Finally, for class action waivers, § 685.304(a)(6)(xv) requires the institution to provide a written description of the applicability of class action waivers, alternatives to class action waivers, and whom the student may contact with questions.

The Department proposes to remove § 668.41(h) because they would be unnecessary given other proposed changes. The proposed regulations at § 685.300 would contain provisions requiring institutions to make specific disclosures about their use of mandatory pre-dispute arbitration agreements and class action waivers.

The Department also proposes to remove § 685.304(a)(6)(xiii) through (xv). The proposed regulations at § 685.300 would state the conditions under which disclosures would be required and provide deadlines for such disclosures.

The Department proposes deleting the identified provisions because these issues would be addressed by the proposed regulations and render the requirements in § 668.41(h) unnecessary. Because § 668.41(h) would be unnecessary, the cross references to that provision in § 685.304 would reflect these technical changes.

3. Interest Capitalization (§§ 685.202, 685.209)

Background: Interest capitalization occurs when any accrued, unpaid interest becomes part of the principal balance of a borrower's loan. Capitalization is triggered by certain events, as provided by either the statute or by regulation. For student loans, interest capitalization is most often triggered after a period of deferment or forbearance. Once interest is capitalized and becomes part of the loan principal, the new principal balance begins to accrue interest at the rate applicable to the loan, which increases the overall cost of the loan. Thus, interest capitalization effectively causes a borrower to pay interest on principal and accrued interest.

This issue was subject to negotiated rulemaking and consensus was reached on the proposal to remove interest capitalization on Direct Loans where it is not required by the HEA. As proposed, interest capitalization on Direct Loans would be retained only where it is specifically required by the HEA. Because there would be fewer situations in which interest is capitalized, this proposal would result in a loss in revenue and therefore would increase costs for the Government and consequently U.S. taxpayers. However, the proposal is expected to result in lower total payments over time for borrowers, thereby increasing the likelihood that borrowers would repay their loans in full. Given this benefit, the Department believes that the benefits for borrowers exceed these costs and justify the change.

Statute: Section 428H(e)(2) of the HEA, which applies to the Direct Loan Program under the parallel terms and conditions provisions in § 455(a)(1) of the HEA, provides that interest may be capitalized: when a loan enters repayment, at the expiration of the grace period (in the case of a loan that qualifies for a grace period), at the expiration of a period of deferment or forbearance, or when the borrower defaults.

Section 455(f)(1) requires capitalization at the end of a deferment period for Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Unsubsidized Consolidation Loans.

Section 493C(b)(3)(B) requires capitalization when a borrower who is repaying under the income-based repayment (IBR) plan stops repaying under that plan or is determined to no longer have a partial financial hardship.

Current Regulations: Under § 685.202(b)(2), the Secretary may capitalize interest on a Direct Loan when a borrower enters repayment. Section 685.202(b)(3) provides that for an unsubsidized Direct Loan and for all Direct Loans during periods of forbearance, the Secretary capitalizes the unpaid interest that has accrued on the loan upon the expiration of the deferment or forbearance. Section 685.202(b)(4) provides that the Secretary annually capitalizes unpaid interest on a Direct Loan during any period of negative amortization under the alternative repayment plan described in § 685.201(l) or under the income-contingent repayment (ICR) plan described in § 685.209(b). Section 685.202(b)(5) provides that the Secretary may capitalize unpaid interest on a Direct Loan when a borrower defaults on the loan.

Section 685.209(a)(2)(iv) provides that interest is capitalized on a Direct Loan when a borrower who is repaying under the Pay As You Earn (PAYE) repayment plan is determined to no longer have a partial financial hardship or chooses to leave the PAYE plan. Under § 689.209(a)(5)(iii)(B), unpaid interest is also capitalized when a borrower repaying under the PAYE plan fails to annually recertify their income.

Under § 685.209(c)(2)(iv), any unpaid interest is capitalized at the time a borrower leaves the Revised Pay As You Earn plan.

Finally, § 685.221(b)(4) and § 685.221(e)(3)(ii) incorporate the requirements from § 493C(b)(3)(B) of the HEA that interest is capitalized at the time a borrower chooses to leave the IBR plan or begins making payments that are not based on income, which includes when a borrower repaying under the IBR plan no longer has a partial financial hardship or fails to recertify income.

Proposed Regulations: The Department proposes to remove the provisions in §§ 685.202 and 685.209 on interest capitalization of Direct Loans where it is not required by the HEA,

including when capitalization is permitted (but not required) under the HEA. We propose to eliminate the regulatory provisions stating that unpaid interest is capitalized or may be capitalized when a borrower enters repayment; upon the expiration of a period of forbearance; annually during periods of negative amortization under the alternative repayment plan or the ICR plan; when a borrower defaults; when a borrower who is repaying under the PAYE plan fails to recertify income, or chooses to leave the plan; and when a borrower who is repaying under the REPAYE plan leaves the plan.

Specifically, we propose to remove—

- § 685.202(b)(2), which provides that for a Direct Unsubsidized Loan, a Direct Unsubsidized Consolidation Loan that qualifies for a grace period under the regulations that were in effect for consolidation applications received before July 1, 2006, a Direct PLUS Loan, or for a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012, and before July 1, 2014, the Secretary may capitalize the unpaid interest that accrues on the loan when the borrower enters repayment.
- The provision in § 685.202(b)(3) that provides that the Secretary capitalizes interest that accrues on Direct Loans during periods of forbearance.
- Section 685.202(b)(4), which provides that, subject to some exceptions, the Secretary annually capitalizes unpaid interest when a borrower is paying under the alternative repayment plan or the income-contingent repayment plan described in § 685.209(b) and the borrower's scheduled payments do not cover the interest that has accrued on the loan.
- Section 685.202(b)(5), which states that the Secretary may capitalize unpaid interest when a borrower defaults on a loan.
- Section 685.209(a)(2)(iv)(A)(*2*), providing that accrued interest is capitalized at the time a borrower chooses to leave the PAYE repayment plan.
- Section 685.209(a)(2)(iv)(B), which provides that the amount of accrued interest capitalized when a borrower is determined to no longer have a partial financial hardship is limited to 10 percent of the original principal balance at the time the borrower entered repayment under the PAYE repayment plan and after the amount of accrued interest reaches that limit, interest continues to accrue, but is not capitalized while the borrower remains on the PAYE repayment plan.
- Section 685.209(c)(2)(iv), providing that any unpaid accrued interest is capitalized at the time a borrower leaves the REPAYE plan.

The Department is not proposing changes to the regulations related to interest capitalization where capitalization is required by the statute. This includes when a borrower exits a period of deferment on an unsubsidized loan or when a borrower who is repaying loans under the IBR plan is determined to no longer have a partial financial hardship, including if they fail to annually recertify income.

Reasons: The Department is concerned that frequent interest capitalization increases what a Direct Loan borrower owes and may extend the time it takes for some borrowers to repay their loans. This may result in delinquency and or default for borrowers who cannot manage payments on higher loan balances. Recent studies have shown that growing loan balances lead to both financial and psychological challenges to successful repayment by borrowers. Borrowers reported being overwhelmed with their increasing loan balances, with many expressing frustration and diminished motivation to make payments toward balances that continue to grow.[24] The Department is concerned that such diminished motivation may result in higher rates of delinquency and or default, which has significant negative consequences for borrowers, including negative credit reporting and the possibility of garnished wages or loss of tax refunds. The Department believes that the negative effects on borrowers of interest capitalization outweigh the added costs that come from ending this practice where allowed. Furthermore, there may be many circumstances where borrowers are not aware that capitalization may occur or do not understand the impact that interest capitalization has on their loan balance. The act of rolling unpaid interest into a borrower's principal balance can be a frustrating experience for borrowers who are confused as to what triggered the capitalization or surprised by the higher amount they owe because of capitalization. Borrowers also frequently express frustration and surprise with interest capitalization, at least in part because this is not an occurrence they are likely to have experienced with other financial products. Given that borrowers already express significant confusion from the overall complexity of student loan repayment and the various options available to them, the Department does not believe alternative approaches to eliminating interest capitalization, such as improved education, would successfully address the problem. As mentioned in the background section for this provision, the Department recognizes the cost impact of this proposal from lost revenue but believes the benefits for borrowers exceed these costs and justify the change. Therefore, the Department proposes to eliminate interest capitalization for Direct Loans in instances where it has the authority to do so.

The Department also proposes to eliminate instances where the regulations currently permit but do not require interest capitalization. This change provides greater clarity for borrowers since it may not be clear when the Department does or does not capitalize interest. This change also eliminates concerns that such permissive instances could be applied inconsistently.

The Committee reached consensus on this issue. The proposal to eliminate interest capitalization where not statutorily required was enthusiastically received by all the committee members and received unanimous support. Many committee members applauded the Department for its efforts to remove interest capitalization in the situations described above.

Some committee members requested that the Department provide this benefit to borrowers who consolidate their other Federal student loans into a Federal Direct Consolidation Loan. The Department could not agree to that request because a consolidation loan does not result in capitalization; rather, it is a new loan with a new principal balance made up of the principal and interest that the borrower owed on each of the underlying loans.

Some negotiators asked the Department to extend this approach to FFEL loans. However, the Department noted that it does not have the authority to prohibit a FFEL lender from capitalizing interest.

One committee member requested that the Department provide more information to help the committee members understand how interest capitalization impacts certain groups of borrowers and requested that the Department apply this benefit retroactively. The Department replied that the regulatory changes to eliminate interest capitalization would be prospective, consistent with our standard rulemaking procedures.

[24] *https://www.pewtrusts.org/en/research-and-analysis/articles/2020/04/08/policymakers-should-consider-impact-of-growing-student-loan-balances-on-borrowers-and-taxpayers.*

4. Closed School Discharge (§§ 674.33(g), 682.402(d), and 685.214)

Statute: Sections 437(c)(1) and 464(g) of the HEA provide for closed school loan discharges for borrowers in the Perkins Loan and FFEL Programs who are unable to complete a program of study because their school closed. The closed school discharge provisions also apply to Direct Loans, under the parallel terms, conditions, and benefits provision in section 455(a) of the HEA.

Current Regulations: Sections 674.33(g), 682.402(d), and 685.214 describe the qualifications and procedures in the Perkins, FFEL, and Direct Loan Programs for a borrower to receive a closed school loan discharge. Pursuant to §§ 674.33(g)(4) and 685.214(c)(1), a Perkins or Direct Loan borrower must submit a written request and sworn statement to apply for a closed school discharge.

If a loan holder in the Perkins, FFEL or Direct Loan Program or a FFEL guaranty agency determines that a borrower may qualify for a closed school discharge, the loan holder provides the borrower with a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The loan holder or guaranty agency promptly suspends any efforts to collect from the borrower on any affected loan. Under §§ 674.33(g)(8)(v), 682.402(d)(6)(ii)(H), 682.402(d)(7)(ii), 685.214(f)(4) and 685.214(g)(4), if a borrower fails to submit an application for a closed school discharge within 60 days of the loan holder or guaranty agency providing the application to the borrower, the loan holder or guaranty agency resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

Sections 674.33(g)(4)(i)(B), 682.402(d)(1)(i), and 685.214(c)(1)(i)(B) provide that to qualify for a closed school discharge, a borrower must have been enrolled in the school at the time the school closed or must have withdrawn from the school not more than 120 days before the school closed. These regulations also provide that the Secretary may extend the 120-day timeframe if exceptional circumstances justify an extension.

Under §§ 674.33(g)(4)(i)(C) and 685.214(c)(1)(i)(C), a Perkins or Direct Loan borrower may qualify for a closed school discharge if the borrower did not complete, and is not in the process of completing, the program of study through a teach-out at another school or by transferring academic credits earned at the closed school to another school. This also applies to FFEL borrowers under former § 682.402(d)(3)(ii)(C), which was inadvertently removed from the Code of Federal Regulations as of July 1, 2019.

Under §§ 674.33(g)(1)(ii)(A), 682.402(d)(1)(ii)(A), and 685.214(a)(2)(i), a school's closure date is the date the school ceases to provide educational instruction in all of its programs, as determined by the Department.

Under §§ 674.33(g)(3)(i)(B), 682.402(d)(8) and 685.214(c)(3)(i), the Secretary (and a guaranty agency, in the case of a FFEL Program loan) may discharge a loan without an application for an eligible borrower based on information in the Secretary's or guaranty agency's possession. The Secretary (and a guaranty agency in the case of a FFEL loan) discharges a Perkins or FFEL borrower's loan if the borrower did not subsequently re-enroll in a title IV school within three years of the school's closure, for schools that closed on or after November 1, 2013, pursuant to §§ 674.33(g)(3)(ii) and 682.402(d)(8)(ii). The Secretary discharges a Direct Loan if the borrower did not re-enroll within three years of the school's closure for schools that closed on or after November 1, 2013 and before July 1, 2020, pursuant to § 685.214(c)(3)(ii).

Current regulations in part 674, subpart B of the Perkins regulations and part 682, subpart D of the FFEL regulations do not address severability. Current regulations in part 685, subpart B and subpart C of the Direct Loan regulations address severability.

Proposed regulations: The Department proposes to revise § 685.214 to remove the separate closed school discharge application requirements for Direct Loans disbursed on or after July 1, 2020, and Direct Loans disbursed before July 1, 2020, that appear in current § 685.214(c), (d)(1), (f) and (g).

Proposed §§ 674.33(g)(4) and 685.214(d)(1) would provide that the borrower must submit a completed closed school discharge application to the Secretary and that the factual assertions in the application must be true and made by the borrower under penalty of perjury.

Proposed §§ 674.33(g)(8)(v), 682.402(d)(6)(ii)(H) and 685.214(g)(4) would extend the time period that a borrower has to submit a closed school discharge application before the forbearance period expires to 90 days of the Secretary or other loan holder providing the discharge application to the borrower. Under proposed § 685.214(g)(4), if the Secretary resumes collection on a Direct Loan after the 90 days the Secretary would not capitalize unpaid interest that accrued on the loan during the period of suspension of collection activity that exists in current § 685.214(f)(4) and (g)(4).

Proposed §§ 674.33(g)(1)(ii)(A), 682.402(d)(1)(ii)(A), and 685.214(a)(2)(i) would specify that, for purposes of a closed school discharge, a school's closure date is the earlier of the date that the school ceases to provide educational instruction in most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the school had ceased to provide educational instruction for most of its students.

Proposed §§ 674.33(g)(1)(ii)(D), 682.402(d)(1)(ii)(D), and 685.214(a)(2)(iii) would define ''program'' for purposes of determining the school's closure date as the credential defined by the level and Classification of Instructional Program (CIP) code in which a student is enrolled. Under the proposed definition, the Secretary may define a borrower's program as multiple levels or CIP codes if:

- The enrollment occurred at the same institution in closely proximate periods;
- The school granted a credential in a program while the student was enrolled in a different program; or
- The programs must be taken in a set order or were presented as necessary for borrowers to complete to succeed in the relevant field of employment.

Proposed §§ 674.33(g)(3)(i)(B), 682.402(d)(8)(i)(B) and 685.214(c)(1) would provide that the Secretary—and a guaranty agency in the case of a FFEL Program loan—may discharge a loan without an application for an eligible borrower based on information in the Secretary or guaranty agency's possession if the borrower did not complete an institutional teach-out plan implemented by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

Proposed §§ 674.33(g)(3)(ii), 682.402(d)(8)(ii) and 685.214(c)(1) would remove the current requirement that a borrower may only qualify for a closed school discharge without an application if the borrower does not re-enroll in an eligible title IV school within three years of the school's closure date.

Proposed § 682.402(d)(3) would restore provisions to the FFEL regulations that were inadvertently removed as of July 1, 2019.

Proposed §§ 674.33(g)(4)(i)(C), 682.402(d)(3)(iii) and 685.214(d)(1)(i)(C)

would retain the current requirement that a borrower state on the closed school discharge application that the borrower did not complete an eligible institutional teach-out plan performed by the school or a teach-out agreement at another school and remove the requirement that the borrower state that they did not complete a comparable program of study at another school.

Under proposed §§ 674.33(g)(3)(ii), 682.402(d)(8)(ii) and 685.214(c)(2), if a borrower accepts but does not complete an institutional teach-out plan implemented by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, the Secretary would discharge the loan within one year of the borrower's last date of attendance in the teach-out program.

Proposed §§ 674.33(g)(4)(i)(B), 682.402(d)(1)(i) and 685.214(d)(1)(i)(A) would provide that a borrower who withdrew from the school not more than 180 days before the school closed may qualify for discharge, an increase in time from the 120-day period under current regulations for Perkins and FFEL loans. The Secretary would be able to extend the 180-day period if exceptional circumstances justify an extension.

Proposed §§ 674.33(g)(9), 682.402(d)(9) and 685.214(h) would contain an expanded, but nonexhaustive, list of exceptional circumstances that would justify the Secretary extending the new 180-day timeframe. The expanded list of exceptional circumstances would include, but not be limited to:

- Revocation or withdrawal by an accrediting agency of the school's institutional accreditation;
- Placement of the school on probation by its accrediting agency or the issuance of a show-cause order by the institution's accrediting agency, or placement on an accreditation status, by its accrediting agency for failing to meet one or more of the agency's standards;
- Revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;
- Termination by the Department of the school's participation in a title IV, HEA program;
- A finding by a State or Federal government agency that the school violated State or Federal laws related to education or services to students;
- A State or Federal court judgment that a school violated State or Federal laws related to education or services to students;
- The teach-out of the student's educational program exceeds the 180-day look back period for a closed school discharge;
- The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study;
- The school discontinued a significant share of its academic programs;
- The school permanently closed all or most of its in-person locations while maintaining online programs; or
- The Department placed the school on the heightened cash monitoring payment method as defined in § 668.162(d)(2).

Conforming changes reflecting the revisions discussed above would be made to §§ 682.402(d)(6)(ii) and 682.402(d)(7) of the FFEL regulations.

Proposed § 682.424 would make it clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: Under the current regulations, to qualify for a closed school discharge, a borrower must have been enrolled at the institution on the date of its closure or have withdrawn no more than 120 days prior to its closure for loans made before July 1, 2020, or 180 days prior to the school's closure for loans made on or after July 1, 2020. The borrower may not have graduated from the school or transferred their credits to complete the same or a comparable program at another school to qualify for the discharge. Through this rulemaking, the Department proposes to address the disparity in eligibility criteria for receipt of a closed school discharge based on the disbursement date of the loan, as well as to address other issues that we believe impede borrowers from obtaining closed school discharges. We propose to modify the current regulations in several ways to increase access to closed school discharges for borrowers who have experienced the disruption of being enrolled in a school that closes, and who are burdened by student loan debt for an educational program that they were unable to complete through no fault of their own.

Automatic closed school discharges, which are granted by the Department based on information in its possession, are available to certain borrowers under different conditions. The Department is proposing to make automatic closed school discharges available to all Direct Loan, FFEL and Perkins Loan borrowers under the same criteria. In addition, the proposed regulations would reduce the time frame for a borrower to qualify for an automatic closed school discharge from three years to one year after the school has closed. The U.S. General Accountability Office (GAO) found that over 70 percent of borrowers who received automatic closed school discharges under the three-year provision were in default on the loan.[25] The GAO has also noted that, without an automatic discharge option, only a small percentage of eligible borrowers ever obtain relief through a closed school discharge. Providing for automatic closed school discharges for all qualified Direct Loan, FFEL loan and Perkins Loan borrowers and automatically discharging loans more quickly (*e.g.,* within one year instead of the current three years) would make it far less likely that borrowers who are qualified for discharges but who fail to apply would default on their loan before receiving relief through an automatic discharge. The Department weighed the risks to borrowers of defaulting on a loan for which they are eligible for a discharge against the possibility that some students may opt to re-enroll and transfer their credits after one year. However, the Department believes that students are best protected by establishing a one-year period for automatic discharges. In addition to protecting borrowers against default, a one-year period still provides borrowers time to decide whether they want to continue their studies through an approved teach-out plan. A borrower may need some time after a school closes to sort out their educational options. Providing an automatic discharge one year after closure should give borrowers enough time to make thoughtful educational decisions but not be so long that there is a risk that those who are struggling would have their loans default.

The non-Federal negotiators were generally supportive of the Department's proposal. Several non-Federal negotiators were concerned about the Department's initial proposal that would not have extended the possibility of automatic discharges for borrowers who attended schools that closed before 2014. The Department initially proposed this limitation on automatic closed school discharges because the Department's enrollment

[25] Government Accountability Office. (2021). ''College Closures: Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges.'' Testimony before the Subcommittee on Higher Education and Workforce Investment, Committee on Education and Labor, House of Representatives. (GAO Publication No. 21–105373). Washington, DC: U.S. Government Printing Office.

information for those years is not sufficient to determine if a borrower re-enrolled in a comparable program. Non-Federal negotiators argued that the borrowers who attended schools that closed before 2014 are the borrowers who are least likely to be aware that they may qualify for closed school discharges.

Several non-Federal negotiators also proposed eliminating the comparable program requirement that prevents a borrower who has enrolled in a comparable program from qualifying for a closed school discharge in its entirety. Without this limitation on eligibility for a closed school discharge, the lack of Departmental data showing whether borrowers re-enrolled in comparable programs for those years would be a moot point. In the view of these negotiators, the existing requirement disincentivizes re-enrollment. As noted by the negotiators, the best outcome for a borrower who attended a school that closed would be for the borrower to re-enroll elsewhere and complete their education. However, if a borrower is faced with the decision to either re-enroll or to obtain a loan discharge, the borrower is likely to opt for the discharge.

One non-Federal negotiator expressed a concern that the proposed automatic discharges would result in fewer students completing teach-out plans or transferring their credits to other schools. This negotiator felt that the Department's proposal could result in the Department discharging student loans for thousands of borrowers who withdrew from their institution for personal reasons and were not impacted by the school closure or by any potential degradation of educational quality prior to the school closing.

Other non-Federal negotiators noted that institutions that close have, in many cases, been spiraling downward, and that school closure does not occur in a vacuum. In the case of sudden closures, there are often a string of events that occurred before the school's accreditation is terminated or the school has its front doors locked with no warning. For an institution that has been steadily declining prior to closure, the credits earned at the school may not be transferrable.

In contrast to this view, one of the non-Federal negotiators made the point that each school closure is unique, and that while there are many examples of schools that have not handled closure well, some schools do effectuate an orderly, planned closure. This negotiator stated that school closure is not necessarily a sign that the quality of instruction at the school has deteriorated and that there can be unique transactions such as mergers, consolidations, or acquisitions that end with an institution officially closing, but prior to the closure the school was still in good standing. According to the negotiator, the transaction that resulted in the school closure may have been intended to result in a stronger institution, and schools that close under these circumstances are likely to have established effective teach-out programs or to have ensured that their credits are transferrable to another institution.

Several non-Federal negotiators disagreed with this line of reasoning. They argued that, regardless of whether the school closure is precipitous or carefully planned, a student attending a school that closes is harmed. Even for a student who can transfer credits to another school, the experience of going through a school closure can still be devastating. The student may have given up a job to attend the school or may have spent months or years in a program that the student will not be able to finish. Students may have taken out private or institutional loans to further their education at the school. These types of loans are not covered under the closed school discharge provisions, which only apply to Federal title IV loans.

During the first negotiating session and in explaining our initial proposal, the Department emphasized that our goal with these proposed regulations is to create more ways for a borrower to qualify for an automatic discharge. Under the proposed rules, re-enrolling would not preclude a borrower from obtaining a closed school discharge. However, the Department did not collect and does not have reliable data on students' programs prior to 2014; therefore, the borrower could not qualify for an automatic discharge prior to 2014. Such borrowers could still apply for a closed school discharge by providing an attestation that they did not enroll in a comparable program. Initially, the Department's proposed regulations would have defined ''comparable program'' as a program with the same credential level and in the same field of study, and which accepted most of the credits transferred from the closed school. The Department pointed out that this would be a less stringent standard than the standard in the 2016 rule pertaining to automatic closed school discharges, which provided that a borrower who enrolled elsewhere would not qualify for an automatic discharge.

Under current practice, a borrower applying for a closed school discharge must certify under penalty of perjury whether the borrower is enrolled in or has completed a comparable program at another school. If the borrower has enrolled in or completed a comparable program, the borrower must certify whether the new school accepted transfer credits from the closed school or did not require the borrower to complete core credits after evaluating the borrower's competency. If transfer credits were accepted or the borrower was not required to complete core credits, the borrower is not eligible for a closed school discharge. Since re-enrollment information at that level of detail would not normally be in the Department's routine databases, in the case of an automatic closed school discharge, if the Department has information indicating that the borrower has re-enrolled in a comparable program, the Department does not grant an automatic discharge. However, the borrower may still apply directly for a closed school discharge, and, by providing the certifications discussed above and meeting the additional eligibility criteria, qualify for a closed school discharge.

The Department's initial proposal would have provided a more generous set of eligibility criteria for granting automatic closed school discharges.

The Department emphasized that we would retain a wait-out period because we believe that it is important to allow time between the school closure and the automatic discharge to give a borrower an opportunity to decide whether to re-enroll in another program. For many borrowers, particularly those close to completing their credential, obtaining the degree or certificate they were pursuing will be their preferred option following a school closure. However, we believe that the current three-year period is too long. If the timeframe is longer than one year, it is possible that the loan will go into default before the automatic closed school discharge would be granted, as evidenced by the high number of automatically discharged loans in default status as found by GAO. Specifically, GAO reported that more than half of borrowers who eventually received an automatic discharge on their loans following a closure first defaulted on their loans; and more than half of those borrowers did so within 18 months of their school closing.

A non-Federal negotiator proposed removing the re-enrollment limitation entirely but retaining the one-year timeframe. This proposal was supported by many members of the negotiating committee. The Department agreed to consider this proposal.

The Department also noted that, under the proposed regulations, the clock on the automatic discharge timeframe would be paused while the borrower is in a teach-out program and would re-start after they leave the teach-out without graduating the program. The non-Federal negotiators were generally supportive of this proposal.

The Department noted the disparity in the timeframe for a borrower to have withdrawn from the school to qualify for a closed school discharge which, depending on the loan disbursement date, could be 120 or 180 days prior to the school closing. The Department proposed making the timeframe consistent at 180 days for all borrowers. As outlined in the 2018 NPRM (83 FR at 37268), when we last amended the closed school regulations, we determined that 180 days is a reasonable timeframe after considering summer breaks and the potential for a student to have withdrawn one semester prior to a school's precipitous closure, which could be as many as 180 days earlier. The proposed changes also ensure equity for all borrowers regardless of loan disbursement date.

The non-Federal negotiators supported this proposal, although some expressed concern that schools might manipulate the date of closure, rendering borrowers ineligible for a closed school discharge. They asked whether there are specific triggering events that the Department uses to determine whether a school is considered closed for purposes of a closed school discharge. The Department indicated that there are and provided the negotiators with a chart that is used to make these determinations.

Determining the date of an institutional closure to include circumstances where an institution has ceased instruction in most programs or for most students allows the Department to address situations where an institution may effectively cease operating without formally closing to limit discharges for borrowers. This provision would not automatically apply if, for example, a small institution remains open but ends a program or two but would capture a circumstance where an institution continues only one small program while otherwise ceasing all other enrollment. This would limit the ability of an institution to manipulate the closed school discharge process.

The Department noted that the existing regulations give the Secretary the authority to extend the discharge timeframe (whether 120 or 180 days) under exceptional circumstances. The existing regulations provide illustrative examples of exceptional circumstances, and the Department proposed adding additional illustrative examples to that list. The proposed six additional examples illustrate circumstances that the Department believes justify an extension of the look-back timeframe. While the current regulations include revocation or withdrawal of accreditation by the institutional accrediting agency, the Department proposes that other actions—such as an accrediting agency putting the institution on probation or issuing a show cause order—could indicate that the institution is at risk of losing its accreditation, thereby placing the borrower in an untenable situation should a resulting closure occur outside the look-back timeframe. Similarly, after receiving comments and feedback from legal aid representatives and State attorneys general, the Department proposes to add administrative findings and court judgments that a school violated State or Federal law related to education or services to students as additional examples that would warrant an extension of the look-back timeframe. Finally, based on its experience, the Department proposes three additional examples that could indicate that the school is in danger of closing and placing its borrowers at risk: when a school discontinues a significant share of its academic programs; when a school permanently closes all or most of its in-person locations while maintaining online programs; and when the school has been placed on heightened cash monitoring as defined under § 668.162(d)(2). Each of these circumstances indicates that the institution may be at risk of closing, and we propose to include these examples as situations that warrant an extension for the borrower.

Non-Federal negotiators expressed concerns relating to stackable credentials and the issuance of retroactive credentials as methods schools use to prevent borrowers from qualifying for closed school discharges. The Department agreed that closing schools issuing retroactive credentials to borrowers to prevent them from qualifying for closed school discharges is a concern. Non-Federal negotiators also discussed the problem of schools forcing borrowers into an associate degree program before a bachelor's degree program, even when the student is only interested in obtaining the bachelor's degree. Negotiators argued that, in some cases, borrowers are unknowingly placed in associate degree programs but are led to believe that they are working toward a bachelor's degree. In these cases, if a school closes, the loans used to obtain the associate degree are not eligible for discharge. Only the loans used to obtain the subsequent bachelor's degree may qualify.

To address these concerns, the Department proposed expanding the definition of ''program'' to give the Department the discretion to determine whether an institution has placed a student in a different program or awarded the student a different degree to make the student ineligible for a closed school discharge. The revised definition would cover enrollments that occurred at the same institution in close proximate periods, or if a school granted a credential for one program while the student was enrolled in a different program. While there are many circumstances in which dual enrollment or reverse credentialing can benefit students, the Department is concerned about past instances where some institutions have required students to start in programs other than the ones the students wanted to pursue, broken up programs into multiple pieces when a student needs to complete all of them to succeed in the relevant field of employment, or retroactively awarded credentials in a way that then reduces the amount of closed school discharges because a borrower cannot receive a discharge related to a program from which they graduated.

The Department is proposing to eliminate the current regulations relating to a borrower re-enrolling in a comparable program. However, we are not proposing to remove the limitation regarding a borrower completing the program through a teach-out agreement. A borrower would only qualify for a closed school discharge if the borrower did not complete an institutional teach-out plan performed by the school or through a teach-out agreement with another school approved by the school's accrediting agency and, if applicable, the school's state authorizing agency.

The Department believes removing the re-enrollment criteria would better reflect the legislative intent of the HEA and avoids the significant challenges that exist in implementing the requirement. Under § 437(c) of the HEA, a borrower may receive a closed school discharge if they are unable to complete the program in which they are enrolled. The HEA does not mention the possibility that enrollment in a comparable program would limit the borrower's eligibility for a discharge. The intent of the comparable program requirement in the regulations is to encourage borrowers to get a degree or certificate. However, this may result in

too many situations where a borrower loses the ability to receive a discharge even though the program they are enrolled in is not a true extension of the program they were in at the institution that closed. Similarly, there is no definition of what constitutes a comparable program, creating a risk that a borrower will incorrectly believe a program to be comparable when it is objectively not comparable. The Department proposes to address this issue by only barring discharges to situations in which the borrower accepts and completes an approved teach-out program. The purpose of a teach-out program is to provide students a smooth path to completion of their program while minimizing the common problems that occur during transfer. Approved teach-out plans include agreements between the two institutions around credit transfer and programs and ensure the new program provides similar content. Teach-out programs with these features may be more clearly viewed as an extension of the student's original program. Schools that are engaged in a planned closure or a planned closure of a program are in a better position to arrange a formal teach-out than schools that close precipitously. A school that closes precipitously, unless it already has a teach-out plan in place, may not be able to provide a teach-out for its students.

Though participating in a teach-out program may be the most expeditious way for a borrower to complete their original program, the Department proposes that students who start a teach-out program be eligible for an automatic discharge if they do not complete it. This proposal would minimize the high-stakes nature of a borrower's decision of whether to continue in a teach-out program and would encourage more students to attempt to continue their education. It also acknowledges that, despite a student's effort to continue the prior program, there may be meaningful differences between the schools and programs that make completion nonviable. These differences can include the teach-out option being too far away for the borrower or that the teach-out program is taught online when the borrower was previously attending an in-person program. The Department also believes that it is inappropriate to limit a borrower's eligibility for a discharge solely on the basis that they have been offered a teach-out program. Under such a policy, an institution could limit its possible closed school discharge liability simply by offering teach-out options in inconvenient locations that are not feasible for borrowers.

As noted above, during the negotiated rulemaking, the Department shared subregulatory guidance in the form of a table that indicates when certain conditions constitute a closed school. The non-Federal negotiators requested that the subregulatory guidance be publicly available to provide institutions with a clearer understanding of when a school is considered closed, beyond the regulatory language. The negotiators recommended putting the guidance in the FSA Handbook or including it as part of the preamble to this NPRM.

The Department agreed to make the document available in a more public forum but noted that the document needed some technical updating and revisions. The updated and revised version of the information will be made available in Volume 2 of the Federal Student Aid Handbook, which will be made available on the Department's website at *https://fsapartners.ed.gov/knowledge-center/fsa-handbook.*

One non-Federal negotiator had significant concerns about the proposed language. This negotiator objected to the proposal to define a closed school to include a school that has ceased to provide educational instruction for most of its students. The non-Federal negotiator added that this would mean a student attending a school that has not closed would be eligible for closed school discharge. The non-Federal negotiator noted that institutions add and discontinue program offerings routinely in response to student demand and changes in the labor market and argued that programmatic innovation should be encouraged so that institutions continuously improve offerings to help students succeed in the workforce. The non-Federal negotiator felt that the Department's proposal could be particularly damaging to small institutions that want to switch up program offerings and only offer three or four programs in total. Under the proposed regulations, instead of starting new programs and discontinuing old programs, some colleges may keep old programs afloat simply to avoid a closed school discharge liability. In this negotiator's view, the proposed definition of a closed school departs from the plain meaning of that term in the HEA. The negotiator contended that to obtain relief under the statute, the school must have closed.

This non-Federal negotiator also noted that the proposed regulations would represent a significant shift away from the concept that a borrower who enrolls in a comparable program would not qualify for a closed school discharge. The Department's new proposal would provide loan discharges to all borrowers who attend a school that closed except those who completed their programs through a teach-out agreement. In the negotiator's view, this would create a perverse incentive for borrowers not to enroll in a teach-out program because it would be more financially rational for a borrower to transfer credits to another school than to participate in a teach-out. The negotiator believed that teach-out arrangements are generally positive for students and expressed disappointment that the Department would propose a policy that would disincentivize enrollment in a teach-out program. If a borrower is close to completing their program when the school closes and can transfer all of their credits, they may only need to take one or two classes at the new school. However, they can still be eligible for full student loan relief under the proposal. The negotiator stated that this creates a windfall for students, which would primarily be paid by taxpayers. Lastly, the negotiator objected to the Department's intention to make these changes to the closed school discharge regulations apply retroactively to all title IV borrowers.

The Department responded that the objections raised by the non-Federal negotiator represented general differences of opinion over the direction of the proposed regulations. The Department emphasized that the proposed revisions to the regulations are intended to ensure that borrowers who have experienced school closures have easier access to closed school discharges and to address a multitude of potential closed school situations that could adversely affect borrowers. In particular, the proposed regulations seek to ensure that borrowers are not left worse off if they accept a teach-out agreement following a closure and that teach-out opportunity does not meet the student's needs or live up to the promise of the program they originally signed up for—a situation that has been a reality for many students affected by precipitous school closures in the past. We do not believe that offering choices to students disincentivizes the use of a teach out and agree that we want to provide pathways for students to complete their academic program. Moreover, the Department believes that the proposal in these regulations would be more likely to encourage a borrower to accept a teach out because doing so would not eliminate their ability to receive a discharge just by trying the program at the new institution. The choice of

whether to take a teach out is thus lower stakes for a borrower than it is under current circumstances.

The Department did not believe that there was a feasible way to bridge the differences between the proposed regulatory language and the non-Federal negotiator's objections. The non-Federal negotiator agreed. Therefore, the Committee was not able to reach consensus on these proposed regulations.

With regard to severability, we believe that each of the proposed provisions discussed in this NPRM serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families; to the public, taxpayers, and the Government; and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

5. Total and Permanent Disability Discharge (§§ 674.61, 682.402, and 685.213)

This issue was subject to negotiated rulemaking and consensus was reached on the proposal.

Statute: Sections 437(a)(1) and 464(c)(1)(F) of the HEA provide for a discharge of a borrower's Perkins or FFEL program loan if the borrower becomes totally and permanently disabled as determined in accordance with the Secretary's regulations, or if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 60 months. The TPD discharge provisions also apply to Direct Loans under § 455(a) of the HEA.

Current Regulations: Under §§ 674.61(b)(2)(iv), 682.402(c)(2)(iv), and 685.213(b)(2), a TPD discharge may be certified by a doctor of medicine (MD) or a doctor of osteopathy (DO). In addition, under certain circumstances, a borrower may qualify for a TPD discharge based on an SSA notice of award indicating that the borrower qualifies for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. The SSA has different time frames for conducting follow-up disability reviews depending on the nature and severity of the individual's disability. If the borrower's next scheduled SSA disability review will be within five to seven years, the borrower would fulfill the requirements in the HEA for a total and permanent disability discharge.

Sections 674.61(b)(6)(I), 682.402(c)(6), and 685.213(b)(7)(i) state that a borrower's Perkins, FFEL, or Direct Loan program loan may be reinstated after the borrower has received a TPD discharge if the borrower:

- Has annual employment earnings that exceed 100 percent of the poverty guideline for a family of two;
- Receives a new TEACH Grant or title IV loan;
- Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned; or
- Receives a notice from SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be within the five- to seven-year period.

If a loan is reinstated, §§ 674.61(b)(6)(iii), 682.402(c)(6)(iii), and 685.213(b)(7)(iii) specify that the notice of reinstatement sent to the borrower explain that the first payment due date following reinstatement would be no earlier than 60 days.

Current regulations in part 674, subpart D (Perkins) and part 682, subpart D (FFEL) do not address severability.

Proposed Regulations: Under proposed §§ 674.61(b)(2)(iv), 682.402(c)(2)(iv), and 685.213(b)(2), a TPD discharge application may be certified by an NP, a PA licensed by a State, or a licensed certified psychologist at the independent practice level, in addition to an MD or DO. The type of SSA documentation that may qualify a borrower for a TPD discharge would be expanded to include an SSA Benefit Planning Query or other SSA documentation deemed acceptable by the Secretary. In addition to SSA documentation indicating that a borrower qualifies for SSDI or SSI benefits with a next scheduled disability review in five years to seven years, a borrower would qualify for a TPD discharge based on SSA documentation indicating that the borrower—

- Qualifies for SSDI or SSI benefits with a next scheduled disability review within three years, and the borrower's eligibility for disability benefits in the three-year review category has been renewed at least once;
- Has a disability onset date for SSDI or SSI of at least five years prior to the application for a disability discharge or has been receiving SSDI or SSI benefits for at least five years prior to the application for TPD;
- Qualifies for the SSA compassionate allowance program; or
- Is currently receiving SSA retirement benefits and met any of the above requirements prior to qualifying for SSA retirement benefits.

Conforming changes identifying the additional medical professionals who would be authorized to certify a TPD discharge application, and the additional SSA documentation that would be acceptable for a TPD discharge would be made throughout §§ 674.61(b), 682.402(c), and 685.213(b) of the Perkins, FFEL, and Direct Loan regulations.

Proposed §§ 674.61(b)(6)(i), 682.402(c)(6), and 685.213(b)(7)(i) would eliminate the existing reinstatement requirements, except for the provision which provides that a borrower's loan is reinstated if the borrower receives a new TEACH Grant or a new title IV loan within three years of the date the TPD discharge was granted.

For a loan that is reinstated, proposed §§ 674.61(b)(6)(iii), 682.402(c)(6)(iii), and 685.213(b)(7)(iii) would revise the regulations governing the notification of reinstatement to provide that the notice will explain to the borrower that the first payment due date following reinstatement will be no earlier than 90 days after the date of the notification of reinstatement, instead of no earlier than 60 days.

The provisions in §§ 674.61(b)(7), 682.402(c)(7), and 685.213(b)(8) that describe a borrower's responsibilities after receiving a total and permanent disability discharge would be removed.

Proposed § 685.213(d) would provide that the Secretary will grant a TPD discharge without an application if the Secretary obtains the appropriate documentation from the Department of Veterans Affairs (VA) or SSA.

Proposed §§ 674.65 and 682.424 would make it clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: Prior to the negotiations that resulted in this NPRM, the Department took important steps to improve the TPD discharge process for eligible borrowers. On November 26, 2019, the Department published in the **Federal Register** an interim final rule (IFR) amending and updating the regulations pertaining to TPD discharges for veterans. The IFR removed administrative burdens that may have prevented at least 20,000 totally and

permanently disabled veterans from obtaining discharges of their student loans by automating the process for granting TPD discharges based on a data match with the VA. On August 23, 2021, we published a final rule in the **Federal Register** that adopted and amended the regulations established in the IFR. The final rule:

- Expanded the automatic TPD discharge process to borrowers who are eligible for SSDI and/or SSI benefits and whose next scheduled disability review is no earlier than five to seven years;
- Clarified that borrowers determined to be eligible for a TPD discharge based on data that the Secretary obtains from VA or the SSA are not required to submit a TPD application to have their Federal student loans discharged;
- Described the process used by the Secretary to automatically discharge Federal student loans for a borrower who is determined to be eligible for a TPD discharge based on data obtained from either VA or the SSA;
- Specified the contents of the notice the Secretary sends to borrowers who are determined to be eligible for a TPD discharge based on data that the Secretary obtains from VA or from the SSA; and
- Provided for the return of payments to the person who made payments on the loan on or after the effective date of the determination by VA or SSA for borrowers who receive the automatic TPD discharge.

In addition to these regulatory changes, the Department also announced in March 2021 that we would relax the TPD monitoring period requirements during the national emergency due to the pandemic and reinstate TPD discharges for any borrower who had not responded to requests for earnings information.

With this rulemaking, the Department proposes to build on the reforms to the TPD discharge process described above.

During the negotiated rulemaking sessions, the Department proposed eliminating the TPD income monitoring period altogether. The Department has found that, rather than acting as a guardrail, requiring borrowers who are totally and permanently disabled to submit annual income information has caused significant numbers of loans discharged due to TPD to be reinstated simply because the borrower did not respond to a paperwork request and not because they had earnings above the threshold for reinstatement. The Department noted that around half of the loans discharged due to total and permanent disability are reinstated because of a failure by the borrower to respond to the request for earnings information.

The non-Federal negotiators agreed with this proposal as part of reaching consensus on the overall total and permanent disability regulatory text. However, since the Department was not proposing to eliminate the reinstatement requirements regarding borrowers who obtain additional title IV loans after receiving a TPD discharge, they recommended that the three-year monitoring period be reduced to one year. The Department considered this proposal, but ultimately determined that retaining the three-year monitoring period for this purpose is appropriate. Because we are taking steps with these regulations to make it easier for borrowers to receive TPD discharges, the Department has not been presented with a reason to change our current position on having a three-year limitation on borrowers taking out additional title IV loans.

Under current regulations, a borrower may qualify for a TPD discharge based on an SSA determination that a borrower is in SSA's Medical Improvement Not Expected (MINE) disability status. The MINE status is the only current SSA disability status that the Department uses for TPD discharges based on SSA disability determinations.

The Department noted that there are other SSA disability categories that may meet the Department's criteria for a TPD discharge. These statuses include qualifying for SSA's Compassionate Allowance Program, which is a status where the borrower has one of a predefined set of serious conditions that is highly likely to result in the borrower qualifying for disability benefits. Another status is Medical Improvement Possible (MIP). MIP requires a disability review within three years, so a borrower whose MIP status was renewed at least once would meet the HEA requirement that a borrower's medical impairment last, or be expected to last, at least five years.

Individuals in the MIP category are required to undergo a medical review within three years of SSA's initial determination that they are qualified for SSA disability benefits. Therefore, a borrower who is in the MIP category and whose approval for disability benefits is subsequently renewed would be in that disability status for six years and would meet the HEA definition of a medical condition that has lasted or is expected to last at least five years. To address this situation, the Department is proposing to allow borrowers whose MIP status has been renewed at least once to qualify for a TPD discharge based on SSA documentation.

Finally, the Department noted that when an individual in the MINE or MIP category reaches retirement age, the individual becomes eligible for SSA retirement benefits. These individuals would now receive SSA retirement benefits rather than disability benefits and would no longer appear in the Department's data match as eligible for SSA disability benefits.

The non-Federal negotiators agreed with allowing borrowers in these additional SSA disability categories to qualify for TPD discharges and recommended that individuals who may not be in the MINE or MIP categories but have a disability onset date for SSDI or SSI purposes of at least five years prior to applying for a TPD discharge qualify for the discharge.

One negotiator supportive of these proposals asked why the proposed regulatory language continued to provide for a TPD application process for borrowers who qualify for a TPD discharge based on the data match with SSA. The Department responded that applications for TPD discharge are also based on a physician's certification. Borrowers would still need to submit an application that is reviewed by the Department. In addition, borrowers who qualify based on SSA documentation may want to apply for the discharge prior to being reflected in an SSA data match or may want to apply at a later time after initially turning down an automatic TPD discharge. Finally, retaining the application process allows borrowers who may be inadvertently missed in the SSA data match to apply directly to the Department for the discharge. This could include borrowers who have reached retirement age after previously being in an eligible SSA category but who are no longer identified in the Department's data matches.

In addition to expanding the types of SSA categories that would qualify a borrower for a TPD discharge, the Department also proposed expanding the type of SSA documentation that a borrower may provide when applying for the discharge. Currently the only SSA documentation submitted by a borrower that is acceptable under the regulations is the SSA Notice of Award. However, the Department has also commonly accepted an SSA Benefit Planning Query (BPQY) which contains similar information to the Notice of Award. A BPQY is also easier for a borrower to obtain than an SSA Notice of Award. This technical change would conform with current practice.

The non-Federal negotiators agreed with this proposal but were concerned that the proposed regulation may limit

the Department's flexibility to accept other types of SSA documentation. The non-Federal negotiators mentioned other types of documentation that might serve the same purpose, such as 1099 tax forms that indicate that an individual has received SSA disability benefits for at least five years and printouts from the MINE social security website. Non-Federal negotiators recommended that the proposed regulations allow the Department to retain flexibility to accept other types of documentation not specifically referenced in the regulatory language. To address this concern the Department adjusted the proposed language to indicate the other types of documentation it could accept was a non-exhaustive list.

The Department also proposed expanding the list of the types of healthcare professionals authorized to certify a TPD discharge application. We proposed expanding the list of eligible certifiers to include both NPs and PAs who are licensed to practice in the United States. As noted by one negotiator, a shortage of physicians is a major problem in poor and rural areas. Allowing NPs and PAs to certify TPD applications would be an enormous benefit for borrowers who seek care from these providers—particularly for those who do not have access to doctors.

The Department raised the concern that, while at the time of the negotiations we had identified a source verifying licensure of NPs, we had still not identified a source for verifying licensure status of PAs. Another concern related to allowing PAs to certify TPD applications was raised by a non-Federal negotiator, who noted that a PA's scope of practice is often defined by a collaboration agreement with the physician, and that such agreements are often required by insurance companies to cover procedures carried out by PAs. This negotiator recommended that the proposed regulation include a qualifier noting that a PA can certify a TPD discharge application if it is within the PA's scope of practice. The Department did not adopt this proposal. The types of agreements often required by insurance companies defining a PAs scope of practice would not routinely address the PA's authority to certify TPD applications. One non-Federal negotiator, supportive of the proposal, also raised the issue of borrowers living abroad, who may have difficulty getting certifications from healthcare practitioners licensed to practice ''in a State.'' This negotiator recommended building in some flexibility regarding the State licensure requirement for health care professionals certifying TPD applications for borrowers living outside the United States.

The Department did not agree with this recommendation. The State licensure requirement provides assurances that individuals certifying TPD are qualified to make disability determinations. It would not be feasible for the Department to verify comparable licensing standards in foreign countries.

Finally, the Department proposed adding language to the regulations that would provide greater protection around the certification of the TPD discharge applications. We proposed adding language stating that the Department would analyze physician's certification forms to verify any patterns that suggest potential cause for concern. This could include large numbers of forms certified by a single individual, for example. In such cases, the regulatory language would authorize the Department to refer concerning practices to the Office of Inspector General (OIG), and to decline to accept health care practitioners' certifications in such cases. We noted that this would provide added protection for taxpayers, considering that we are also proposing to eliminate the income monitoring period and give more options for the current physician's certification.

In general, the non-Federal negotiators did not support this proposal. They were concerned about the term ''patterns of concern,'' which some felt was ambiguous. Another concern was that opening the certifying authority to NPs and PAs would have the potential of an individual certifying a high volume of TPD applications simply because that individual could not assist patients in this way before the regulatory change. The negotiators noted that this could be a problem especially in rural communities, where PAs and NPs serve many patients due to the lack of doctors in these areas.

The negotiators expressed concern that the proposed regulation would create a chilling effect, and that some health care professionals would be less likely to feel comfortable certifying TPD applications if the Department retained this proposed language in the final regulations.

The Department responded that every few years there are some significant criminal prosecutions involving physicians who falsified TPD discharge applications. The proposed regulatory language was intended to address those situations and was designed to put people on notice that we are going to analyze the information that we receive through the TPD discharge process, and we will take action to protect the Federal fiscal interest when warranted. The Department noted that we already have the authority to do this, regardless of whether the language is included in the regulations. However, we were proposing to include the language as a way of providing notice that we intend to conduct this level of oversight to the TPD discharge process. Ultimately, the Department agreed to remove the language from the proposed regulations since the language is not needed for the Department to refer such cases to OIG.

The Department made further changes to the proposed regulatory language in response to the concerns raised by the non-Federal negotiators. We propose to accept SSA disability determinations showing a disability onset date of at least five years prior to the date of application for TPD or an indication that the borrower has been receiving SSDI or SSI benefits for at least five years prior to the application for TPD. We propose expanding the SSA documentation requirements to include ''other documentation deemed acceptable by the Secretary,'' in response to the recommendation that the proposed regulations allow the Department to accept documentation not specified in the regulations. This would provide the Department with flexibility to accept documentation that we may not have been aware of at the time the regulation is finalized, but that when presented by a borrower indicates that they meet the criteria for discharge.

The non-Federal negotiators supported the proposed TPD regulations, as revised based on their recommendations, and reached consensus on this issue.

With regard to severability, we believe that each of the proposed provisions discussed in this NPRM serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families; to the public, taxpayers, and the Government; and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we propose including an administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

6. False Certification Discharge (§§ 682.402(e), 685.215(c) and 685.215(d)

Statute: Section 484(d) of the HEA contains the requirements that an

individual who does not have a high school diploma or a recognized equivalent of a high school diploma must meet to qualify for title IV, HEA aid. Section 437(c) of the HEA provides for the discharge of a borrower's liability to repay a FFEL Program Loan if the student's eligibility to borrow was falsely certified by the school. The false certification discharge provisions also apply to Direct Loans, under § 455(a) of the HEA.

Current Regulations: Sections 682.402(e), 685.215(c) and 685.215(d) describe the qualifications and procedures for receiving a false certification discharge in the FFEL and Direct Loan programs.

Section 682.402(e)(1)(i)(A) provides that a FFEL borrower may qualify for a false certification discharge if the school certified the eligibility of a borrower who was admitted based on the ''ability to benefit'' (ATB) from its training, but the borrower did not meet the eligibility requirements in part 668 and in § 484(d) of the HEA. Section 682.402(e)(13) describes a variety of different ATB standards that have been applicable to different enrollment periods.

Section 685.215(a)(1) provides that a Direct Loan borrower who does not meet the applicable alternative to high school graduation eligibility criteria qualifies for the discharge if the borrower reported not having a high school diploma or equivalent to the school.

Sections 682.402(e)(1)(i)(B) and 685.215(a)(1)(iii) provide that a borrower qualifies for a false certification discharge if the school signed the borrower's name on the loan application or promissory note without the authorization of the borrower.

Sections 682.402(e)(1)(i)(C) and 685.215(a)(1)(v) state that a borrower qualifies for a false certification discharge if the school certified the borrower's eligibility for a FFEL or Direct Loan as a result of the crime of identity theft.

Section 685.215(a)(1)(iv) provides that a Direct Loan borrower may qualify for a false certification discharge if the school certified the eligibility of a student who would not meet the requirements for employment in the occupation for which the training program supported by the loan was intended due to a physical or mental condition, age, criminal record, or other requirement accepted by the Secretary that was imposed by State law.

Current FFEL regulations in part 682, subpart D, do not address severability.

Proposed Regulations: Proposed §§ 682.402(e)(6) and 685.215(d) would amend the procedures for applying for a false certification discharge. The proposed regulations would remove the provisions in § 685.215(a)(1), (c), (d) and (e) that established separate false certification discharge procedures and eligibility requirements for loans disbursed before July 1, 2020, and loans disbursed on or after July 1, 2020.

Under proposed §§ 682.402(e)(6)(iii) and 685.215(d)(3), if a FFEL or Direct Loan borrower submits an application for discharge that a FFEL program loan holder or the Secretary determines is incomplete, the loan holder or Secretary would notify the borrower of that determination and allow the borrower 30 days to amend the application and provide supplemental information. If the borrower does not amend the application within 30 days of receiving the notification, the borrower's application would be closed as incomplete, and the loan holder or Secretary would resume collection on the loan and grant forbearance to the borrower for the period in which collection activity was suspended.

Under proposed § 682.402(e)(6)(iv) and (v), if a FFEL borrower submits a complete application to the loan holder, the holder would file a claim with the guaranty agency no later than 60 days after the holder receives the borrower's complete application. The guaranty agency would determine whether the available evidence supports the claim for discharge. Proposed § 682.402(e)(6)(vii) would require a guaranty agency to issue a decision that explains the reasons for any adverse determination on a false certification discharge application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The guaranty agency would consider any response or additional information from the borrower and notify the borrower as to whether the determination is changed. Proposed § 682.402(e)(6)(ix) would provide the borrower with the option to request that the Secretary review the guaranty agency's decision.

Proposed §§ 682.402(e)(6)(x) and 685.215(d)(7) would provide that a borrower whose discharge request is denied is not precluded from re-applying for a false certification discharge if the borrower has additional supporting evidence. We do not propose to impose a deadline by which a borrower who seeks to re-apply must do so.

We propose to eliminate the reference to ''ability to benefit'' in current § 602.402(e)(1)(i)(A). Instead, § 682.402(e)(1)(ii)(A) would specify that a FFEL borrower qualifies for a false certification discharge if the borrower reported not having a high school diploma or its equivalent and did not satisfy the alternative to graduation from high school requirements under section 484(d) of the HEA and § 668.*32(e).*

The earlier ATB standards were all based in statute. Since there have been many changes to the statutory requirements over the years, and could be more changes in future years, we are proposing to remove the regulatory language and simply cross-reference the relevant HEA section. The detailed descriptions of ability to benefit eligibility criteria applicable to different cohorts of borrowers in § 682.402(e)(13) of the FFEL regulations would be removed. This is a conforming change to a change that we made to the Direct Loan regulations several years ago.

Under proposed § 682.402(e)(1)(ii)(B), if a school certified the eligibility of a FFEL borrower who is not a high school graduate (and who does not meet the applicable alternative to high school graduate requirements) the borrower would qualify for a false certification discharge if the school:

- Falsified the borrower's high school graduation status;
- Falsified the borrower's high school diploma; or
- Referred the borrower to a third party to obtain a falsified high school diploma.

Proposed § 685.215(a)(1)(i) and (ii) would remove the language in the Direct Loan regulations that limited the provisions described above to Direct Loans made before July 1, 2020, add a cross-reference to the alternative to graduation from high school requirements in § 668.32(e), and provide that a borrower would qualify for the discharge if the borrower did not meet the alternative to high school graduation requirements that were in effect when the loan was originated.

Proposed § 682.402(e)(3)(ii) would describe the requirements a FFEL borrower must meet to qualify for a discharge due to a false certification of high school graduation status. Proposed § 685.215(c)(1)(i) and (ii) would specify that a Direct Loan borrower would qualify for the discharge if the borrower did not meet high school graduation requirements at the time the loan was originated, rather than at the time the loan was disbursed.

Proposed § 682.402(e)(1)(ii)(C) would specify that a FFEL borrower qualifies for a false certification discharge if the borrower failed to meet the applicable State requirements for employment due to a physical or mental condition, age, criminal record, or other reason accepted by the Secretary that would prevent the borrower from obtaining

employment in the occupation for which the training program supported by the loan was intended in the student's State of residence at the time the loan was certified. Proposed § 682.402(e)(3)(iii) would state the requirements a FFEL borrower must meet to obtain a discharge based on a disqualifying condition.

Proposed § 685.215(a)(1)(iv) would specify that a Direct Loan borrower qualifies for a discharge due to a disqualifying condition if the borrower did not meet the applicable State requirements at the time the loan was originated.

Proposed § 685.215(a)(3) would describe what it means for a loan to be ''originated'' for purposes of a false certification discharge of a Direct Loan.

Proposed §§ 682.402(e)(3)(iv), 682.402(e)(3)(v), 685.215(c)(3), and 685.215(c)(4) would remove the requirements that a borrower applying for a false certification discharge based on an unauthorized signature or unauthorized payment provide signature samples.

Proposed §§ 682.402(e)(3)(vi) and 685.215(c)(5) would replace the documentation requirements for a false certification discharge due to identity theft, including the signature sample requirements, and replace them with a nonexhaustive list of documentation a borrower may provide to apply for the discharge. The list includes:

- A judicial determination of identity theft relating to the individual;
- A FTC identity theft affidavit;
- A police report alleging identity theft relating to the individual;
- Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and
- Other evidence acceptable to the Secretary.

Proposed § 682.402(e)(15) would change the provisions for granting a false certification discharge without an application in the FFEL Program to include cases in which the Department or the guaranty agency has information in its possession showing that the school has falsified the Satisfactory Academic Progress (SAP) of its students.

Proposed §§ 682.402(e)(16) and 685.215(c)(10) would provide that a State Attorney General or non-profit legal services representative may submit an application for a group false certification discharge to the Secretary.

The proposed FFEL program regulations would include conforming changes to § 682.402(e)(7) through § 682.402(e)(14) reflecting the changes discussed above.

Proposed § 682.424 would make it clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: As noted above, FFEL and Direct Loan borrowers may currently qualify for false certification discharges if the borrower's eligibility to borrow was falsely certified by the school or was falsely certified due to the crime of identity theft. A borrower may currently qualify for false certification discharge if:

- The borrower did not have a high school diploma or its recognized equivalent and did not meet the applicable alternative eligibility criteria;
- The borrower had a status, including either a physical or mental condition, age, criminal record, or other circumstance, that disqualified them from meeting the legal requirements for employment in the occupation for which the training program supported by the loan was intended;
- The school signed the borrower's name on the loan application or promissory note without authorization; or
- The borrower was a victim of identity theft.

The current false certification regulations have two separate sets of eligibility criteria depending on when the loans were first disbursed, either before July 1, 2020, or after July 1, 2020. The regulations effective on or after July 1, 2020, make it more difficult for borrowers to obtain false certification discharges than the regulations that were in place prior to July 1, 2020. The proposed regulations are more in keeping with the statutory intent of the false certification discharge by providing easier access to the discharge for eligible borrowers. The Department believes that maintaining the stricter standards effective July 1, 2020, for one cohort of borrowers while providing more equitable standards for another cohort of borrowers would be unfair and arbitrary. Unless there is a programmatic reason for different cohorts of borrowers seeking the same Federal benefit to apply under different requirements, we believe the requirements should be consistent. Therefore, we are proposing consistent false certification discharge standards for all cohorts of borrowers. In addition to the equity issues, it is challenging for the Department to process false certification discharge applications under two sets of eligibility criteria. With these proposed regulations, the Department seeks to standardize the eligibility criteria for a false certification discharge, regardless of when a borrower's FFEL or Direct Loan was made. In addition, we are proposing to revise some of the current provisions in the false certification regulations that we believe are overly burdensome for borrowers. By proposing standards that cover all false certification discharge claims, regardless of when the loan was first disbursed, and by reducing the administrative burden created by some of the existing regulatory requirements, we hope to provide more clarity to borrowers and to make it easier for borrowers who qualify for a false certification discharge to receive that relief. For this purpose, a loan is considered originated when the school has certified the loan and the loan is created within the FSA system. The actual disbursement of the loan could take place months thereafter. This proposal would help to ensure that students meet the title IV eligibility requirements by discouraging institution from authorizing loan disbursements to ineligible students.

The non-Federal negotiators were supportive of this proposal. One negotiator noted that using the disbursement date rather than the origination date allows the school to falsify the eligibility of a borrower and then, during the months that may elapse between origination date and disbursement date, try to cure it by allowing the borrower to complete six credit hours of their program. This negotiator requested that the Department include in the regulatory language a definition of ''origination.'' The negotiator was concerned that the determination of the origination date for purposes of a false certification should be close to the time a student signs the promissory note.

Another non-Federal negotiator noted that a student may lie to an institution and to the Department about the student's high school graduation status to access the Federal student aid programs. When a student is lying and the lie was not coached or coerced by an institution, the negotiator asked for assurances that the Department would not hold institutions accountable for false certification liability concerning high school completion.

Other non-Federal negotiators stated that mistakes can be made both by institutions and students and noted that there is a distinction between an honest mistake and intentional fraud on the part of either party. These negotiators asserted that unless there is evidence that the institution has intentionally misled or deceived the student, the school should not be liable.

The Department responded that if a participant in the student financial aid programs is found to have lied on a form

or committed fraud, the Department pursues that liability through appropriate steps that can include assessing liabilities against the school or seeking restitution from the student under the False Claims Act.

The Department emphasized that the purpose of these proposed regulations is to address situations under which a student would qualify for a false certification discharge. For the Department to hold a school liable for the discharge, the Department would have to go through an administrative process to establish the liability and then prove that liability before a hearing official. We would need sufficient evidence to demonstrate that the school is responsible for the discharged amount. The school is not automatically liable for the discharged amount.

The Department pointed out that the proposed regulations would rescind the provision that any borrower who attested to having a high school diploma or equivalent does not qualify for false certification discharge. This would ensure that borrowers can seek a discharge through the false certification regulations if they were coerced or deceived by their school and had reported not having a valid high school diploma or equivalent. The non-Federal negotiators were generally supportive of this proposal.

Non-Federal negotiators also expressed concern that schools would falsely certify satisfactory academic progress for enrolled students who are not meeting minimal requirements to continue in an educational program. The Department agreed that the proposal to allow the Department to grant false certification discharges without an application due to falsification of satisfactory academic progress would provide clarity to borrowers and institutions and ensure that all borrowers are treated under the same standards.

One non-Federal negotiator recommended expanding the disqualifying status false certification conditions to include de facto prohibitions to employment as well as legal prohibitions. The negotiator provided examples of such type of prohibitions, including the inability of students to obtain employment because the school lacked the type of programmatic accreditation needed for the occupation or because the student does not speak English. The Department considered this proposal but determined that including prohibitions that are not established by State law would not be feasible. De facto prohibitions, which may simply be standard practices of a particular industry, as opposed to clearly defined rules that would render a borrower unemployable in that industry, could not reasonably be considered grounds for a false certification discharge. The Department also noted that claims by a school that it had certain programmatic accreditation that it did not would be more appropriately adjudicated as a borrower defense discharge.

The Department's current regulations require borrowers to submit an application within 60 days of their loan being placed into forbearance. The proposed regulations would allow borrowers whose initial application is incomplete 30 days to submit supplemental information. This would expand the time frame by which borrowers can send information to support their false certification application. If the borrower does not amend their application within 30 days, the claim would be closed as incomplete, and collection would resume on the loan. The borrower would still have the option to reapply. These reforms would make it easier for a borrower to obtain and provide the information to support their false certification discharge application. The Department sees no downside in making it easier for borrowers to demonstrate eligibility for a benefit to which they are statutorily entitled. We are proposing to limit this time period for submitting additional information to 30 days because it would not be in the interests of the borrower for the loan to stay in forbearance indefinitely, and the total of 90 days should be sufficient time for a borrower to collect and submit the evidence needed to support the discharge claim.

The non-Federal negotiators generally supported the Department's proposal to remove the requirement that borrowers submit signature samples to qualify for certain categories of false certification discharge. However, they were concerned that, in certain claims, a signature would be helpful and by removing the requirement to submit them, borrowers may not realize that they may still have the option to submit signature samples. Negotiators asked if there was a mechanism for the Department to inform a borrower that signature samples would be helpful in reviewing the borrower's claim.

The Department responded that in cases where there may be other evidence that could support the borrower's claim, the Department does now, and will continue to, inform borrowers that, if they have additional information, such as a signature sample, it would be helpful to provide it.

In discussing the proposed revisions to the identity theft provisions, the Department pointed out that we are proposing to replace the current requirement that a borrower must provide a judicial determination of identity theft as the sole acceptable evidence with a list of possible alternative forms of evidence, such as an FTC identity theft affidavit, or a police report, or a dispute of a loan with all three credit bureaus. We explained that we decided to include multiple types of evidence for a borrower to prove identity theft since a single type of evidence may not be sufficient, and, in most cases, a judicial determination of identity theft would be difficult and time consuming for a borrower to obtain.

The negotiators supported these proposed revisions. One negotiator noted that the FTC identity theft affidavit is lengthy, and that requiring the use of additional evidence to demonstrate identify theft creates multiple hurdles for borrowers. The negotiator cautioned against requiring multiple sources of evidence to prove identify theft and requested that the Department ensure that there is some flexibility in the kinds of evidence that can be presented to the Department to make a claim of false certification due to identity theft.

The Department noted that allowing the use of additional evidence of identity theft was not intended to make it more difficult for borrowers to qualify for a discharge under these provisions but is intended to broaden the current categories of acceptable documentation for identity theft false certification claims while protecting against insufficient claims. The Department also noted that the proposed regulations also would include ''other evidence accepted by the Secretary'' to allow for flexibility for the borrower in requesting a discharge. We propose this provision to allow the Secretary to accept evidence that the Department may not be aware of at the time these regulations are promulgated, but that make a strong case that the borrower qualifies for the discharge.

As noted above, a non-Federal negotiator asserted that if a school falsely certified its own institutional or programmatic eligibility to participate in the title IV programs, it should constitute a false certification of a borrower under the statute. The Department, however, believes this proposal is not consistent with the statute. The statute refers to a school falsely certifying the eligibility of a borrower and not to the school falsely certifying its own eligibility. In our

view, the latter might be a basis for borrower defense discharge, not a false certification or borrower eligibility issue.

Some negotiators raised concerns about the determination of when a loan is considered originated for purposes of a false certification discharge, particularly in reference to the mention of the Common Origination and Disbursement (COD) system in the proposed regulation. Negotiators were concerned that future successor systems to COD are not mentioned. The Department clarified that reference to a successor system to COD is not necessary since loan origination is not tied to a specific Department of Education system.

A non-Federal negotiator proposed adding a group discharge provision to the regulations. This negotiator felt that, although the Department has existing authority to grant group discharges and has done so in the past, amending the regulations to identify the instances in which the Department would provide for group discharges would be beneficial to borrowers. The negotiator believed that it would be particularly useful for borrowers who attended the same school and who attest to similar violations for which there is common evidence that would allow for an accurate discharge for a group of borrowers. The non-Federal negotiator contended that a regulatory provision that requires the Department to accept group discharge applications is a necessity. The negotiator noted that many borrowers do not know of their right to file for a false certification discharge and so the group process is particularly important. The negotiator also asserted that the Department has not responded to group applications in the past. Without regulatory language that explicitly provides for group discharge, the negotiator stated that it is difficult for advocates and borrowers to obtain relief through a group discharge process.

The negotiator also argued that it is much more difficult for an advocate to seek to compel unlawfully withheld action or unreasonably delayed conduct without statutory or regulatory language specifically requiring the Department to act on a group discharge application.

After considering these arguments, the Department agreed with the negotiator and added language to the proposed regulations providing for group applications for false certification discharges. The proposed new language would provide that a State attorney general or nonprofit legal services representative may submit an application for a group discharge to the Secretary.

The Department also clarified that, in the FFEL Program, guaranty agencies (GAs) would not be expected to accept group applications. Group applications for FFEL borrowers would be submitted to the Department and, if the Department approved the application, the Department would notify the appropriate GAs to discharge the loan, as the Department currently does under 34 CFR 682.402(e)(11)(iii) for false certification discharge applications for which a borrower requests a review of a false certification discharge application by the Secretary.

With this final issue resolved, the Committee reached consensus on the proposed false certification discharge regulations.

With regard to severability, we believe that each of the proposed provisions discussed in this NPRM serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families; to the public, taxpayers, and the Government; and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

7. Public Service Loan Forgiveness (PSLF)

Qualifying Employer and Definitions for PSLF (§ 685.219(b))

Background: The Department has received significant public input regarding the requirement that a borrower be employed full-time with a qualifying public service employer to qualify for PSLF. The Department believes that additional definitions in the regulations, including defining the term ''full-time'' in a manner that takes into consideration the traditional work schedule for non-tenured faculty at institutions, and adds flexibility in determining full-time employment, would clarify eligibility for the PSLF program. The Department reviews and responds to numerous borrower inquiries regarding the issues with the Department's determination of qualifying employers, qualifying payments, and overall requirements for PSLF. The Department uses this information to formalize changes in the PSLF program that would assist borrowers in achieving loan forgiveness, clarify steps for our servicers, and provide more transparency in the PSLF processes.

Statute: Section 455(m) of the HEA provides for forgiveness of the remaining balance due on an eligible non-defaulted Federal Direct Loan (Federal Direct Stafford Loan, Federal Direct PLUS Loan,[26] Federal Direct Unsubsidized Stafford Loan, or Federal Direct Consolidation Loan) after the borrower has made 120 monthly payments on the eligible Federal Direct Loan while the borrower is employed full-time in a public service job. The 120 monthly payments must be made under at least one of the following qualifying repayment plans: the income-based repayment plan; the standard repayment plan based on a 10-year repayment period; the income contingent repayment plan; or, except for the alternative repayment plan, any other repayment plan if the monthly payment amount is not less than what would have been paid under the standard 10-year repayment plan. The 120 payments do not have to be made consecutively.

Section 455(m)(3)(B) of the HEA defines a ''public service job'' as a full-time job in:

- Emergency management;
- Government (excluding serving as a member of Congress);
- Military service;
- Public safety;
- Law enforcement;
- Public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations), as such terms are defined by the Bureau of Labor Statistics;
- Public education;
- Social work in a public child or family service agency;
- Public interest law services (including public defense or legal advocacy on behalf of low-income communities at a nonprofit organization);
- Early childhood education (including licensed or regulated childcare, Head Start, and State funded prekindergarten);
- Public service for individuals with disabilities;

[26] Parents who take out Federal Direct PLUS Loans to pay the costs of attendance for their dependent children are not eligible to repay the parent PLUS loans under any of the income-driven repayment plans. However, if a parent PLUS loan is consolidated into a Direct Consolidation Loan, the consolidation loan may be paid under the income-contingent repayment plan and would then qualify for PSLF.

- Public service for the elderly;
- Public library sciences; or
- School-based library sciences and other school-based services.

A public service job may also include:

- A full-time job at an organization that is described in section 501(c)(3) of Title 26 and exempt from taxation under section 501(a) of such title;
- Teaching as a full-time faculty member at a Tribal College or University as defined in section 316(b); or
- Teaching as a full-time faculty member in high-needs subject areas or areas of shortage (including nurse faculty, foreign language faculty, and part-time faculty at community colleges), as determined by the Secretary.

The statute does not include separate definitions of any of the listed public service jobs, nor does it include definitions of other terms or specify what constitutes full-time employment.

Current Regulations: Current § 685.219(b) contains definitions of key terms, including the definitions of ''full-time'' and ''public service organization.'' The current regulations incorporate the concept of qualifying employment into the defined term ''public service organization.'' Under the current regulations, qualifying employers generally include Federal, State, local, and Tribal Government agencies; nonprofit organizations that are described in section 501 (c)(3) of the Internal Revenue Code and exempt from taxation under § 501(a) of the Internal Revenue Code; and other organizations that provide certain specific public services listed in § 455(m)(3)(B) of the HEA, other than a business organized for profit, a labor union, or a partisan political organization.

Proposed Regulations: The Department proposes adding new definitions and modifying some existing definitions in § 685.219(b) to clarify what are ''qualifying employers'' and ''full-time'' work under PSLF.

Specifically, the Department proposes to add the following 11 definitions:

- ''civilian services to the Military,''
- ''early childhood education program,''
- ''non-tenure track employment,''
- ''public health,''
- ''non-governmental public service,''
- ''public service for individuals with disabilities,''
- ''public service for the elderly,''
- ''public education service,''
- ''public library services,''
- ''school library services,'' and
- ''qualifying repayment plan.''

As with existing regulations, these new definitions would relate to qualifying services only relevant for organizations that provide certain specific public services listed in § 455(m)(3)(B) of the HEA, other than a business organized for profit, a labor union, or a partisan political organization.

The Department further proposes to expand or clarify the current five definitions: ''employee or employed,'' ''full-time,'' ''military service,'' ''other school-based service,'' and ''qualifying employer.'' With regard to ''civilian services to military'' in particular, the Department proposes to clarify that this definition speaks to providing services to or on behalf of members, veterans, or the families or survivors of members or veterans of the U.S. Armed Forces. Military service, while technically government employment, is generally considered and referred to as military service or non-civilian Federal employment rather than just government employment for the purposes of qualifying for PSLF.

The Department proposes to define ''full-time'' as: (1) working in qualifying employment in one or more jobs at least an average of 30 hours per week for the time period certified; (2) working at least 30 hours per week throughout a contractual or employment period of at least 8 months in a 12-month period, such as in the situation of elementary and secondary school teachers, in which case the borrower is deemed to have worked full-time; or (3) working the equivalent of 30 hours per week as determined by multiplying each credit or contact hour taught per week by at least 3.35 in non-tenure track employment at an institution of higher education.

The Department proposes to define ''non-governmental public service'' as services provided directly by employees of a nonprofit organization where the organization has devoted a majority of its full-time equivalent employees to work in at least one of the following areas: emergency management, civilian service to military personnel and military families, public safety, law enforcement, public interest law services, early childhood education, public service for individuals with disabilities and/or the elderly, public health, public education, public library services, school library, or other school-based services.

The Department proposes to define ''public service for individuals with disabilities'' as services performed for or to assist individuals with disabilities (as defined in the Americans with Disabilities Act (42 U.S.C. 12102)) that are provided to a person because of the person's status as an individual with a disability.

The Department proposes to define ''public service for the elderly'' as services that are provided to individuals who are aged 62 years or older and that are provided to a person because of the person's status as an individual of that age.

The Department proposes to define ''public education service'' as the provision of educational enrichment and/or support to students in a public school or a school-like setting, including teaching.

The Department proposes to define ''public library service'' as the operation of public libraries or services that support their operation.

The Department proposes to define ''school library services'' as the operations of school libraries or services that support their operation.

The Department proposes to remove the current definition of ''public service organization'' and replace it with a definition of the term ''qualifying employer.'' The proposed definition includes (1) A United States-based Federal, State, local, or Tribal Government organization, agency, or entity, including the U.S. Armed Forces or the National Guard; (2) a public child or family service agency; (3) a non-profit organization under section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code; (4) a Tribal college or university; or (5) a nonprofit organization that provides a non-governmental public service, attested to by the employer on a form approved by the Department, and that is not a business organized for profit, a labor union, or a partisan political organization.

Reasons: The proposed definitions would provide greater certainty, simplicity, and clarity to borrowers and employers and ensure that the Department is fulfilling the statutory intent of encouraging borrowers to work in public service.

Since the creation of the PSLF program almost 15 years ago, the Department has interpreted public service to mean employment with a government organization, a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code, or another type of nonprofit organization that provides services in areas specified by Congress so long as it is not a labor union or a partisan political organization. During the negotiations, some non-Federal negotiators cited the exclusion of for-profit organizations as qualifying employers that provide services in specified areas as a primary

reason for not agreeing with the Department's proposed regulations. In considering any changes to the eligible employers, the Department must craft proposals that are operationally viable to ensure that the Department is able to process PSLF benefits in a timely manner. In particular, the Department currently could not implement any changes that require it to: (i) perform an in-depth and individualized review of the eligibility for any significant number of additional employers and particularly for for-profit employers, which have far less required transparency than nonprofit organizations and thus require more extensive investigation; or (ii) assess individual borrowers' job descriptions to determine whether some, but not all, positions within an employer qualify for PSLF. Based upon those operational considerations, the Department seeks feedback on two possible changes where the Department is assessing operational and legal feasibility and policy alignment. The first is around the concerns raised by some non-Federal negotiators about some doctors in California and Texas who work full-time at private, non-profit hospitals but who are ineligible for PSLF because State law prohibits them from being hired by the hospital itself. This is a change that would not expand the universe of qualifying employers but rather adjust for whom a qualifying employer may sign a PSLF form. ED invites comment on whether borrowers who provide services to a qualifying employer but are ineligible to provide those services as an employee due to State law should be able to participate in the program through the qualifying employer. The second is around whether for-profit early childhood education employers, as defined in § 103(8) of the Higher Education Act (20 U.S.C. 1003) and for which the majority of full-time equivalent employees provide a qualifying service such as education for young children, should be qualifying employers for purposes of PSLF. Among other potential reasons, this might be operationally feasible because early childhood education is a category of employment that already has a specific definition in the HEA which references licensure and regulation and the universe of eligible employers might be simpler to identify. In responding to comments on operational issues as well as the two possible items above, the Department is particularly interested in the following questions: (1) What criteria and sources of information can the Department use to identify eligible for-profit early childhood education employers in a consistent and simple manner that does not require an individualized review of employer or borrower specific activities? As mentioned above, an expansion of eligible employers without simple and clear criteria that minimizes the judgment required by the Department would be impossible to administer. The Department is interested in potential solutions for addressing these operational limitations. For example, are there sources that could identify IRS employer identification numbers for licensed and regulated early childhood education programs, as defined in § 103(8) of the Higher Education Act (20 U.S.C. 1003)? Could those same sources identify whether the employer meets other requirements in this regulation, such as having a majority of an employer's full-time equivalent employees provide a qualifying service in the form of early childhood education for young children?

(2) Should the Department use the eligibility for, or receipt of, certain Federal funding as a requirement for a for-profit early childhood education employer to be a qualifying employer for the purposes of PSLF? Are there sources of information identifying employer identification numbers of Federally funded early childhood education programs, consistent with the definition of early childhood education noted above?

(3) Could the Department limit PSLF eligibility to only for-profit early childhood education employers for which another Federal agency such as the U.S. Department of Health and Human Services has provided employer identification numbers and information that would help the Department easily assess eligibility?

(4) Is it consistent with the purposes and goals of the PSLF program to include for-profit early childhood education as qualifying employment? For instance, to what extent would the inclusion of for-profit licensed and regulated early childhood education providers as eligible employers improve recruitment and retention of the early childhood workforce, increase early educator degree and credential attainment, and improve access to quality early childhood education for children and families?

(5) Are there other considerations for including for-profit early childhood education as a type of qualifying employer for PSLF? For example, this could include Congress' specific mention of licensed and regulated childcare programs in § 103(8) of the Higher Education Act (20 U.S.C. 1003), or the PSLF legislative history.

The Department's proposed definition of ''qualifying employer'' reflects the statutory requirements and the goals of public service. We believe that the additional definitions would help to clarify the meaning of public service toward that end and align the regulations with the statutory intent of the PSLF Program.

Through these proposed regulations, the Department would also modify the regulations in response to public comments we received during the public hearings and negotiation sessions. Specifically, the Department would modify the definition of ''full-time'' to include any employee who works a minimum average of 30 hours of work per week during the period being certified.[27] Currently, in most cases, if the borrower has a single employer, ''full-time'' is defined as the greater of 30 hours per week or the number of hours the employer considers full-time or a minimum of 30 hours throughout a contractual employment period of at least 8 months in a 12-month period, such as elementary and secondary school teachers. The Department's proposed definition also would include a conversion calculation to use in determining whether someone in non-tenure track employment at institutions is employed full-time. The determination of how many hours these borrowers worked for PSLF purposes would be calculated by multiplying each credit or contact hour the employee has by at least 3.35. The calculation aligns with the conversion rates used in California and Oregon to certify that an adjunct instructor is eligible for PSLF.[28] This ratio would require an adjunct to teach at least nine credit hours a term to be considered full-time. That figure is three-quarters of the hours needed for a student to be considered full-time for Federal financial aid purposes (12). That is the same relationship between the number of weekly hours required to be considered full-time for PSLF (30), which is three-quarters of the standard 40-hour workweek. Originally, the Department proposed multiplying each credit hour by 2.5. The negotiators felt this number was too low because the Department did not consider contact hours as hours worked and did not accurately reflect of the hours that non-tenured staff work when teaching courses. The Department agreed that multiplying each credit or contact hour by 3.35 would more accurately reflect

[27] *https://www.irs.gov/affordable-care-act/employers/identifying-full-time-employees.*

[28] *https://leginfo.legislature.ca.gov/faces/home.xhtml.*

the hours worked by non-tenured staff and the negotiators agreed. The proposed regulations would also add a definition to clarify the meaning of ''non-tenure track employment'' based on current practice. Providing greater clarity in the regulations would help employers who may be unsure how to properly certify PSLF applications for these individuals.

As suggested by the negotiators, the Department has also proposed definitions of ''public health'' and ''non-governmental public service,'' including public service for individuals with disabilities and the elderly, to provide clarity for borrowers.

Some negotiators suggested that the Department should determine a borrower's eligibility for PSLF by evaluating the borrower's job description instead of determining eligibility based on the activities of their employer. The Department notes that making individual determinations about PSLF eligibility based upon a borrower's specific job would be administratively infeasible. The Department does not have the capacity to review individual job descriptions. Further, obtaining the necessary documentation to make borrower-by-borrower decisions would add a significant burden to anyone participating in the program.

One Committee member suggested that the Department use the Standard Occupational Classification (SOC) System codes which classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data. As discussed during the negotiations, the Department did not have a viable way to operationalize a process to review individual job descriptions to determine borrower eligibility and still does not. Moreover, the statute does not require such individual review. The statute refers to broad eligibility for certain types of services traditionally embedded in the government or nonprofit sectors. The Department is concerned that determining eligibility based on job description rather than employer would lead to borrowers working for the same employer having different eligibility statuses, creating significant confusion and disparities within an organization. Such a process would also require employers to make potentially new determinations about what SOC code a borrower's occupation should fall into for the sole purpose of PSLF. The Department also proposes to continue using the employer approach because it would be more equitable for all employees of an organization. If the Department relied on individual job descriptions, it is likely that many support staff who provide services to the organization rather than to its clients would not qualify even though their services are vital to keeping the organization itself in operation. The Department would not have adequate processes to monitor the complexities around reviewing these applications to ensure borrowers would not lose benefits if they changed jobs while working for the same employer. Moreover, the Department would not have the ability to review the accuracy or appropriateness of every job description.

The Department is proposing one clarifying change from its continued approach of using the services provided by the organization to determination eligibility for PSLF. In the past, the Department considered an organization to be a qualifying employer for the purposes of PSLF if its primary purpose was to provide a qualifying service. The idea behind this concept was that an entire organization should not be designated as a qualifying employer if only a couple of its employees are providing a qualifying service because that demonstrates that the qualifying service is not in fact a core part of the organization's work. However, the Department has found that determining an organization's primary purpose can be confusing and hard to apply. Therefore, the Department proposes to use a more quantitative standard for determining that an employer is providing a public service—that the majority of an organization's full-time equivalent employees must be providing a qualifying service for the organization to be a qualifying employer for PSLF.

The Department heard concerns from several negotiators and public commenters during the negotiated rulemaking process that there are borrowers who are working with qualifying government and nonprofit organizations but who are not eligible for PSLF because they are employed either directly through a contract with the qualifying employer or as the employee of an organization that has a contract with the qualifying employer. For instance, the Department heard from borrowers who work as contractors to provide support to K–12 students on a full-time basis but who are not eligible for PSLF because they are not employees of a qualifying employer. We also heard negotiators discuss public defenders in rural areas who work on a contract basis and also do not qualify for PSLF. The Department also heard about nonprofit hospitals where doctors work as contractors even while nurses or other medical professionals work as full-time employees. The Department is considering whether it should adjust eligibility to account for these types of situations. For example, a provision would note that, only for the purposes of PSLF, the eligible borrowers would include a borrower who works as a contractor at a qualifying employer if that qualifying employer is willing to certify the periods worked by that individual.

The Department seeks comments on whether to revise the program in this way or to address these issues in another manner. The Department also seeks feedback on whether qualifying employers would be willing to sign PSLF forms on behalf of their contractors; how to ensure consistency within and among employers about signing PSLF forms for contractors so there are not disparities based upon a borrower's pay, level of education, or job function; and what additional guidance employers would need to implement this change. The Department is also interested in feedback about whether there could be ways to distinguish which types of contractors should be eligible, such as restricting eligibility to a contractor whose job site is co-located with a qualifying employer—either virtually, in-person, or with individuals served by the qualifying employer, such as students—versus one who works completely separately from the qualifying employer.

8. Improving the PSLF Processes (§§ 685.219 and 682.414(b))

Statute: Section 455(m) provides that the Secretary shall cancel the balance of interest and principal due on any eligible Federal Direct Loan for borrowers who are not in default, have repaid their loans under a qualifying repayment plan, and have made 120 payments while employed in a public service job and at the time of forgiveness. The statute does not define the PSLF application process.

Current Regulations: Section 685.219 establishes the conditions under which a borrower may qualify for PSLF and lists the specific eligibility criteria that a borrower must meet to receive PSLF. The regulations specify that the borrower must make each of the required 120 monthly payments within 15 days of the scheduled due date for the full scheduled installment amount for that payment to qualify toward PSLF. Under § 685.219(e), after a borrower makes 120 qualifying payments on a loan, the borrower may request forgiveness of the remaining balance by submitting a request on a form approved by the Department. The payments do not have to be made consecutively. If the Department

determines the eligibility criteria is not met, the Department resumes repayment obligations the loan.

Proposed Regulations: The Department proposes to revise § 685.219(c)(1)(iii) so that borrowers have more ways to have payments count toward forgiveness. This includes counting payments that are equal to the full scheduled payment, even if the payment is made in multiple installments or outside the 15-day period in current regulations so long as the loan is not in default. The Department also would revise in § 685.219(c)(2) so that a borrower who makes a lump sum or monthly payments equal to or greater than the full scheduled amount made in advance of the borrower's scheduled payment due date may also receive credit toward forgiveness on those additional payment amounts. These lump sum payments can be counted for a period of months not to exceed the date of the borrower's next annual repayment plan recertification date under the qualifying repayment plan. For example, a borrower who makes a $50 monthly payment on an income-driven repayment plan could pay that $50 a month or make a one-time payment of $600 during that year and receive credit for a year of payments.

Current regulations do not allow any periods of deferment or forbearance to count toward PSLF. In § 685.219(c)(2)(v), the Department proposes to allow each month in which a borrower is in one of the following deferment or forbearance periods to count as a month of payment for PSLF purposes if the borrower certifies qualifying employment for the period of time covered by the deferment or forbearance:

- Cancer treatment deferment under § 455(f)(3) of the Act;
- Economic hardship deferment under § 685.204(g), including a Peace Corps service deferment;
- Military service deferment under § 685.204(h);
- Post-active-duty student deferment under § 685.204(i);
- AmeriCorps forbearance under § 685.205(a)(4);
- National Guard Duty forbearance under § 685.205(a)(7);
- U.S. Department of Defense Student Loan Repayment Program forbearance under § 685.205(a)(9); and
- Administrative forbearance and mandatory administrative forbearance under § 685.205(b)(8) or § 685.205(b)(9).

In § 685.219(c)(3), the Department proposes to count toward the required 120 monthly qualifying payments, those qualifying payments made by a borrower on an eligible Direct Loan that the borrower later consolidates into a Direct Consolidation Loan.

Proposed § 685.219(e), which broadly reflects the Department's current practice, explains the process by which a borrower documents qualifying employment and requests forgiveness after making 120 qualifying payments on the eligible loans for which forgiveness is requested. In proposed new § 685.219(f), the Department would authorize forgiveness on eligible loans without an application from the borrower when the Department has sufficient information to determine the borrower's eligibility without an application. For example, the Department has announced its intentions to enter into data matching agreements with the U.S. Office of Personnel Management so that it can identify Federal employees who are eligible for PSLF. Once those matches are active, the Department could possibly award sufficient PSLF credit for forgiveness without the borrower taking any action. The same could be true with other data matches under consideration. All other borrowers would be required to provide the necessary information on a form approved by the Department along with the employer's certification.

If a borrower is unable to obtain the employer's certification, the Department would attempt to determine if the borrower was working for a qualifying employer at the time the qualifying payment was made based on the documentation provided by the borrower or otherwise available to the Department. If the Department determines the borrower meets the requirements for loan forgiveness, the Department would notify the borrower of this determination and the remaining balance of principal and accrued interest on the eligible loans would be forgiven. For borrowers who do not meet the requirements for forgiveness, the Department would notify the borrower of the decision, resume loan repayment obligations, and grant forbearance of payment on both principal and interest for the period in which collection activity was suspended. No interest would be capitalized per changes proposed in other sections of this NPRM.

The Department also proposes new regulations to create a reconsideration process under proposed § 685.219(g) for borrowers whose applications for forgiveness were denied or who disagree with the Department's determination of the number of qualifying payments or months of qualifying employment that have been earned by the borrower, which formalizes the current non-regulatory process. Borrowers whose applications have been denied would have 90 days to request reconsideration on a form approved by the Department. The Department proposes that borrowers whose forgiveness applications were denied before the effective date of the final regulations would have 180 days from the effective date of the regulations to request reconsideration.

In new § 685.219(g)(6), the Department would also propose to count time toward forgiveness for a borrower who postponed monthly payments under a deferment or forbearance that would not lead to a qualifying payment under the proposed regulations. The Department proposes that a borrower would have to meet certain criteria to have a month counted as a qualifying payment for this purpose. First, the borrower would have to have been employed full-time at a qualifying employer as defined under § 685.219 during the forbearance or deferment period. Second, the borrower would have to make a payment equal to or greater than the amount they would have paid at that time on a qualifying repayment plan. For example, a borrower with a monthly payment of $100 under the standard 10-year plan who spent a year on a forbearance while employed at a qualifying employer could make an additional payment of $600 and receive credit for six of those months.

In § 682.414(b)(4), the Department would propose to require FFEL Program lenders to report detailed information related to a borrower's deferments, forbearances, repayment plans, delinquency, and contact information on any FFEL loan to the Department by an established deadline.

Reasons: In August 2020, the Department updated the description of a qualifying payment by allowing the payment to count as a qualifying payment if it was made in full within 15 days of the payment due date.[29] On October 6, 2021, the Department announced a limited PSLF waiver during which borrowers may receive credit for payments that previously did not qualify for PSLF or TEPSLF.[30] These

[29] *https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-10-28/changes-public-service-loan-forgiveness-pslf-program-and-new-single-pslf.*

[30] Press Release, U.S. Department of Education, ''U.S. Department of Education Announces Transformational Changes to the Public Service Loan Forgiveness Program, Will Put Over 550,000 Public Service Workers Closer to Loan Forgiveness,'' October 6, 2021, *https://www.ed.gov/news/press-releases/us-department-education-*

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administrative steps demonstrated improvements to the PSLF process for borrowers. In addition, in October 2021, the Department waived certain PSLF rules, such as the requirement to make a qualifying payment within a specified time, under a specific repayment plan, and on a loan from a particular program for a limited time due to the COVID–19 pandemic.[31] Through the proposed rules described in this NPRM, the Department seeks to continue to improve upon the program and convert certain of the temporary changes into permanent regulatory changes under a continuing basis.

Specifically, the Department proposes to amend the regulations governing PSLF to treat months in which a borrower is in certain deferment and forbearance periods as months of qualifying payments. The proposed changes would also streamline and clarify the application process for PSLF, provide increased flexibility to borrowers, remove application barriers where practicable, and allow the Department to communicate with borrowers from the FFEL Program instead of (or in addition to) lenders, and provide overall improvements to the process. While consensus was not reached on the proposed regulations for PSLF, the negotiating committee generally agreed with the Department's proposals regarding expanded qualifying payment periods; eliminating the 15-day payment date requirement; clarifying requirements related to lump sum payments; allowing months spent in certain forbearances and deferments to count as months in repayment; allowing prior payments on Direct Loans to count toward the 120 payments required for forgiveness if the borrower repays the loan on which the payments were made through a Direct Consolidation Loan; automating the application process where practicable; requiring FFEL Program lenders to report additional details to the Department related to the loans; and formalizing a reconsideration process where borrowers seeking PSLF may request a review and redetermination of the decision on whether the borrower had a qualifying employer, qualifying payments, or on the denial of an application for forgiveness.

Many of the negotiators did not agree with the Department's proposed regulatory language that would provide a path for borrowers to receive credit for past periods of deferment or forbearance while the borrower was working for a qualifying employer. The negotiators requested instead that the Department automate the PSLF process. These negotiators also wanted the Department to allow payments made on FFEL Program loans that are repaid through a Direct Consolidation Loan to count toward PSLF forgiveness. Under the current interpretation of the law, the 120 monthly payments have to be made on the loan for which the borrower requests forgiveness. So, a borrower who consolidates a Direct Loan and later applies for forgiveness of the Consolidation Loan does not receive credit for payments made on the loan before it was consolidated. However, the negotiators advanced a different interpretation of the HEA, suggesting that counting payments made on loans later consolidated into the Direct Loan Program and regardless of whether the loan consolidated was a Direct Loan would also be a permissible interpretation of the HEA.

Negotiators also wanted to include additional forbearances and deferments and proposed to provide a forbearance to borrowers seeking PSLF until the effective date of the regulations and to count the months in this forbearance as qualifying payments.

The Department proposes to include certain specific forbearance and deferment periods as qualifying periods for PSLF because of concerns based on past practices that borrowers, who are likely to have a $0 payment on an income-driven repayment plan which would make them eligible to receive PSLF credit, could instead be offered one of these deferments or forbearances. A borrower who chose to pause their payments through one of these deferments or forbearances would be giving up the opportunity to receive credit toward PSLF. For example, deferments tied to military service, Peace Corps or post-active duty or forbearances related to AmeriCorps, National Guard Duty, or U.S. Department of Defense student loan repayment are instances in which a borrower is engaging in employment that would qualify for PSLF. Allowing these deferments and forbearances to count toward PSLF prevents the borrower from losing months or years of progress toward forgiveness by making the wrong choice or getting inaccurate advice. We also seek feedback on whether, if possible to operationalize, the Department should include comparable deferments for Direct Loan borrowers with FFEL Program loans described in 34 CFR 685.204(j). The Department is aware that this problem has affected a substantial number of borrowers. For instance, in October 2021, the Department announced a limited PSLF waiver that allows borrowers to count other repayment plans, and deferments or forbearances used while working for a qualifying employer, toward forgiveness. As a result of that time-limited waiver, approximately 127,000 borrowers have been approved for $7.3 billion in forgiveness as of mid-May 2022. More than 1 million additional borrowers also receive an average of 12 months credit toward forgiveness. These data indicate that even better servicing and clearer information for borrowers would likely be unable to address the scale of the challenge.[32] The Department also proposes to provide credit toward PSLF for periods in which a borrower is on an economic hardship or cancer deferment. Borrowers on an economic hardship deferment would have a $0 payment on an income-driven repayment plan, which already counts toward forgiveness. Borrowers on a cancer treatment deferment should not have to choose between pausing their loan payments while receiving life-saving medical treatment or receiving credit toward PSLF. The Department also proposes to allow months spent in administrative or certain mandatory administrative forbearances to count as a qualifying payment where the borrower does not control whether their loans are paused. While borrowers would not receive credit for qualifying months when a servicer pauses a borrower's payments while it reviews PSLF paperwork or other circumstances, the Department proposes that a borrower be able to receive credit for these months by making any required payment under the hold harmless period. The Department believes that this measure will would ensure borrowers do not lose forgiveness credit during prolonged time spent in a forbearance due to paperwork processing.

The negotiators requested that additional deferment and forbearance periods be counted as time toward forgiveness. The Department has not included the other deferment periods, such as the period of an unemployment deferment, in the proposed regulations because borrowers utilizing that deferment would not meet the employment requirements for PSLF. The Department also did not include the rehabilitation training deferment in the proposed regulations because eligibility for this deferment requires that the

announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.

[31] Ibid.

[32] *https://studentaid.gov/announcements-events/pslf-limited-waiver.*

borrower be in a program that prevents them from being employed for more than 30 hours a week, which is an employment requirement for PSLF. The Department believes that granting credit toward PSLF for those periods would create a conflict because under the deferment, the borrower would not be engaging in the 30 hours a week of work required to qualify for PSLF.

The Department recognizes that many borrowers may have paused their payments through deferments or forbearances that we are not proposing to credit toward PSLF. The Department announced in April 2022 improvements to past challenges with the use of deferments and forbearances that will help many of these individuals. Specifically, the Department will be awarding credit toward PSLF for borrowers who spent more than 3 years cumulatively in a forbearance or 12 consecutive months in a forbearance, and for months spent in any deferment prior to 2013 besides an in-school deferment. These changes will only result in PSLF credit for periods after the program's creation in October 2007, and borrowers must have qualifying employment during those months. The Department believes that these changes will address many of the most concerning instances of forbearance, but for other periods as well as in the future the Department proposes to offer a hold harmless period. This would provide those borrowers who were working for a qualifying employer during the periods of forbearance or deferment an opportunity to get PSLF credit for those months by making payments equal to what the borrowers would have owed during that time. A borrower would receive credit toward forgiveness without the need to make an additional payment for any month in which the borrower would have had a $0 payment on an income-driven repayment plan but obtained a forbearance instead. The Department believes, that with these proposed regulations, borrowers would have an opportunity to regain progress toward forgiveness that would otherwise be lost without putting them through a burdensome process of proving they were steered, misled, or otherwise taken advantage of.

The Department has manually reviewed PLSF applications to determine qualifying payments and/or qualifying employment on an informal basis. The Department believes that by formalizing and codifying a reconsideration process, borrowers would be able to officially request the Department take another look at their qualifying payment and/or qualifying employer eligibility through a process determined by the Secretary. The Department believes that 90 days from the denial notice is more than adequate time for a borrower to submit a reconsideration request. This reconsideration period also aligns with what the Department is proposing for the borrower defense to repayment reconsideration process.

The Department could not agree to the negotiators' request that payments on FFEL loans or other Federal student loans not made under Part D of the HEA count for PSLF purposes. Section 455(m)(1)(A) of the HEA specifically provides that the 120 monthly payments must have been made on an eligible Federal Direct Loan.

The Department already requires FFEL Program lenders to contact FFEL Program borrowers and provide information about PSLF. The Department proposes to require FFEL lenders to report additional information under 682.414 so that borrowers (particularly those with loans from multiple programs) are receiving accurate, timely, and helpful messages directly from the Department about the repayment and forgiveness of their Federal student loans to ensure that all Federal loan borrowers are informed on PSLF information and information about other digital tools offered by the Department.

The Department believes that these proposed regulations would improve the Department's ability to administer forgiveness to borrowers who qualify for PSLF, increase the number of qualifying borrowers who receive forgiveness, and increase the number of borrowers who receive forgiveness by aligning with the number of months of qualifying employment. The corresponding increase in discharges would represent a greater cost to the taxpayer, but the Department believes that the benefits received by borrowers by obtaining discharges under the PSLF statute justify the costs.

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 Department estimates the quantified annualized economic and net budget impacts to be $85.1 billion in increased transfers among borrowers, institutions, and the Federal Government, including annualized transfers of $9.1 at 3 percent discounting and $10.0 billion at 7 percent discounting, and annual quantified costs of $5.3 million related to paperwork burden. Therefore, this proposed action is ''economically significant'' and subject to review by OMB under section 3(f) of Executive Order 12866. Notwithstanding this determination, based on our assessment of the potential costs and benefits (quantitative and qualitative), we have tentatively determined that the benefits of this proposed regulatory action would justify the costs.

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 proposed regulations as these policies are better in light of the facts and to comply with executive orders. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. 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.

As required by OMB Circular A–4, we compare the final regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

1. Need for Regulatory Action

The Department has identified a significant need for regulatory action to address regulatory burdens, alleviate administrative burden, and ensure Federal student loan borrowers are more easily able to access the loan discharges to which they are entitled under the Higher Education Act of 1965, as amended (HEA). Accordingly, these proposed regulations would alleviate some of the burden on students, institutions, and the Department, as discussed further in the Costs and Benefits section of this RIA.

In recent years, outstanding Federal student loan debt has increased considerably and, for too many borrowers, that burden has been costly. More than 1 million borrowers defaulted on a Federal student loan each year in the periods prior to the nationwide pause of student loan interest and repayment first implemented by the Department and then extended by Congress in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Millions of others fell behind on their payments and risked default. For those who have defaulted, consequences can be significant, with many borrowers having their tax refunds or other expected financial resources garnished or offset, their credit histories marred, and their financial futures put on hold. To alleviate some of this burden, the administration enacted the American Rescue Plan Act of 2021 where all student loan forgiveness and discharges of any loan type is Federal tax-free through December 31, 2025.

We continually examine our regulations to improve the Federal student loan programs and it was the primary goal of this negotiated rulemaking. This NPRM specifically addresses regulatory changes to discharges that will help borrowers to reduce or eliminate debt for which they should not be responsible to pay. The Department will also propose regulatory changes to income driven repayment plans in a future NPRM that would greatly benefit borrowers.

The Department seeks to reduce the burden for students and borrowers to access the benefits to which they are entitled through several provisions in these proposed regulations. This includes streamlining the borrower defense regulations and establishing a process for group consideration of claims from borrowers with common claims or affected by the same unacceptable institutional act or omission; easing the process of accessing false certification discharges; clarifying the rules borrowers must comply with for the PSLF program; reducing the burden caused by interest capitalization; ensuring totally and permanently disabled borrowers have the ability to access and maintain a discharge more easily; and allowing borrowers to automatically access a closed school loan discharge. Throughout these proposed regulations, we accommodate and, where possible, require, that these benefits are provided automatically, so that borrowers are not required to submit unnecessary paperwork to benefit from provisions included in the HEA. We also preserve borrowers' ability to pursue their grievances in court by prohibiting pre-dispute arbitration clauses or class action waivers in institutions' enrollment agreements.

These efforts to reduce burden for students and institutions would also indirectly reduce the burden on the Department by, for example, limiting the need for adjudication of individual claims for borrower defense in some cases, simplifying the criteria that need to be checked to determine if payments count toward PSLF, and limiting the need for the Department to process paperwork by providing discharges on a more automatic basis for borrowers whose schools close or when a borrower has a total and permanent disability.

These proposed regulations would affect each of the three major Federal student loan programs. This includes the Direct Loan program, which is the sole source of Federal student loans issued by the Department of Education today, as well as loans from the Federal Family Education Loan Program, which stopped issuing new loans in 2010 and the Perkins Loan Program, which stopped issuing new loans in 2017. Changes to TPD, closed school discharges, and false certification discharges would affect all three programs. Changes to interest capitalization, borrower defense, arbitration, and Public Service Loan Forgiveness would only affect Direct Loans.

Interest Capitalization

Virtually all struggling borrowers likely saw their balances increase due to interest capitalization. Interest capitalization may have occurred due to time in forbearances or deferments. Furthermore, interest capitalization following in-school grace periods affects all borrowers with unsubsidized loans. Eliminating interest capitalization stops compounding the costs and makes loans more affordable for borrowers. While eliminating interest capitalization doesn't remove borrowers' debt burden, it would help to increase affordability for students whose balances might continue to grow. That's particularly true for the low-income or struggling borrowers who tend to use deferments and forbearances more heavily, and thus see more capitalizing events throughout their repayment periods.

Pre-Dispute Arbitration

Often, schools that have taken advantage of students have forced those students to shield their complaints by requiring students to participate in private arbitration proceedings, where the terms are set by the institution, rather than allowing them their day in court. These pre-dispute arbitration agreements require students to agree to the terms before a conflict ever arises and often dictate whether the student can appeal the decision. Though pre-dispute agreements are not inherently predatory in practice, they can be applied in predatory ways toward borrowers such as undermining borrowers' rights to avail themselves of

certain loan discharges, depriving borrowers of the protections in the HEA. We have seen arbitration applied across different industries including consumer protection and employment, and in the realm of education, pre-dispute arbitration agreements are often linked to propriety education enrollment agreements.[33] As a result, successive cohorts of students may have experienced the same predatory behavior. Additionally, while the Department is aware of arguments that arbitration lowers the costs of dispute resolution for borrowers relative to litigation, a study of consumer finance cases analyzed by the Consumer Financial Protection Bureau found that most resulted in no determination on the merits of the allegation by the arbitrator, and those that did (and where counsel was retained) resulted in attorney's fees awarded at a similar rate to both consumers and companies.[34]

The Department observed several issues and problems around pre-dispute arbitration and class action waivers. First, institutions may use arbitration clauses in enrollment agreements to effectively discourage students from pursuing complaints. This enables an institution to avoid financial risk associated with its wrongdoing and shift the risk to the taxpayers and federal government through subsequent borrower defense discharges. Additionally, borrowers cannot have their day in court because some enrollment agreements prevent their ability to participate in lawsuits, including class action litigation. This further insulates institutions from the potential financial risk of their wrongdoing and the lack of transparency surrounding institutions' arbitration requirements and limits on class actions.

Closed School Discharge

Borrowers have also faced the negative financial impacts of institutions closing, often without adequate warning, interrupting borrowers' ability to continue and complete their desired educational programs. Many of these borrowers were left with debt but no degree, sometimes facing new barriers to education such as geographic location, nontransferable credits, and inability to complete their degree. This has negatively affected borrowers' ability to make their payments, creating a need for improved processes for closed school discharges.

Several aspects of the closed school discharge process have limited the ability of borrowers to receive closed school discharges. Final regulations published in the **Federal Register** on November 1, 2016, provided for automatic closed school discharges to borrowers who were eligible for a closed school discharge but did not apply for one, and who did not enroll elsewhere within three years of the institution's closure. Final regulations published on Sept. 23, 2019, eliminated this provision. The proposed ruleset would reinstate a form of the 2016 provision.

Closed school discharges for borrowers who withdrew from a school prior to the school closing are also not consistent across years in the discharge window available to borrowers. Additionally, under § 685.214(c)(1)(i)(B), the Secretary may extend the closed school discharge window under ''exceptional circumstances.'' The non-exhaustive list of exceptional circumstances provided in the regulations does not include many events that may occur on the path to closure and could reasonably be associated as a cause of that closure. In addition, the September 23, 2019, regulations removed some of the exceptional circumstances that were included in the prior regulations, such as ''a finding by a State or Federal government agency that the school violated State or Federal law,'' and that remain highly relevant factors in some college closures. This proposed regulation aims to remedy these issues.

Total and Permanent Disability Discharge

Another area in which the current regulations create gaps for borrowers is related to total and permanent disability discharge. For borrowers who are unable to meaningfully work, their student loan debt became exceedingly burdensome, leaving many in dire financial circumstances, despite being eligible for discharges of their Federal student loans under the HEA. Some eligible borrowers are not fully aware of existing relief pathways, but for those who are aware of TPD discharges, they face a complex and onerous procedure to ensure borrowers continue to meet the statutory test of not being able to engage in gainful employment to acquire and maintain discharges.

The Department has identified several aspects of the TPD discharge process that could be improved through regulation. First, the Department currently runs a 3-year post-discharge income monitoring period, for which the documentation requirements are burdensome for affected borrowers. Since 2013, loans for more than half of the 1 million borrowers who received a TPD discharge were reinstated because the borrower did not respond to requests for income documentation, although an analysis conducted by the Department with Internal Revenue Service (IRS) data suggests that 92 percent of these borrowers did not exceed the earnings threshold, and that these results are similar for borrowers whose discharge is based on the SSA or physician's certification process. Second, borrowers who currently qualify for TPD discharges based on SSA disability determinations must be in SSA's Medical Improvement Not Expected (MINE) category to qualify, although there are other SSA disability categories that may support a discharge. For borrowers applying for a TPD discharge based on a disability determination by the SSA, acceptable documentation for the TPD discharge is limited to the notice of award that the borrower receives from the SSA and for borrowers applying for a TPD discharge based on a physician's certification, only a Doctor of Medicine or a Doctor of Osteopathy may certify the TPD discharge form. This ruleset aims to mitigate and to streamline total and permanent disability discharge process.

False Certification Discharge

The Department also identified opportunities to improve false certification discharges. These are discharges available to borrowers under the HEA if the institution that certifies the borrower's eligibility for the loan does so under false pretenses, such as when the borrower did not have a high school diploma or equivalent and did not meet alternative criteria; when the borrower had a status that disqualified them from meeting legal requirements for employment in the occupation for which they are training; or if the institution signed the borrower's name without authorization.

One challenge the Department identified with false certification discharges is that the different standards and processes for false certification discharges depending on when the loan was disbursed that can create confusion for borrowers. The proposed regulations would streamline the false certification discharge process for student loan borrowers to establish standards that apply to all claims, regardless of when the loan was first disbursed, and provide for a group discharge process. The proposed rules would also reduce

[33] Habash, T. and Shireman, R., (April 28, 2016). *How College Enrollment Contracts Limit Students' Rights, The Century Foundation.* Retrieved from *https://tcf.org/content/report/howcollege-enrollment-contracts-limit-students-rights/.*

[34] Consumer Financial Protection Bureau. (2015.) ''Arbitration Study: Report to Congress.'' *https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.*

the burden on borrowers to prove eligibility for false certification discharges if they did not have a high school diploma, if the institution falsely signed the borrower's name for the loan, or if the borrower had a disqualifying condition (those that would prevent the borrower from obtaining employment due to applicable State requirements related to criminal record, age, physical or mental condition, or other factors) at the time they took out the loan.

Public Service Loan Forgiveness

The HEA provides forgiveness of remaining balances for borrowers who work in qualifying employment in public service and who make 120 qualifying payments. However, the Department is concerned that too many borrowers have found it difficult to navigate the program's requirements due to unclear or complex definitions and complex, overly stringent requirements regarding the payments made on the loan. For instance, the current regulations leave the definition of what constitutes full-time employment up to interpretation by each employer, even though the underlying statutory requirement is only that the borrower be employed for at least 30 hours a week. This creates inconsistency, such as through scenarios where one employer considers 40 hours a week as full-time employment and another employer may consider 35 hours as full-time employment, so a borrower employed 35 hours a week may be denied or granted qualifying employment depending on their employer, despite working in the same type of work. There are also situations where professors and contingent faculty have difficulty obtaining employer certification of their qualifying employment because their employers are unsure of what conversion factor to use in converting course load into hours worked per week.

The Department would like to improve the PSLF application process and provide automation in instances where the Secretary has enough information to determine eligibility for forgiveness. This will significantly reduce the borrower's burden, as well as the Department's burden, to review and approve applications. The current PSLF application process is difficult for many borrowers, who often struggle both with meeting the complex terms of the program and with the process of applying to demonstrate their eligibility.

Borrower Defense to Repayment

Borrowers whose colleges take advantage of them, such as by misrepresenting job placement rates or other important information about the program, are eligible for a borrower defense discharge on their loans. However, the process—which was rarely used prior to 2015—has resulted in many borrowers filing claims that remain pending due to burdensome review processes and differing standards and processes depending on when the borrower took out their loan. The Department proposes changes to the borrower defense regulations to make these policies more consistent, regardless of when the borrower took out the loan, and to ensure a more timely and effective process for reviewing borrowers' claims. The Department also seeks to implement measures that would reduce the burden on institutions of participating in borrower defense proceedings with the proposed changes in group claims and recoupment. Allowing group claims ensures that institutions with large numbers of outstanding claims would likely only have to respond once to a request for information regarding the allegations that could lead to an approved borrower defense claim. Institutions would not face some financial liabilities because the Department would only seek recoupment for discharges tied to conduct that would have been approved under the applicable prior regulation in place at the time the loans were disbursed. Additionally, separating the approval of borrower defense claims from recoupment of loan discharge costs from the institution also limits the burden on educational institutions, when we seek to establish liabilities from a discharge paid. The use of pre-existing processes for recoupment proceedings also means institutions will not need to learn and participate in an entirely new liability and appeals process.

2. Summary

Provision	Reg section	Description of provision
Borrower Defense to Repayment		
Uniform Borrower Defense to Repayment Framework.	§ 685, subpart D	Would establish a new uniform borrower defense to repayment framework based on applications received following or already pending with the Secretary on the effective date of these regulations, rather than based on a loan's disbursement date.
Grounds for Borrower Defense Claims.	§ 685.401(b)	Outlines the five grounds on which a defense to repayment claim could be brought: substantial misrepresentation, substantial omission of fact, breach of contract, aggressive recruitment, or a State or Federal judgment or final Department action against an institution that could give rise to a borrower defense claim. A misrepresentation or omission would be substantial if a borrower relied upon it, with the Department using a presumption of reasonable reliance for individual and group claims.
Preponderance of Evidence Standard.	§ 685.401(b)	Would establish that the Department would review the claims based on a preponderance of the evidence standard.
Group Process	§ 685.402	Would establish two processes for pursuing group borrower defense claims. Under the first, the Department determines if a group of borrowers it identifies has a defense to repayment. Under the second, the Department may initiate a group process upon request from a State requestor.
Forbearance and Stop Collection.	§ 685.402(d)(2), § 685.403(c)(3).	Would establish that, during adjudication of a borrower defense claim, all of the borrower's Title IV loans would be placed in forbearance or stopped collection status, including loans that are not associated with the borrower defense claim. Loans associated with an individual claim would cease accumulating interest after the claim has been pending for 180 days. Loans associated with a group claim would cease accumulating interest upon formation of the group.

Provision	Reg section	Description of provision
Prior Final Departmental Actions.	§ 685.404	Would establish a process by which the Department could consider prior final Departmental actions against an institution in the context of determining whether to form a group borrower defense claim.
Institutional Response Process	§ 685.405	Would establish that the institution would have 90 days to respond to the Department official's notification to the institution of the borrower defense claim and its basis.
Timeline	§ 685.406(f)	Would establish that group claims would be adjudicated within 2 years of the Department's notification of group claim formation, while individual claims would be adjudicated within 3 years from the submission of a materially complete application package.
Written Decision	§ 685.406(e)	Would establish that the Department would issue a written decision on the outcome of an adjudication. The written decision also would describe the process for the borrower to request reconsideration of the decision. The written decision would be made available to an individual or member of a group and, to the extent practicable, the institution.
Reconsideration Process	§ 685.407	Sets forth the circumstances under which a borrower would be able to seek reconsideration of a Department official's decision on their borrower defense claim. The Department official's written notice would be final, but if the borrower's claim is denied in full or in part, that individual borrower, or for a group claim, a State requestor, would be able to request reconsideration. A reconsideration request would be allowed if there were administrative or technical errors, new evidence became available, or the borrower or State requestor wishes the claim to be reconsidered under a State law standard. Group reconsideration requests could be made for the same reasons as an individual request, but a request for reconsideration under State law would require additional documentation, including an analysis of the applicable State law standard and why it would lead to an approved borrower defense claim.
Discharge	§ 685.408	Would establish discharge process. For an approved claim, the Department official would recommend a discharge amount for a borrower or group of borrowers. All borrowers within an approved group claim would receive the same recommended discharge, either in amount or as a percentage of their loans. In making a discharge recommendation, the Department official would apply a rebuttable presumption that the borrower or group of borrowers with an approved claim should receive a full discharge of the loans they received for attendance at the institution that is the subject of the claim, unless in certain circumstances a preponderance of the evidence demonstrates that the discharge should be for a lower amount.
Recovery from Institution	§ 685.409	Would strike 34 CFR 668.87 in its entirety and establish a general framework to recover from institutions the amounts that the Secretary discharges and to leverage the processes already in place at 34 CFR Part 668, part H.
Limitations Period	§ 685.409(c)	Would adopt a 6-year limitations period to recover from the institution the amount of the borrower defense discharge received by borrowers who attended the institution, running from the borrower's last date of attendance at the institution or at any time if the act or omission was a judgment against an institution.
False Certification Discharge		
Uniform Standard	§ 685.215(a)(1)	Would use the borrower's status regarding having a high school diploma or its recognized equivalent or meeting the alternative to graduation from high school eligibility requirements at the time the loan was originated, not at the time the loan was disbursed.
Specification	§ 685.215(c), § 682.402(e)(3)	Would explicitly state in the regulations that all loans may qualify for the discharge based on a false certification of high school diploma or equivalent by the school.
Disqualifying Status	§ 685.215(c)(2), § 682.402(e)(3).	Would include disqualifying status as a false certification discharge condition for all loans.
Signature Specimen	§ 685.215(c)(3), § 685.215(c)(4), § 682.402(e)(3).	Would remove the requirement that borrowers submit signature specimens.
Judicial Determination	§ 685.215(c)(5), § 682.402(e)(3).	Would replace the provision which requires a judicial determination of identity theft with provisions allowing alternative evidence.
Grant Without Applying	§ 685.215(c)(9), § 682.402(e)(15).	Would specify that the Secretary may grant a false certification discharge without an application due to the institution's falsification of Satisfactory Academic Progress for all loans.
Timeline	§ 685.215(d), § 682.402(e)(6)	Would require borrowers to submit an application for a false certification discharge within 60 days of their loan being placed into forbearance but allow borrowers an additional 30days to submit supplemental information.
Rescind Regulation	§ 685.215(e)	Would rescind the provision that any borrower who attests to a high school diploma or equivalent does not qualify for a false certification discharge.

Provision	Reg section	Description of provision
		PSLF
Definitions	§ 685.219(b)	Would add eleven new terms: ''civilian service to the Military,'' ''early childhood education program,'' ''non-tenure track employment,'' ''public health,'' ''non-governmental public service,'' ''public service for individuals with disabilities,'' ''public service for the elderly,'' ''public education service,'' ''public library services,'' ''school library services,'' and ''qualifying repayment plan.'' Would modify five existing terms: ''employee or employed,'' ''full-time,'' ''military service,'' ''other school-based service,'' and ''qualifying employer.'' These definitions are relevant for nonprofit organizations that provide certain specific public services listed in § 455(m)(3)(B) of the HEA, other than a business organized for profit, a labor union, or a partisan political organization.
Amounts Paid	§ 685.219(c)(1)(iii)	Would establish amounts paid by the borrower on a loan that are equal to the full scheduled payment due would count toward forgiveness even if the payment is made in multiple installments or outside the 15-day period in current regulations.
Amounts Paid	§ 685.219(c)(2)	Would clarify that the lump sum or monthly payments equal to or greater than the full scheduled amount made in advance of the borrower's scheduled payment due date could count for a period of months not to exceed the date of the borrower's next annual repayment plan recertification date under the qualifying repayment plan.
Deferment or Forbearance Period.	§ 685.219(c)(2)(v)	Would allow months in which a borrower is in an identified determent or forbearance period to count as a month of payment for PSLF if the borrower certifies qualifying employment for the period of time covered by the deferment or forbearance.
Direct Consolidation Loan	§ 685.219(c)(3)	Would count those payments made on an eligible Direct Loan that the borrower later consolidates into a Direct Consolidation Loan as qualifying payments for PSLF.
Current Practice	§ 685.219(e)	Would reflect the Department's current practice and process for borrowers to document qualifying employment and request PSLF after making 120 qualifying payments.
Automation	§ 685.219(f)	Would establish that the Department would grant PSLF without an application if the Department has sufficient information to determine eligibility without an application. The Department would attempt to determine if the borrower was working for a qualifying employer at the time the payment was made. If the Department determines the borrower is eligible for PSLF, the Department would notify the borrower and forgive the remaining balance. If the borrower is ineligible for PSLF, the Department would notify the borrower, resume loan repayment obligation, and grant forbearance for the time spent in forbearance.
Reconsideration Process	§ 685.219(h)	Would formalize a reconsideration process for PSLF applications who were denied or disagree with the Department's determination regarding the number of qualifying payments or months of qualifying employment. Borrowers would have 90 days from application denial to request consideration and 180 days from the effective date of the regulation to request reconsideration if denied prior to the effective date of these final regulations.
Qualified Payment During Deferment or Forbearance.	§ 685.219(h)(6)	Would count time toward PSLF for a borrower who postponed monthly payments under a deferment or forbearance that would not lead to a qualifying payment. During the forbearance or deferment period, the borrower must have been employed full-time at a qualifying employer and then make an additional payment or payments equal to or greater than the amount the borrower would have paid at the time of a qualifying repayment plan.
Federal Family Education Loans (FFEL).	§ 682.414(b)(4)	Would require FFEL Program guaranty agencies to report detailed information related to deferments, forbearances, repayment plans, delinquency, and contact information on any FFEL.
		Interest Capitalization
When Entering Repayment	§ 685.202(b)(2)	Would remove section that provides that, for Direct Unsubsidized Loans, Direct Unsubsidized Consolidation Loans that qualify for a grace period under the regulations that were in effect for consolidation applications received before July 1, 2006, and for Direct PLUS Loans, or Direct Subsidized Loans for which the first disbursement is made on or after July 1, 2012, and before July 1, 2014, the Secretary may capitalize the unpaid interest that accrues on the loan when the borrower enters repayment.
During Forbearance	§ 685.202(b)(3)	Would remove provision that provides that the Secretary capitalizes interest that accrues on Direct Loans during periods of forbearance.
Under Alternative Repayment or ICR Plan.	§ 685.202(b)(4)	Would remove section that provides that, subject to some exceptions, the Secretary annually capitalizes unpaid interest when a borrower is paying under the alternative repayment plan or the income-contingent repayment plan described in § 685.209(b) and the borrower's scheduled payments do not cover the interest that has accrued on the loan.

Provision	Reg section	Description of provision
Upon Loan Default	§ 685.202(b)(5)	Would remove section that provides that the Secretary may capitalize unpaid interest when a borrower defaults on a loan.
When Leaving PAYE Plan	§ 685.209(a)(2)(iv)(A)(2)	Would remove section that provides that accrued interest is capitalized at the time a borrower chooses to leave PAYE repayment plan.
Under PAYE Plan	§ 685.209(a)(2)(iv)(B)	Would remove section that limits the amount of accrued interest capitalized under § 685.209(a)(2)(iv)(A)(1) to 10 percent of the original principal balance at the time the borrower entered repayment under PAYE repayment plan, and that, after the amount of accrued interest reaches that limit, interest continues to accrue, but is not capitalized while the borrower remains on PAYE repayment plan.
When Leaving REPAYE Plan	§ 685.209(c)(2)(iv)	Would remove section that provides that any unpaid accrued interest is capitalized at the time a borrower leaves REPAYE plan.
Total and Permanent Disability Discharge		
Certification and SSA Documentation.	§ 674.61(b)(2)(iv), § 682.402(c)(2)(iv), § 685.213(b)(2).	Would add language to provide that, in addition to an MD or DO, a Total and Permanent Disability (TPD) discharge application may be certified by an NP, a PA licensed by a State, or a licensed certified psychologist at the independent practice levels. Would expand the types of SSA documentation that may qualify a borrower for a TPD discharge to include an SSA Benefit Planning Query or other SSA documentation deemed acceptable by the Secretary; in addition to SSA documentation indicating that a borrower qualifies for SSDI or SSI benefits with a next scheduled disability review in 5 years to 7 years, a borrower would qualify for a TPD discharge based on SSA documentation indicating that the borrower— • Qualifies for SSDI or SSI benefits with a next scheduled disability review within 3 years, and the borrower's eligibility for disability benefits in 3-year review category has been renewed at least once; • Has a disability onset date for SSDI or SSI of at least 5 years prior or has been receiving SSDI or SSI benefits for at least 5 years prior to application for TPD; • Qualifies for SSA compassionate allowance program; or • Is currently receiving SSA retirement benefits and met any of the above requirements prior to qualifying for SSA retirement benefits.
Certification Conforming Changes.	§ 674.61(b), § 682.402(c), § 685.213(b).	Would add conforming changes to Perkins, FFEL, and Direct Loan regulations identifying the additional medical professionals who would be authorized to certify a TPD discharge application, and the additional SSA documentation that would be acceptable for a TPD discharge.
Reinstatement Requirements	§ 674.61(b)(6)(i), § 682.402(c)(6), § 685.213(b)(7)(i).	Would remove existing reinstatement requirements, except for provision that provides that a borrower's loan is reinstated if borrower receives a new TEACH Grant or a new Title IV loan within 3 years of date the TPD discharge was granted.
Reinstatement Notification	§ 674.61(b)(6)(iii), § 682.402(c)(6)(iii), § 685.213(b)(7)(iii).	Would revise language regarding notification of reinstatement to borrowers; provides that notice would explain to the borrower that first payment due date following reinstatement would be no earlier than 90 days after date of the notification of reinstatement, instead of no earlier than 60 days.
Borrower Responsibilities	§ 674.61(b)(7), § 682.402(c)(7), § 685.213(b)(8).	Would remove provisions that describe a borrower's responsibilities after receiving a total and permanent disability discharge.
VA or SSA Documentation	§ 685.213(d)	Would add language that provides that the Secretary would grant a TPD discharge without an application if the Secretary obtains appropriate documentation from the Department of Veterans Affairs (VA) or SSA.
Closed School Discharge		
Application Requirements	§ 685.214	Would remove separate closed school discharge application requirements for Direct Loans disbursed on or after July 1, 2020, and Direct Loans disbursed before July 1, 2020, that appear in current §§ 685.214(c), (d)(1), (f) and (g).
Application Completion	§ 674.33(g)(4) and § 685.214(d)(1).	Would codify current practice by adding language that provides that the borrower must submit a completed closed school discharge application to the Secretary and that factual assertions in the application must be true and made by the borrower under penalty of perjury.
Application Extension	§ 674.33(g)(8)(v), § 682.402(d)(6)(ii)(H), § 685.214(g)(4).	Would extend the time period that a borrower has to submit a closed school discharge application before the forbearance period expires to within 90 days of the Secretary or other loan holder providing the discharge application to the borrower. Under § 685.214(g)(4), if the Secretary resumes collection on Direct Loan after the 90 days the Secretary would not capitalize unpaid interest that accrued on the loan during the period of suspension of collection activity that exists in current § 685.214(f)(4) and (g)(4).

Provision	Reg section	Description of provision
School Closure Date	§ 674.33(g)(1)(ii)(A), § 682.402(d)(1)(ii)(A), § 685.214(a)(2)(i).	Would specify that, for purposes of a closed school discharge, a school's closure date is the earlier of the date that school ceases to provide educational instruction in most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when school had ceased to provide educational instruction for most of its students.
Definition of Program	§ 674.33(g)(1)(ii)(D), § 682.402(d)(1)(ii)(D), § 685.214(a)(2)(iii).	Would add definition of ''program'' for purposes of determining school's closure date as credential defined by level and Classification of Instructional Program (CIP) code in which a student is enrolled; under the proposed definition, the Secretary may define a borrower's program as multiple levels or CIP codes if: • The enrollment occurred at same institution in closely proximate periods; • The school granted a credential in a program while the student was enrolled in a different program; or • The programs were presented as necessary for borrowers to complete to succeed in relevant field of employment.
Discharge for Teach-Out	§ 674.33(g)(3)(i)(B), § 682.402(d)(8)(i)(B), § 685.214(c)(1).	Would add language to provide that the Secretary (and a guaranty agency, in the case of a FFEL loan) may discharge a loan without an application for an eligible borrower based on information in the Secretary or guaranty agency's possession if the borrower did not complete an institutional teach-out plan implemented by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.
Borrower Does Not Re-Enroll	§ 674.33(g)(3)(ii), § 682.402(d)(8)(ii), § 685.214(c)(1).	Would remove limitation that a borrower may only qualify for a closed school discharge without an application if the borrower does not re-enroll in an eligible Title IV school within 3 years of the school's closure date. Instead, would provide a discharge automatically if a borrower within 1 year of the school's closure date unless the borrower accepts and completes an approved teach-out agreement.
Teach-Out Plan on Application	§ 674.33(g)(4)(i)(C), § 682.402(d)(3)(iii), § 685.214(d)(1)(i)(C).	Would maintain requirement that a borrower state on the closed school discharge application that the borrower did not complete an eligible institutional teach-out plan performed by the school or a teach-out agreement at another school and would remove requirement that the borrower state that they did not complete a comparable program of study at another school.
Discharge For Not Completing Teach-Out Plan.	§ 674.33(g)(3)(ii), § 682.402(d)(8)(ii), § 685.214(c)(2).	Would add language that provides if a borrower accepts but does not complete an institutional teach-out plan implemented by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, then the Secretary would discharge the loan within one year of the borrower's last date of attendance in the teach-out program.
Discharge for Borrowers 180 Days Before Closure.	§ 674.33(g)(4)(i)(B), § 682.402(d)(1)(i), § 685.214(d)(1)(i)(A).	Would add language to standardize the time frame for closed school discharge eligibility to allow borrowers who withdrew from the school not more than 180 days before the school closed to qualify.
List of Exceptional Circumstances.	§ 674.33(g)(9), § 682.402(d)(9), § 685.214(h).	Would expand non-exhaustive list of exceptional circumstances that would justify the Secretary extending the 180-day time frame. The expanded list of exceptional circumstances would include, but not be limited to: • Revocation or withdrawal by an accrediting agency of school's institutional accreditation; • Placement of school on probation, issuance of a show-cause order, or an equivalent status by the institution's accrediting agency for failing to meet one or more of the agency's standards; • Revocation or withdrawal by State authorization or licensing authority to operate or to award academic credentials in the State; • Termination by the Department of school's participation in a Title IV, HEA program; • A finding by a State or Federal government agency that school violated State or Federal law related to education or services to students; • A State or Federal court judgment that a school violated State or Federal law related to education or services to students; • The teach-out of student's educational program exceeds 180-day look back period for a closed school discharge; • The school responsible for teach-out of student's educational program fails to perform the material terms of teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study; • The school discontinued a significant share of its academic programs; • The school permanently closed all or most of its in-person locations while maintaining online programs; or • The Department placed the school on heightened cash monitoring payment method as defined in section 668.162(d)(2).

Provision	Reg section	Description of provision
Pre-Dispute Arbitration		
Complaint Through Internal Dispute Process.	§ 685.300(d)	Would prohibit institutions, as a condition of participating in the Direct Loan program, from requiring students to pursue a complaint based on a borrower defense claim through an internal dispute process before presenting it to an accreditor or relevant government agency.
Relying on Pre-Dispute Arbitration Agreement with Respect to a Class Action.	§ 685.300(e)	Would prohibit institutions from relying on a pre-dispute arbitration agreement, or any other pre-dispute agreement with a student who obtained or benefitted from a Direct Loan, in any aspect of a class action related to a borrower defense claim, until presiding court rules that case cannot proceed as a class action. Would include a non-exhaustive list of what would constitute reliance on a pre-dispute arbitration agreement with respect to a class action, including seeking dismissal, deferral, or stay of a class action; excluding a person or persons from joining a class action; avoiding discovery; and/or filing an arbitration claim. Would add provisions regarding class action bans being included in any agreement with a student who receives a Direct Loan to attend the school or for whom a Direct PLUS Loan was obtained.
Arbitrate Borrower Defense Claim and List of What Constitutes Reliance.	§ 685.300(f)	Would require an institution, as part of the PPA, to agree it would not enter into a pre-dispute arbitration agreement to arbitrate a borrower defense claim or rely in any way on a pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim. Would include a non-exhaustive list of what would constitute reliance on a pre-dispute arbitration agreement, including seeking dismissal, deferral, or stay of a judicial action; avoiding discovery; and/or filing an arbitration claim. Would add provisions relating to notices and the terms of the pre-dispute arbitration agreements be included in any agreement with a student who receives a Direct Loan to attend the school or for whom a Direct PLUS Loan was obtained.
Arbitral and Judicial Records	§ 685.300(g), § 685.300(h)	Would require institutions to submit certain arbitral records and judicial records connected with any borrower defense claim filed against the school to the Secretary by certain deadlines.
Definitions	§ 685.300(i)	Would add general definitions section that includes a revised definition of ''borrower defense claims'' that maintains congruence with definitions elsewhere in the Title IV regulations.

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).

3. Discussion of Costs and Benefits

The proposed regulations are broadly intended to provide benefits to struggling borrowers by improving the administration of specific aspects of Federal student loan programs. These are borrowers who have difficulty keeping up with their payments, often ending up in forbearance, delinquency, or default, and as a result, see their balances grow through interest accrual and capitalization. Borrowers often struggle to manage their student loan debt due, in part, to acts or omissions by the institution of higher education they attended, a category that includes closed schools and schools that engage in the types of behaviors that can lead to approved borrower defense claims.

The Department believes that these proposed regulations will provide critical support to underserved borrowers. For instance, Black borrowers are disproportionately likely to face repayment difficulties and growing balances. Within recent cohorts, Black college graduates faced a likelihood of default that was five times larger than that of white borrowers.[35] Black borrowers enter repayment after earning a bachelor's degree with higher debt than borrowers in other racial groups, and also continue to see their balances increase rather than fall.[36]

Family income, college completion status, and the type of college a student borrowed to attend are additional factors that relate to repayment difficulties. One study finds that students who borrowed to attend two-year for-profit colleges were 26 percent more likely to default than those who borrowed at four-year public colleges, and that family income is a strong predictor of default risk.[37] Using data from the College Scorecard, a different analysis finds that across all institution types, undergraduate noncompleters have substantially higher default rates compared to those who completed a degree or credential.[38] Borrowers in these groups also spend more time with their loans in forbearance and are more likely to see their balances increase after entering repayment.[39]

The remainder of this subsection of the RIA summarizes the conclusions and information which the Department relied on, such as technical studies, assumptions, data, and methodologies, to develop this regulation.

3.1 Borrower Defense

These proposed regulations seek to improve the process for adjudicating borrower defense claims and for

[35] Scott-Clayton, J. (2018, January 10). The looming student loan default crisis is worse than we thought. Brookings Institution Evidence Speaks Report, vol. 2 #34. Retrieved from: *https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/.*

[36] Scott-Clayton, J. (2016, October 10). Black-white disparity in student loan debt more than triples after graduation. Brookings Institution Evidence Speaks Report, vol. 2 #3. Retrieved from: *https://www.brookings.edu/wp-content/uploads/2016/10/es_20161020_scott-clayton_evidence_speaks.pdf.*

[37] Hillman, N.W. (2014). College on credit: A multilevel analysis of student loan default. *The Review of Higher Education,* 37(2), 169–195.

[38] Itzkowitz, M. (2018, August 8). Want More Students To Pay Down Their Loans? Help Them Graduate. Third Way report. Retrieved from: *http://thirdway.imgix.net/pdfs/want-more-students-to-pay-down-their-loans-help-them-graduate.pdf.*

[39] Department analysis of the 2004/2009 Beginning Postsecondary Students Study, estimated via PowerStats (table references: ivbztb and qobjsb).

recouping from institutions the cost of discharges associated with approved claims. The Department anticipates that these proposed regulations would have many benefits for borrowers, as well as some reduction of burden for institutions of higher education. In total, the Department believes the expected increase in borrower defense discharges and the expected increase in recoupment, as compared with the 2019 regulations, would deter behavior that could form the basis for a borrower defense claim and ensure more borrowers are able to access a loan discharge, as provided for in the HEA.

The Department's proposal would establish a uniform Federal standard for initial adjudication of borrower defense claims, regardless of when a loan was disbursed, which would streamline administration of the borrower defense regulations and increase protections for students. This would ensure that all borrower defense claims could be adjudicated under the same standard. However, institutions would not be subject to recoupment actions for applications that are granted based upon this regulation that would not have been approved under the standards of the 1994, 2016, or 2019 regulations. Nor would institutions be subject to a recoupment amount greater than what they would have faced under the standards of the 1994, 2016, or 2019 regulations, as applicable. A uniform standard also would significantly reduce the time necessary to determine eligibility and relief for borrower defense claims, ensuring that borrowers would receive faster determinations. The use of a uniform Federal standard for initial adjudication would also ensure all borrowers receive consistent review, unlike current rules that outline different requirements depending on when a loan was disbursed.

The Federal standard would provide a clearer path for approval of borrower defense claims while still limiting approval to circumstances where the Department determines that serious improper behavior occurred. We propose to add aggressive recruitment as grounds for a borrower defense to repayment. The Department is adding this category based upon its experience in administering the borrower defense regulation and because the Department is concerned about instances in which aggressive and deceptive recruitment tactics have prevented a borrower from making an informed choice. The proposed language would also clarify that if a recruiter engages in these tactics but then provides accurate written disclosures, the latter cannot undo the actions of the former. We also propose to restore the categories of breach of contract and judgment as grounds for a borrower defense claim, which were included in the 2016 regulation but removed in the 2019 regulation. We have also expanded the category of judgment to include final Department actions against an institution that could give rise to a borrower defense claim. This includes actions such as a final program review determination that finds an institution has engaged in misrepresentations. To clearly delineate that omission of fact is a form of misrepresentation we have listed it separately.

The regulations also propose clearer protections for borrowers while their cases are under consideration by Department officials by placing a borrower's loan in forbearance or stopping collections activity would stop while the case is being adjudicated. Interest accumulation would cease immediately in the case of a group claim or after 180 days for an individual claim. Individual claims would be adjudicated within 3 years from the receipt of a complete application. Group claims would be adjudicated within 2 years from the receipt of a complete application. Previously, there was no timeline for adjudicating borrower defense claims. As a result, many borrowers who filed claims have found themselves waiting for years to have their claims adjudicated; of nearly 81,000 claims submitted in 2017, for instance, more than 15,000 (nearly one in five) remaining pending. More than one in five claims submitted in 2018 and nearly one in four claims submitted in 2019 also remain pending.[40] In late June 2022, the Department announced it had reached a settlement agreement with the plaintiffs in *Sweet* v. *Cardona,* a lawsuit challenging the Department's timeliness in rendering decisions on borrower defense claims, as well as other matters. Because that settlement process is still underway any effects of that agreement are not contemplated in this regulation. The Department's failure to render a decision by the end of the timeline would render the loans unenforceable. Loans in such a circumstance would not be viewed as a borrower defense claim so an institution would not face a recoupment action for the cost of those loans.

The Department has proposed to include a group process for borrower defense to repayment claims. This process would allow for the use of existing information within the Department's records, such as prior Secretarial actions, which were limited by the 2019 regulations. This would ensure a more efficient process. The process would also invite State requestors to provide evidence that could lead the Department to initiate a group claim, which would provide critical assistance for the Department in investigating and assessing borrower defense claims. The Department estimates that as much as 75 percent of borrower defense volume associated with private for-profit colleges could be associated with group claims, with the rates in public and private nonprofit sectors a minority of volume. While the staff time required to investigate the evidence behind a group claim could be longer than what is needed for an individual claim, applying the same adjudication result to a group of borrowers would result in an overall reduction in staff time. Approving group claims would also result in the filing of fewer individual claims, as the approved group claims would result in discharges for borrowers who have not yet applied, eliminating the need for such borrowers to submit applications.

The Department proposes to presume that a borrower with an approved claim is eligible for a full discharge and specify limited instances in which the Department could rebut that presumption. All borrowers with approved claims to date have been approved for a full discharge. However, as the Department continues to review and adjudicate claims, there may be circumstances where a claim is approved, and a partial discharge is warranted. The Department believes a presumption that borrowers would get a full discharge would help to ease the burden on both the borrower and the Department by limiting the cases in which it must determine the relief amount to a subset of claims.

If a claim is not approved, or is not approved for full discharge, a reconsideration process would allow a borrower to submit new evidence that was not available in the initial application. This process would afford borrowers an opportunity to be considered under a State law standard if a decision under the Federal standard does not result in an approved claim for a full discharge.

By increasing relief to borrowers, improving the borrower defense standard, restoring a group process, establishing the presumption of full relief, and providing a reconsideration process, these proposed regulations would result in additional transfers from the Department to borrowers, or from institutions to borrowers when the

[40] Department analysis of data retrieved from the CEMS Borrower Defense System in June 2022. Values were rounded to the nearest 10.

Department successfully recovers from the institutions. All borrowers would fall under a single, more expansive rule and would be able to receive relief more quickly and efficiently.

The process that the Department proposes would also afford institutions an appropriate opportunity to respond. The Department's allowance for group processes in the proposed regulations means that institutions would need to respond only once regarding a group claim, instead of sending responses to a potentially large number of individual claims. While institutions would be expected to provide a response within 90 days to claims, the separation of approval and recovery processes means that institutions would not be expected to engage in extended contestation of claims for which the Department decides not to pursue recoupment.

In the past, the Department has seen institutions attempt to increase enrollment by resorting to conduct that later leads to borrower defense approvals. For instance, institutions aggressively marketed inflated job placement rates to encourage students to enroll in their institution. Holding institutions accountable for this type of misrepresentation, as well as adding in aggressive recruitment as a type of conduct that can lead to approved borrower defense claims, would benefit institutions that do not engage in these tactics. This is because approved borrower defense claims may deter institutions from providing students with inaccurate information and from using aggressive recruitment tactics, helping institutions with better conduct and outcomes more successfully compete for enrollment.

The proposed rules provide for a process to recover the discharged amount from institutions after the adjudication of borrower defense cases. Recovery from institutions is important to offset costs to the Federal government and taxpayers from approved borrower defense claims. It also holds institutions accountable for past behavior and would help to deter future practices that could form the basis for additional borrower defense claims. The Department anticipates that, by establishing a process for recoupment from institutions and by providing for a faster adjudication process, it would be able to recover more funds from institutions because those schools would be less likely to have closed by the time liabilities are assessed than is the case under current regulations.

The Department also believes that a stronger and more expansive borrower defense process would result in positive changes in institutional behavior. For instance, as past title IV policy changes to increase accountability, such as the cohort default rate measure and the 90/10 rule, have demonstrated, institutions are likely to change their practices to respond and conform to new regulations. Accordingly, we expect that, over time, institutions would engage less frequently in acts or omissions that could give rise to a borrower defense claim.

Costs of the Regulatory Changes

As detailed in the Net Budget Impact section, the proposed changes to borrower defense are expected to reduce transfers from affected borrowers to the Federal government as their obligation to repay loans is discharged. We estimate this transfer to have an annualized net budget impact of $2.6 billion and $2.3 billion at 7 percent and 3 percent discount rates, respectively. This would be partially reimbursed by affected institutions with the annualized recoveries estimated at $51 and $49 million at 7 percent and 3 percent discount rates. The Department anticipates that all costs are transfers, other than minimal costs related to implementation. If the Department recoups from institutions the forgiven dollars, they are transfer from institutions to borrowers. Otherwise, they are transfers from Federal budget to borrowers. Details about these estimates are in the Net Budget Impacts section of this document, and the Department invites further feedback on the estimates.

In the proposed Federal standard for defense to repayment claims, a claim could be brought on any of the following five grounds: substantial misrepresentation, substantial omission of fact, breach of contract, aggressive recruitment, and a State or Federal judgment or final Department action against an institution that could give rise to a borrower defense claim. The first two grounds incorporate and expand 34 CFR part 668, subpart F, which currently defines three categories of misrepresentation, relating to the nature of education programs, the nature of financial charges, and the employability of graduates. Aggressive recruitment is added as a new ground for a borrower defense to repayment application and is outlined in 34 CFR part 668, subpart R. The proposed Federal standard would be applied to all borrowers regardless of when their loans were disbursed. Borrower defense to repayment applications that are currently awaiting adjudication upon the effective date of the regulations would be adjudicated based on the proposed regulations. Since the proposed regulations expanded on the categories in which borrowers may be eligible for a borrower defense claim, these pending cases could be approved where they otherwise may not be under existing regulations. In addition, the Department expects an increase in the number of borrower defense to repayment applications when the proposed regulations would go into effect due to the expanded coverage of types of institutional misconduct. However, the Department also expects a deterrent effect from the proposed regulations as institutions adjust their behavior according to the proposed rules.

The proposal to expand group borrower defense claims includes a process initiated by State requestors and a process based on prior Secretarial final actions, as well as general ability for the Secretary to form a group. With these changes, the Department expects that individuals who have a valid borrower defense to repayment claim they could assert, but who were previously unaware of their eligibility or unfamiliar with the process, could become members of a group claim. The Department would presume that a borrower with an approved claim is eligible for a full discharge, except in limited situations. All borrowers with approved claims to date have been approved for a full discharge.

The proposed reconsideration process could increase costs in the form of burden for the Department, although these costs are likely to be small. In general, there are three possible outcomes for a borrower defense to repayment application: denial, approval with partial discharge, and approval with full discharge. The Department expects a percentage of borrowers whose borrower defense applications are denied or approved with partial discharge to seek reconsideration, which would increase administrative costs and time compared to previous regulations that do not have reconsideration processes. In addition, cases brought by State requestors may also seek reconsideration, provided that the State requestor specifies the exact State standard that applies and why they think it would result in a different decision.

While these proposed regulations would result in higher short-term costs for the Federal government in the form of transfers to borrowers, the Department expects that some of these payments would be recovered from institutions over time. While the Department would likely be unable to recover from institutions that are no longer operating when borrower defense

claims have been adjudicated, the proposed regulations would increase the likelihood that the Department could recover from relevant institutions before they are closed because (1) group claims against an institution would increase the expected benefit of recovering from the institution since it would result in large amounts of discharge if approved; (2) the Department is expected to respond to group claims within 2 years of a materially complete application, which would increase the possibility that the institution is still in operation; and (3) the streamlined process of borrower defense claims would allow borrowers, State requestors, and the Department to act more quickly on borrower defense applications. As a result, the costs in the form of transfers to borrowers that would result from the proposed regulations on borrower defense to repayment could be smaller for the Federal government in the long term as it receives transfers from institutions.

Benefits of the Regulatory Changes

The proposed regulations would result in administrative cost savings for the Department, efficiencies in responding to claims for institutions, and benefits to borrowers. In addition, borrowers may benefit from a deterrent effect of these proposed regulations.

Borrowers who would benefit the most from these proposed regulations are relatively disadvantaged. To date, borrower defense applicants have disproportionately attended schools in the proprietary sector. Of more than 487,000 borrower defense claims received since 2015, more than 367,000—about three out of four borrower defense applicants—attended proprietary institutions. Meanwhile, just 5 percent of applicants attended public institutions.[41] These numbers understate the share of borrowers who attended private for-profit institutions because the data reflect the sector of an institution at the time a borrower applied, not when they attended. That means a borrower who attended a college when it was a proprietary institution but applied after it became a nonprofit would be coded as an application from a nonprofit institution.

Borrowers who received Pell Grants while enrolled and borrowers who struggle to repay their loans and default would benefit from these proposed regulations. Eighty-two percent of borrower defense applicants received a Pell Grant indicating they were low-income while in college, and at least 22 percent of applicants are currently in default on their loans, consisting of approximately 95,000 borrowers.[42] This number does not include borrowers previously in default who have had their claims approved and discharged, but it does include some borrowers whose claims have been approved and are in the process of being discharged. As a result, it potentially understates the potential degree to which borrower defense applicants have been in default.

The proposed single Federal standard for initial adjudication, uniform borrower defense regulations, and a more streamlined process (such as presuming a full discharge) would reduce the staff time per borrower needed to adjudicate borrower defense applications. These savings would largely come from being able to apply consistent rules across all borrowers while still ensuring that each case receives a thorough and rigorous review to determine whether their claims should be approved or denied.

The proposed group process would significantly reduce the staff time required to investigate and adjudicate borrower defense cases on a per-borrower basis. The proposed regulations include two means by which the Department can pursue a group process. Specifically, a group process can be initiated by the Department based on either common evidence from cases being adjudicated or prior Secretarial final action, or a State may request that a group process be initiated.

When the Department initiates a group process, it would thus be considering the possibility of approval for tens of borrowers all at once, if not hundreds or thousands. While the scope of this work would require significantly more time than reviewing any one individual claim, it is far more efficient than on a per-borrower basis. In addition, the evidence available during group claims is expected to be more extensive than what the Department may possess for an individual claim. The process for group claims tied to prior final actions by the Secretary would be particularly efficient because the Department would draw upon prior work done by the agency, minimizing the amount of duplication in investigation that needs to occur. This would result in a significant saving of Department staff time and ensure faster adjudication for borrowers, as well as a straightforward process for subsequent recoupment. This proposed process is more efficient than how the Department has addressed borrower defense claims to date. For those claims, it has first worked to reach common findings—a process similar to what would be done to determine a group claim. But after reaching those common findings for approval, the Department then conducts reviews of individual claims to determine if the allegations provided by the borrower match the common findings. This results in a second step of claim review that has disqualified some borrowers who may have experienced the misconduct that led to approvals, but whose claims did not necessarily articulate those experiences. Such a secondary review would not be necessary in the proposed group process, though the Department would continue to review borrower eligibility to ensure findings are applied appropriately only to affected borrowers.

The use of group processes can also provide some efficiencies for institutions in the process of responding to claims. Institutions would have to respond to individual claims separately, which could require them to respond to hundreds if not thousands of separate claims from similarly situated borrowers. By contrast, a group approach would require institutions to offer only a single response back.

The proposed regulations could also result in significant benefits to borrowers who qualify for a borrower defense to repayment approval. In particular, it would help to reduce the burden of applying where the Department is able to identify eligible borrowers for relief on their loans but where some borrowers might not know they are eligible or how to access relief. These borrowers who are eligible for borrower defense discharges, but may not know how to access relief, are unlikely to have benefited from the education they received and may be distressed borrowers who are delinquent, in default, or have previously defaulted on their student loans. These loan repayment struggles create further barriers for borrowers' personal financial circumstances, but also add to the Department's administrative burden when there are borrowers in the system who are eligible for a discharge but instead are in default. The proposed regulation would allow more eligible borrowers access to relief through group claims, which would bring benefit to both borrowers and the Department.

The Department believes that the expansion of eligibility for borrower defense to repayment claims and the reintroduction of a rigorous group process would result in positive change

[41] Department analysis of data retrieved from the CEMS Borrower Defense System in June 2022. School Type is determined using the ''School Type'' field on each case in the system. Each value is rounded to the nearest 10.

[42] Data analysis of borrower defense applicants.

in institutional behaviors due to the deterrent effect. It would also benefit institutions that do not engage in conduct that leads to approved borrower defense claims. The Department has seen in the past that some institutions with poor outcomes have used fraudulent or misleading materials in marketing and recruitment to attract new students. This may place institutions that remain truthful about their outcomes at a competitive disadvantage in attracting and enrolling students. Curbing the conduct that leads to approved borrower defense claims thus helps institutions that never engaged in those behaviors in the first place. It is possible that in some limited circumstances tied to the worst behavior, the approval of borrower defense claims could result in the exit of an institution from the Federal financial aid programs. An institution that engages in problematic practices for years could face significant liabilities from approved borrower defense claims that they cannot afford. As with deterring institutions from engaging in misleading or other questionable marketing practices, having the institutions with the worst behaviors exit the Federal aid programs would provide benefits to all other institutions that are operating in more truthful and ethical manners.

3.2 False Certification Discharge

False certification discharges ensure that borrowers whose institutions falsely certified their eligibility for a Federal student loan are able to access relief on that debt. The Department decided in September 2019 that borrowers who took out loans after July 1, 2020, are ineligible for a false certification discharge if they were unable to provide an official high school transcript or diploma, and loans disbursed after July 1, 2020, are not eligible for disqualifying status discharge as well. After these regulatory changes, we observed a sharp decline in the number of borrowers and total amounts of false certifications discharged in 2021. The number of borrowers who were granted false certification discharge was 400 in 2020 but was only 100 in 2021, and the total amount of false certification discharges was $4.8 million in 2020 but only $0.8 million in 2021, suggesting that borrowers were facing increased barriers to accessing false certification discharges to which they were entitled.

TABLE 1—FALSE CERTIFICATION DISCHARGES, BY CALENDAR YEAR

Calendar year	Borrowers	Amount ($ M)	Average per borrower ($ K)
2019	300	3.8	12.7
2020	400	4.8	12.0
2021	100	0.8	8.0
Total	800	9.4	11.8

The effects for borrowers could be significant. In 2020, prior to the new regulations, the discharge approval rate was about 7.3 percent, and the average amount discharged per application was $9,310.

TABLE 2—NUMBER OF FALSE CERTIFICATION APPROVALS AND DISCHARGE AMOUNTS, BY REASON

	Discharge type	7/1/19 to 6/30/20	7/1/20 to 6/30/21	2020 calendar year estimated	2020 subtotal
Applications Approved	FC—ATB	520	145	330	470
	FC—DQS	30	10	30	
	FC—UNS	200	30	120	
Applications Denied	FC—ATB	3500	1510	2510	6000
	FC—DQS	1500	770	1130	
	FC—UNS	3530	1190	2360	
Loans Discharged	FC—ATB	1170	250	710	980
	FC—DQS	50	40	50	
	FC—UNS	400	40	220	
Amount Discharged	FC—ATB	$5,764,280	$1,274,520	$3,519,400	$4,404,220
	FC—DQS	$219,130	$305,600	$262,370	
	FC—UNS	$1,161,290	$83,610	$622,450	
Average amount discharged per application.					$9,310
Average amount discharged per loan.					$4,510
Average approve rate					7.3%

Data source: Federal Student Aid (FSA)
Note: 2020 calendar year is estimated with the average of 2020 and 2021 fiscal years. ATB stands for the ability to benefit, DQS for disqualifying status, and UNS for unauthorized signature. All figures are rounded to the nearest 10.

To address the decline in borrower access to necessary discharges on their loans, and to ensure the regulations governing these discharges are streamlined and understandable to eligible borrowers, the Department proposes one set of regulatory standards to cover all false certification discharge claims.

The Department proposes a uniform standard that would improve borrower access to false certification discharges by clarifying that eligibility for the discharge begins at the time the loan

was originated, not at the time the loan was disbursed. Current regulations for Direct Loan and FFEL (FFEL) Program loans also contain separate requirements for loans first disbursed before July 1, 2020, and loans first disbursed on or after July 1, 2020, which confuse borrowers and create equity issues for borrowers who may struggle to navigate this complexity. This uniform standard would ensure that more borrowers have access to the proposed expanded eligibility and that they are not forced to navigate a complex and overlapping set of regulatory frameworks. As with the proposed borrower defense standard, we believe that this uniform standard would streamline the administration of the regulations and better protect students while reducing confusion among borrowers, institutions, servicers, and the Department.

The Department proposes to rescind the requirement that any borrower who falsely attests that they have a high school diploma or its equivalent does not qualify for a false certification discharge. This would ensure that borrowers can seek a discharge if they were coerced or deceived by their institution of higher education and as a result reported having a valid high school diploma or its equivalent when they in fact did not, further expanding access to false certification discharges.

The Department also proposes to specify that the Secretary may grant a false certification discharge, including without an application, if the institution falsified Satisfactory Academic Progress (SAP) for all loans. We would grant group discharges based on the falsification of SAP and the Department would establish the dates and borrowers affected. The discharge would only cover loans for those borrowers for the period covered by the falsification of SAP and does not discharge all the borrower's other loans or all loans at the institution. The Department is aware of problematic practices by institutions that have falsified SAP, which is a basic eligibility requirement for continued access to Title IV, HEA aid, and believes that this proposed addition would ensure that borrowers whose institutions falsely confirmed their eligibility through these practices have access to loan relief, and that institutions may be held accountable for their actions.

The Department proposes to remove the requirement that borrowers submit signature specimens when applying for discharge due to unauthorized loan, unauthorized payment, or identity theft, and replace the need that a borrower provides a judicial determination of identity theft with the ability to submit alternative evidence. This would expand access to false certification discharges by reducing the burden of documents-preparation on borrowers and simplifying the application process.

The Department's proposal would also establish a group process for awarding discharges to similarly situated borrowers. In part, this addition was in response to negotiators who noted that the Department has rarely utilized its authority to grant group false certification discharges. As a result, the Department believes that borrowers would receive more equitable and consistent treatment, because they would be able to access relief on their loans regardless of whether they applied, based on evidence the Department collects or has in its possession. A State attorney general or nonprofit legal services representative would be able to submit an application for a group false certification discharge to the Department. This would ensure a more efficient process than is typically available, whereby third-party requestors and other stakeholders would be able to contribute directly to the fact-finding process required before adjudicating the application. The group process, and associated improvements, would also help to significantly reduce staff time required to investigate and adjudicate individuals' applications when common facts and circumstances are present.

Costs of the Regulatory Changes

Increased accessibility of discharges may encourage more borrowers to file claims or may result in additional discharges as a result of borrowers' access to a group process. The Department expects an increase in the Federal government's expenditure and an increase in the time in processing the claims in the short term, but a minimal long-term cost. The Department anticipates the costs associated from these proposed changes will be transfer costs. The short-term increase in expenditures would come from the following proposed regulations:

The Department proposes to rescind the provision that any borrower who attests to having obtained a high school diploma or equivalent does not qualify for a false certification discharge on that basis. The Department is aware of numerous instances in which borrowers were forced or misled by their institution into attesting to holding a high school diploma, or into obtaining a diploma on false pretenses. In cases where such evidence is available, the Department believes the institution should be held accountable for its misconduct, and the borrower should be able to access a discharge of their eligible loans. This could lead to more borrowers applying and being granted loan discharges in the future.

The Department also proposes to remove the requirement that borrowers submit signature specimens and replaces the provision of a judicial determination of identity theft with alternative evidence. Similarly, the Department anticipates that removing this barrier would allow more eligible borrowers to apply without having their applications rejected, and may, therefore, increase the costs of approved false certification discharges.

Benefits of the Regulatory Changes

The proposed process, which would be more streamlined, would ease the administrative burden on the Department for the review of claims and for appeals of denials that are escalated for further review. Most importantly, the proposed process contemplates the benefits to the borrowers themselves who are entitled to discharges when their institution wrongfully saddles them with debt they are not eligible for and wastes their aid eligibility.

The Department also expects that there would be some behavioral impact as institutions respond to changes in the regulations and reduce their use of such predatory practices, since the Department could assess liabilities against the institution for the discharges. In addition, this deterrent of strengthening and streamlining these regulations is expected to offer some benefit to taxpayers. Therefore, the long-term transfer costs may be reduced.

Taken together, the proposed regulations would result in a more streamlined process, rescind limitations on borrower eligibility from current regulations, and remove and replace requirements, which are expected collectively to improve borrowers' accessibility to false certification discharge. The Department expects that these proposed rules would ensure more borrowers have access to relief. While this would increase costs to taxpayers through additional false certification discharges, the Department also anticipates that some of these costs would be recouped from the institutions responsible, and that these proposed rules would be more efficient.

3.3 PSLF

The Department proposes to clarify its regulations on PSLF to help borrowers better understand and access the program, particularly by simplifying the rules regarding what constitutes a qualifying payment, and to streamline

the Department's processing of the applications it receives for forgiveness. Overall, we anticipate that these proposed regulations would increase the amounts of Federal student loan forgiveness through PSLF.

The Department proposes to further clarify the types of employers whose employees can qualify for PSLF and to clarify the definition of full-time employment that meets the terms of the program to address inconsistencies in how different employers may consider full-time employment and in how non-tenured faculty are treated. While most of these changes are modest, we believe they would bring benefits to borrowers in the form of more consistent treatment. This may also provide additional clarity to employers, ensuring they can better understand the program and inform borrowers of their eligibility.

Where possible, the Department would seek to automate the process of identifying public servants and accounting for their time worked to ensure they automatically receive progress toward PSLF. For instance, the Department is working to implement data matches with other Federal agencies that would enable it to account for federal employees and service members. The benefit of these data matches for borrowers is increased access for those who would otherwise not have met the paperwork requirements, but who may be eligible for relief on their loans. The Department has also announced longer-term efforts to work with States and private nonprofit organizations to obtain data that would similarly allow for discharges without an application. We anticipate a significant percentage increase in the total amount of loans forgiven due to greater use of automation made possible by changes proposed in these regulations. Most borrowers employed by the Federal government would be able to receive PSLF benefits without submitting an application. We also expect that borrowers identified for forgiveness through these data matches would have information that is validated by government agencies, ensuring greater program integrity among a larger share of applicants who receive forgiveness.

Automation would also have considerable benefits, both for the Department and for borrowers, in terms of reducing the administrative burden. While there are initial costs associated with developing the automation, the future cost savings far outweigh the development costs. In 2021, the Department received 776,000 applications for employment certification and/or forgiveness, all of which needed to be evaluated individually. Prior to any data match, the Department was aware of approximately 110,000 Federal employees and 17,000 service members who had certified some employment toward PSLF and anticipates that many others could opt to certify employment in the future. Automating the consideration of those borrowers' employment and/or PSLF applications would reduce the investment of staff resources required to analyze PSLF applications.

The Department proposes to relax the requirements around loan payments to ensure more eligible borrowers have access to PSLF, partially addressing the low success rate of PSLF applications. Currently, the regulations governing qualifying payments are extremely rigid. Payments must be made on-time (within 15 days of the due date), or they do not count as qualifying payments. Payments also must be made in full, so payments off by only a few cents or payments that are made in more than one installment are disqualified. Additionally, some public servants have opted for deferments or forbearances available to borrowers who are working in public service jobs—such as for AmeriCorps and Peace Corps—without realizing those months would not qualify for PSLF. The Department believes simpler payment rules and counting some deferments and forbearances would significantly reduce confusion around the program. In addition, borrowers would significantly benefit by being able to make qualifying payments for prior deferment or forbearances where there was no qualifying payment. This change grants borrowers the ability to make up payments that did not previously qualify as well as not reset the clock toward consolidation.

These changes would increase costs to the government in the form of greater transfers to borrowers eligible for PSLF, as take-up of the benefit increases due to automation and as more borrowers become eligible for PSLF outside of the narrow constraints of the existing rules but consistent with the statutory purpose of the PSLF program. Borrowers who work in Federal agencies where data matching agreements are arranged will benefit as a higher fraction of eligible borrowers receive forgiveness and the burden in applying for benefits is reduced. All other things equal, among borrowers for whom receiving forgiveness becomes more likely, borrowers with higher debt levels, including some graduate borrowers, will experience greater amounts of loan forgiveness.

The Department also proposes to formalize a reconsideration process and establish a clear timeline by which borrowers must submit a reconsideration request. These refinements would streamline the application process and provide a clearer timeline to apply for PSLF or request a reconsideration. The Department anticipates that this reconsideration process would increase administrative burden for the agency and for borrowers, but that it would allow for a fairer and more equitable process to access PSLF where borrowers believe the Department has erred in its determination.

Costs of the Regulatory Changes

As detailed in the Net Budget Impact section, the proposed changes to PSLF are expected to reduce transfers from affected borrowers to the Federal government as their loans are forgiven. We estimate this transfer to have an annualized net budget impact of $3.0 billion and $2.8 billion at 7 percent and 3 percent discount rate, respectively. The Department anticipates most of these costs would be transfers as borrowers who are employed by a non-profit organization that provides non-governmental public services more easily access PSLF benefits. In particular, we expect that the expansion of eligibility, the inclusion of additional payments as qualifying payments, and increases in take-up facilitated by automating the benefit where it is possible to identify eligible borrowers through a data match would increase transfers from the government to eligible borrowers. The revised definitions of qualifying services are not anticipated to impact a significant number of borrowers but will provide greater clarity about eligibility.

Benefits of the Regulatory Changes

The Department anticipates several benefits based on these regulatory changes to PSLF. The Department seeks to reduce the burden of accessing PSLF benefits for borrowers who are employed by a non-profit organization that provides non-governmental public services and streamline the process to obtain these benefits. The Department received over 917,000 employment certification forms in 2019, certifying that borrowers are working toward forgiveness, and 825,000 employment certification forms in 2020. The Department also received 96,000 forgiveness applications in 2019 and 135,000 forgiveness applications in 2020 from borrowers who may believe they completed the requirements of the program to qualify for forgiveness.

Starting in late 2020, the combined form replaced the separate process of borrowers submitting employment certification forms and forgiveness applications. The Department received 130,000 combined forms in 2020 and 776,000 combined forms in 2021. Over the last few years, the Department has seen fewer submitted PSLF forms, with 1,013,000 forms submitted in 2019; 1,090,000 forms submitted in 2020; and 776,000 forms submitted in 2021. However, after the announcement of the Limited PSLF Waiver in October 2021 that temporarily waived some program requirements through the end of October 2023, the Department has seen significant growth in applications compared to earlier periods. Due to the implementation of an automated process for some eligible borrowers, we are anticipating a significant decrease in the number of applications received because an application would not need to be submitted if the Department has the necessary information to assess whether the borrower met the PSLF requirements during the automated process. Under this proposed process, a borrower would be notified if the borrower meets the requirements for loan forgiveness. After the borrower is notified, the Department would suspend collection and the remaining balance of principal and accrued interest would be forgiven.

By streamlining the PSLF process, the Department anticipates a reduction in the administrative burden and time savings for application processing. There would also be a burden reduction on qualifying employers as the employers would have a simpler time verifying what they are attesting to, such as the hours worked by the borrower.

We anticipate these regulations would impact numerous borrowers who would now qualify for PSLF under the clarified definitions of qualifying employment but previously did not qualify for PSLF. The updated list of deferments and forbearances are anticipated to benefit a significant number of borrowers who would otherwise not be able to consider those months toward forgiveness. A significant number of borrowers who would ordinarily have to apply for PSLF are anticipated to receive student loan forgiveness without submitting an application, namely military service members and Federal employee borrowers who would automatically receive credit toward PSLF using Federal data matches.

3.4 Interest Capitalization

Interest capitalization occurs when any unpaid interest is added to the principal loan amount of a Federal student loan, further increasing the outstanding principal balance. Interest is then charged on the higher principal balance, and the overall cost of repaying the loan increases. Capitalization can occur when a borrower changes repayment plans, as well as after periods of deferment or forbearance.

The Department is concerned that interest capitalization can adversely affect student loan borrowers by significantly increasing what they owe on their loans, which may extend the time it takes to repay them. Additionally, borrowers may not fully understand the impact of interest capitalization. While there are circumstances where interest capitalization is required by statute, such as when borrowers exit a deferment period and when they leave Income-Based Repayment plans, the Department believes that it is important to eliminate capitalization events where it has the authority to do so. Borrower misunderstanding of interest accrual and capitalization and resulting confusion about the accuracy of one's loan balance contributed to the most frequent type of borrower complaint received by the Department.[43] Qualitative evidence from focus groups with struggling borrowers also has shown that borrowers find capitalized interest to be complex and burdensome, noting that many borrowers do not realize which decisions result in capitalization and feel overwhelmed and frustrated by growing balances on loans.[44] A recent study suggests that among borrowers enter an income-driven repayment plan after becoming delinquent on their payments, most fail to recertify and, as a result, have their interest capitalize.[45]

Data from the 2003–04 Beginning Postsecondary Students Study (BPS), which tracked students from entry in 2003–04 through 2009 with an additional administrative match through 2015, sheds greater light on the distributional consequences of interest capitalization and the forbearance events that are a source of capitalization. The statistics that follow all concern students who first entered college in 2003–04 and borrowed a Federal student loan at some point within 12 years of entry (as of 2015). Among those students, 43 percent had a larger amount of principal balance outstanding in 2015 compared to what they originally borrowed.

Among borrowers who did not consolidate their loans (*e.g.,* the group for whom the growth in balance can be attributed to interest capitalization), 27 percent had a higher principal balance as seen in Table 3. Borrowers who are Black, received a Pell Grant, and borrowers from low-income families are overrepresented in this group. Specifically, 52 percent of Black borrowers had a higher principal balance compared to 22 percent of White borrowers. There are also differences based upon income, with 33 percent of Pell Grant recipients (versus 14 percent of non-recipients), and 34 percent of borrowers from families with income at or below the federal poverty line at college entry (versus 22 percent of borrowers with income at least 2.5 times the federal poverty line) having principal balances that exceed their original amount borrowed. Gaps also exist by attainment. Among borrowers who did not consolidate their loans, those who did not complete any degree or credential were 60 percent more likely to see their principal balance grow than bachelor's degree recipients.[46]

While the BPS data cannot break down the exact sources of interest capitalization, this analysis indicates that borrowers in the groups most likely to experience capitalization also are more likely to experience periods in forbearance, which is one cause of interest capitalization. Nearly 80 percent of Black or African-American student loan borrowers in the BPS sample had a forbearance at some point within 12 years of first enrollment as seen in Table 3 below. Among American Indian or Alaska Native or Hispanic or Latino borrowers, the rates of forbearance usage were 64 percent and 59 percent respectively. By contrast, about half of white students used a forbearance.[47]

The results are similar by Pell Grant receipt and family income at college entry. Nearly two-thirds of Pell Grant recipients who also borrowed had a

[43] Report by the FSA Ombudsman, in Federal Student Aid. (2019, November 15). *Annual Report FY* 2019. *https://www2.ed.gov/about/reports/annual/2019report/fsa-report.pdf.*

[44] Delisle, J. & Holt, A. (2015, March). *Why student loans are different: Findings from six focus groups of student loan borrowers.* New America Foundation. Retrieved from: *https://files.eric.ed.gov/fulltext/ED558774.pdf*; Pew Charitable Trusts (2020, May). Borrowers Discuss the Challenges of Student Loan Repayment. *https://www.pewtrusts.org/-/media/assets/2020/05/studentloan_focusgroup_report.pdf.*

[45] Herbst, D. (forthcoming.) ''The Impact of Income-Driven Repayment on Student Borrower Outcomes.'' *American Economic Journal: Applied Economics.* Retrieved from: *https://djh1202.github.io/website/IDR.pdf.*

[46] Department analysis of the 2004/2009 Beginning Postsecondary Students Study, estimated via PowerStats (table reference: qobjsb).

[47] Department analysis of the 2004/2009 Beginning Postsecondary Students Study, estimated via PowerStats (table reference: ivbztb).

forbearance at some point compared to just 40 percent of non-Pell students. Among borrowers from families with income at or below the federal poverty line in 2003–04, 64 percent had a forbearance at some point compared with 46 percent of borrowers from families with income at least 2.5 times the federal poverty line at college entry. Finally, 62 percent of borrowers who did not complete a degree or credential had a forbearance, compared with 46 percent of those who earned a bachelor's degree.

Data from the same study also show that the groups of borrowers that are more likely to have had a forbearance also had more total forbearances within 12 years of entering college. On average, Black or African American borrowers who had at least one forbearance had nearly six forbearances compared to four for white borrowers as seen in Table 3. Similarly, borrowers who received a Pell Grant and had a forbearance had an average of nearly five forbearances, compared to just over three for non-Pell students.[48] This means borrowers in these groups would be subject to more capitalizing events than their peers.

TABLE 3—PRINCIPAL BALANCE GROWTH AND FORBEARANCE USAGE AMONG 2003–04 COLLEGE ENTRANTS WHO BORROWED

Borrower type	Share of borrowers whose principal balance exceeds original amount borrowed within 12 years of entry (among those who did not consolidate) (%)	Share of borrowers who had a forbearance at any time within 12 years of entry (%)	Average number of forbearances among borrowers who ever had a forbearance within 12 years of entry
All	27	56	4.5
Black or African American	52	79	5.7
White	22	50	4.0
Hispanic or Latino	25	59	4.5
American Indian or Alaska Native	***	64	3.1
Asian or Native Hawaiian/other Pacific Islander	13	39	3.0
Received a Pell Grant	33	64	4.8
Never received a Pell Grant	14	41	3.4
Family income at or below 100 FPL in 2003–04	34	64	5.0
Family income 101–250 FPL in 2003–04	31	63	4.7
Family income above 250 FPL in 2003–04	22	48	3.9
No degree or credential as of 2009	31	62	4.8
Earned undergraduate certificate or associate degree as of 2009	30	61	4.6
Earned bachelor's degree as of 2009	19	46	3.8

Source: Beginning Postsecondary Students Study, estimated via PowerStats.

Capitalizing events present a significant burden to borrowers as they see their balances quickly rise with interest capitalization that is compounded over time. The events described in the table below are circumstances in which the Department proposes to eliminate interest capitalization.

CAPITALIZATION EVENTS BEING ELIMINATED

Borrower who repaying under the PAYE plan fails to recertify income, or chooses to leave the plan.
Borrower who is repaying under the REPAYE plan leaves the plan.
Negative Amortization Under the alternative repayment plan or the ICR plan.
Exiting Forbearance.
Entering Repayment.
Default.

Costs of the Regulatory Changes

As detailed in the Net Budget Impact section, the changes to interest rate capitalization are expected to reduce transfers from affected borrowers to the Federal government as their obligation to repay loans is lessened by the removal of capitalizing events. We estimate this transfer to have an annualized net budget impact of $1.29 billion and $1.26 billion at 7 percent and 3 percent discount rate, respectively. The main costs associated with the ruleset represent a transfer of benefits from the Federal government to the eligible borrower, primarily forgone revenue from payments on the higher balance and resulting increase in interest due to elimination the capitalizing events listed above. In addition, as less interest income is received by the government, the costs of the programs to taxpayers increase, as less income is available to offset losses. More details on the costs to the government are provided in the Net Budget Impact Section.

Benefits of the Regulatory Changes

The Department anticipates that some borrowers may see the lack of capitalizing events for borrowers exiting certain Income-Driven Repayment (IDR) plans as enabling them to switch out of IDR and instead enroll in a Standard or other repayment plan. For some borrowers, this could mean that they pay less on either a monthly basis or over the life of the loan (*e.g.,* if they exit an IDR plan and enter an Extended or Graduated repayment plan with lower

[48] Ibid.

monthly payments). For some, they could pay more; a borrower could switch out of IDR and into a Standard plan, for instance, before their IDR monthly payment reaches that amount.

The lack of capitalizing events can also have broader societal benefits by reducing debt burdens for groups that may be most affected by interest capitalization—borrowers from low-income families, Black borrowers, and borrowers who do not complete a college credential.[49] First, student debt has been shown to reduce households' ability to accumulate wealth through homeownership.[50] Thus, eliminating interest capitalization for these events may help reduce existing disparities in this wealth-building asset by race and family income.[51] Additionally, student loan debt is negatively correlated with the probability that a borrower starts a business, suggesting that gaps in entrepreneurship by race may decrease if eliminating capitalization events reduces disparities in debt burdens for borrowers of color.[52]

3.5 Total and Permanent Disability Discharge

The Department is committed to simplifying the Total and Permanent Disability (TPD) process for eligible borrowers. In addition to allowing for automatic discharges when a borrower is identified through a data match with the Social Security Administration (SSA), which was announced in summer 2021, the Department is also proposing new regulations for TPD to ensure it provides relief to eligible borrowers uniformly across its loan programs, including Federal Perkins Loans, FFEL loans, and William D. Ford Federal Direct Loans.

The Department proposes to expand the categories of SSA disability status that qualify for TPD discharges. Currently regulations only allow borrowers to qualify for a discharge if their status is Medical Improvement Not Expected (MINE). In this status, an individual's status is reviewed every 5 to 7 years, which fits the requirement in the HEA that a borrower have a disability that is expected to result in death or that has persisted or is expected to persist for at least 60 consecutive months while the borrower does not engage in gainful employment. The Department proposes to add additional categories for Compassionate Allowance (applied where the applicant has one of a certain set of predefined conditions); Medical Improvement Possible (MIP), if that status has been renewed at least once and therefore has been or would be in a disability status for at least 6 years; if the borrower had one of the qualifying statuses and has since aged into retirement; and borrowers with a disability onset data for SSDI or SSI that is at least 5 years prior to the TPD application. More borrowers would be eligible for TPD discharges with the addition of these categories.

The Department also proposes to eliminate the post-discharge income monitoring period. Currently, borrowers must supply their income information annually through a 3-year post-discharge monitoring period to ensure that they continue to meet the criteria for the program. If borrowers do not respond to these requests, their loans are reinstated, regardless of whether the borrowers' earnings are above set thresholds. The Department is concerned that high numbers of borrowers have their loans reinstated not because they fail to meet the criteria but simply because they fail to submit the required paperwork. The Government Accountability Office's (GAO) 2016 report on Social Security offsets reported that more than 61,000 loans discharged through TPD, totaling more than $1.1 billion, were reinstated in fiscal year 2015 alone; and that 98 percent of those were reinstated because the borrower did not provide the requisite information for the monitoring period.[53] Meanwhile, an analysis conducted by the Department using Internal Revenue Service (IRS) data suggests that 92 percent of these borrowers did not exceed the earnings criteria required to retain their eligibility.

The Department also proposes to streamline the process for applying for a TPD discharge where automation is not feasible. We propose to amend the TPD regulations to expand allowable documentation that can be submitted as evidence of a qualifying disability status, including the current practice of accepting a Benefit Planning Query Handbook, and to expand the list of medical professionals eligible to certify an individual's total and permanent disability to include nurse practitioners, physician assistants, and licensed or certified psychologists at independent practice level who are licensed to practice in the United States.

Costs of the Regulatory Changes

As detailed in the Net Budget Impact section, the changes to total and permanent disability are expected to reduce transfers from affected borrowers to the Federal government as their obligation to repay loans is discharged. We estimate this transfer to have an annualized net budget impact of $2.4 billion and $2.2 billion at 7 percent and 3 percent discount rate, respectively.

As a result of expanding the SSA categories that qualify for TPD discharges, the Department estimates increased costs to the taxpayer in the form of transfers to the additional borrowers who would be eligible for, and receive, TPD discharges.

Because more borrowers would also be able to retain their discharges and not see their loans reinstated, the Department also anticipates that this proposed change would increase costs to taxpayers in the form of transfers in direct benefits to those borrowers.

The proposed changes to expand allowable documentation and the list of certifying medical professionals are expected to modestly increase the amounts discharged through TPD through transfers to affected borrowers, as more borrowers overcome these barriers and apply for discharges.

Benefits of the Regulatory Changes

The Department believes that many more borrowers would be eligible for TPD discharges with the addition of SSA categories. Based on the Social Security Administration's Disability Analysis File (DAF) Public Use File for 2019 (PUF19), the MINE population represented approximately 24.5 percent of total SSI recipients, while the MIP category represented 22.9 percent at first reexamination.[54]

[49] Department analysis of the 2004/2009 Beginning Postsecondary Students Study, estimated via PowerStats (table reference: ivbztb and qobjsb).

[50] Mezza, A., Ringo, D., Sherlund, S., & Sommer, K. (2020). Student loans and homeownership. *Journal of Labor Economics,* 38(1), 215–260.

[51] U.S. Census Bureau (2019). *Table 22: Homeownership Rates by Race and Ethnicity of Householder.* Retrieved from *https://www.census.gov/housing/hvs/data/ann19ind.html.*

[52] For evidence on the correlation between student debt and entrepreneurship, see Krishnan, K., & Wang, P. (2019). The cost of financing education: can student debt hinder entrepreneurship? *Management Science,* 65(10), 4522–4554.

For evidence on gaps in entrepreneurship by race, see Hipple, S.F. & Hammond, L.A. (2016). *Self-Employment in the United States.* U.S. Bureau of Labor Statistics. *https://hdl.handle.net/1813/79426.*

[53] Government Accountability Office. (2016). ''Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief.'' (GAO Publication No. GAO–17–45.) Washington, DC: U.S. Government Printing Office. Retrieved from *https://www.gao.gov/products/gao-17-45.*

[54] Note that 44.9 percent of the SSA data also contains missing reason code for medical re-examination where there is no data available, but applicable to the beneficiary having a populated date of initial SSDI or SSI eligibility, so it is likely that the MIP and MINE categories may represent a higher portion of the overall data; however, no additional description is publicly available.

Eliminating the post-discharge income monitoring period would also ensure consistency between borrowers with an SSA determination of disability status and those with a VA determination. Total and permanent disability discharges based on determinations by the Department of Veteran Affairs are not subject to a post-discharge monitoring period (though some veterans may apply for or receive a TPD discharge based on an SSA determination instead). The Department believes this change would reduce the burden that borrowers with a total and permanent disability face in retaining their discharge, as the time and effort involved in providing income information during the monitoring process would be eliminated.

The Department also believes that expanding allowable documentation and the list of certifying medical professionals would increase transfers to borrowers through discharges by lowering administrative burdens that borrowers face, including in reducing the costs that borrowers face in obtaining the necessary documentation of their disability.

3.6 Closed School Discharge

The Department proposes to improve access to closed school loan discharges for borrowers who are unable to complete their programs due to the closure of their institution. While there are many closures that occur in an orderly fashion with advance notice, the majority of students affected by closures in the last several years were mid-program and unable to complete their program at the college where they started.

Presently, the process for closed school discharges includes specific eligibility requirements that can limit borrowers who have been affected by school closure from receiving the loan discharge. Through the proposed regulations, the Department aims to expand eligibility for closed school discharges. In 2016, the Department issued regulations that provided automatic closed school discharges to borrowers who were eligible for a closed school discharge but did not apply for one and who did not enroll elsewhere within 3 years of the institution's closure.[55] A 2021 GAO report on college closures found that 43 percent of those eligible for a CSD had not re-enrolled 3 years later. Moreover, the report found that 70 percent of borrowers who eventually received an automatic discharge were in default or past due, a sign of significant financial distress among this subset of borrowers. Given this, the Department proposes to implement the automatic process for borrowers. We propose to provide such automatic discharges within 1 year of closure, which would significantly benefit affected borrowers.

Borrowers who left a school shortly before it closed can also receive a closed school discharge. However, the discharge windows have not been consistent across years for these borrowers. Loans made prior to July 1, 2020, were generally subject to a 120-day window, while borrowers with loans made after that date were subject to a 180-day window. The Department proposes to standardize the window, making it 180 days for all borrowers, regardless of when the loan was disbursed.

The Secretary can also extend this 180-day window under exceptional circumstances. However, the current non-exhaustive list under § 685.214(c)(1)(i)(B) does not include many events that may reasonably be associated with a closure, such as the school being placed on probation. Additionally, the 2019 regulations removed items that were included in prior regulations, such as ''a finding by a State or Federal government agency that the school violated State or Federal law.'' [56] The Department proposes to expand this list to include this and several other items.

Finally, the Department proposes to remove the requirement that borrowers may not receive a closed school discharge if they opt to transfer credits to a ''comparable program.'' Borrowers currently lose access to a closed school discharge if they transfer any of their credits to another program, even if they only transfer a single credit and otherwise reset their progress to completion. This makes the borrower's choice to continue their education needlessly high stakes. The possibility of losing the discharge, even if a borrower only transfers a low number of credits, could also dissuade borrowers from even trying to continue their education; and risks punishing a borrower who chooses to continue their education but determines the new program is not working for them, as they would have lost the ability to discharge their loans. The Department proposes to address these concerns by removing the ''comparable program'' requirement and instead providing discharges for all borrowers unless they accept and complete an approved teach-out.

Costs of the Regulatory Changes

As detailed in the Net Budget Impact section, the changes to closed school discharge are expected to reduce transfers from affected borrowers to the Federal government as their obligation to repay loans is discharged. We estimate this transfer to have an annualized net budget impact of $763 million and $697 million at 7 percent and 3 percent discount rate, respectively. The Department will work to recover from institutions the amounts that the Secretary discharges and to leverage the processes already in place at 34 CFR part 668, part H. Based on historical Closed School Discharge data, the average discharge amount at the institutional level was $2.4 million based on discharge amounts from 573 closed institutions. Based on the same data, the majority of closed school discharge loan amounts (88.5 percent), were from closed proprietary schools. The table below illustrates the historical average closed school discharge amounts by institution type from 1991 through early April 2022, which are a good estimate of the discharge costs per loan by institution type for future closed school loan discharges.

TABLE 4—CLOSED SCHOOL DISCHARGE AMOUNTS BY INSTITUTION GROUP

Institution group	Average discharge amount	Sum of closed school discharges	% of Total closed school discharges
Private 2 to 3 Years	$2,876	$5,771,862	0.41
Private 4 Years or More	5,030	106,347,003	7.60
Private Less Than 2 Years	2,610	1,461,896	0.10
Proprietary 2 to 3 Years	3,265	387,352,052	27.68
Proprietary 4 Years or More	5,074	823,679,386	58.85
Proprietary Less Than 2 Years	3,002	74,336,389	5.31

[55] 81 FR 75926.

[56] 84 FR 49788.

TABLE 4—CLOSED SCHOOL DISCHARGE AMOUNTS BY INSTITUTION GROUP—Continued

Institution group	Average discharge amount	Sum of closed school discharges	% of Total closed school discharges
Public 4 Years or More	3,258	570,211	0.04
Public Less Than 2 Years	3,692	116,264	0.01

In addition to the cost that the closed institutions will bear, the Department will also incur costs associated with the closed school discharges. These costs would represent a transfer of benefits between the Federal government and the borrower. The Department would have to discharge the affected loans prior to trying to recover the funds from the institutions in order to provide a timely discharge for the borrower. Ultimately, the size of the transfer from the Department to borrowers would be the difference in funds between the discharge amount and the recovery amount from the institution. The Department would also incur administrative costs associated with the process of recovering funds from closed institutions, especially in cases where the institutions may be facing litigation, such as due to bankruptcy or legal violations. This represents net new costs to the Department.

Benefits of the Regulatory Changes

Automatic loan discharges would significantly benefit affected borrowers who are eligible for a discharge. In particular, after entering repayment, affected borrowers may receive a discharge before they could default on their loans. The Department would also face a reduced administrative burden due to the reduced staff time required to review applications for borrowers who meet the eligibility criteria for a closed school discharge.

Regarding the proposal to standardize the closed school discharge window, the Department believes this would modestly increase eligibility for the discharge for some borrowers, though application rates for closed school discharge tend to be relatively low and are not likely to increase significantly. The Department is also proposing to expand the non-exhaustive list of exceptional circumstances required for the Secretary to use their authority to extend the 180-day window. In certain cases, this would increase eligibility for closed school discharges, potentially by several years. However, this authority would be employed on a case-by-case basis and thus the overall impact is expected to be modest.

The Department believes that by removing the ''comparable program'' requirement and instead providing discharges for all borrowers unless they accept and complete an approved teach-out would encourage borrowers to continue their education because they would still be able to keep their discharge if the teach out option does not work for them. It also means a borrower who continues seeking higher education but loses all or most progress toward their degree would not have to worry about whether they would receive relief.

This approach would also encourage institutions to manage closures more carefully. In particular, institutions would have a stronger incentive to make sure borrowers have access to high-quality and affordable teach-out options; otherwise, the institution that is closing would face larger liabilities associated with closed school discharges.

3.7 Pre-Dispute Arbitration

The Department proposes to prohibit pre-dispute arbitration and class action waivers in institutions' enrollment agreements to ensure borrowers have access to fair processes and to provide insight and evidence to the Department that may be needed to adjudicate borrower defense claims. Mandatory pre-dispute arbitration and class action waivers may allow institutions to minimize financial risk associated with wrongdoing and instead may shift the risk of wrongdoing to taxpayers and the Federal government through subsequent borrower defense discharges. In addition, a quick result provided by arbitration does not necessarily consider the interests of taxpayers who have funds at stake for borrower defense claims and Direct Loans. While the Department included a similar provision in its 2016 borrower defense regulations, the prohibition was rescinded by the 2019 regulations.

Borrowers also may not understand the implications of agreeing to a mandatory pre-dispute arbitration requirement or a class action waiver and what that means for future attempts to seek relief. In a study on arbitration clauses, legal researchers surveyed a random sample of consumers and concluded respondents generally lacked an understanding about the terms of the arbitration agreement and what that meant for their ability to seek relief in court. These researchers expressed concern about whether the consent consumers provide when they enter into a contract that contains an arbitration clause is knowing consent, and therefore valid.[57]

By prohibiting Direct Loan-participating institutions from using certain restrictive contractual provisions regarding dispute resolution and requiring notification and disclosure regarding their use of arbitration, schools would be prevented from keeping complaint information hidden from borrowers facing potential borrower defense issues faced by their borrowers. Keeping complaint and arbitration information hidden from public view hinders the Department's ability to investigate patterns of student complaints.

In addition, borrowers' ability to pursue individual and class-action litigation would make it difficult for schools to hide potentially deceptive practices from current or prospective students and would allow students who have been harmed by an institution to sue for damages and recoup their financial losses. Providing a litigation option could also mitigate the potential conflict of interest between the arbitrators and the institutions that hire them, leading to more fair outcomes for students. Taxpayer dollars would be better protected by ensuring that grievances from enrollees in problematic schools could be publicly aired through the court system.

The Department notes that the impact of these proposed changes would be largely limited to the for-profit sector. In a 2016 study by an independent think tank, researchers looked at enrollment contracts of more than 270 institutions across the country. None of the public colleges surveyed and only one private nonprofit college required its students to agree to arbitration as a condition of enrollment. Among private for-profit colleges, the researchers found

[57] Sovern, Jeff and Greenberg, Elayne E. and Kirgis, Paul F. and Liu, Yuxiang, 'Whimsy Little Contracts' with Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements (February 19, 2015). 75 Maryland Law Review 1 (2015), St. John's Legal Studies Research Paper No. 14–0009, *http://dx.doi.org/10.2139/ssrn.2516432.*

significant differences depending on whether the institution participated in the Federal student aid programs. A majority (93 of the 158) private for-profit colleges that participate in the Federal aid programs used a forced arbitration clause compared to just one of the 49 that do not participate in the aid programs.[58]

Costs of the Regulatory Changes

The costs associated with the proposed changes would be affected by whether institutions are less likely to engage in behavior that could lead to an approved borrower defense claim as a result of not using mandatory pre-dispute arbitration clauses or class action waivers. If institutions that engage in conduct that could lead to an approved borrower defense claim do not change their behavior, then there could be a number of costs related to more grievances ending up in court. This would include the cost to students of seeking judicial intervention, though such costs may be offset if their claims in court are successful. Costs can also increase for institutions, as they tend to incur higher legal fees during litigation. Institutions would not only face higher administrative costs, but institutions are also likely to face higher number of settlements and the costs associated with them, as it is expected that the students will be able to reach more favorable decisions in court than during arbitration. These costs would, however, decrease if institutions currently engaging in conduct that could lead to an approved borrower defense claim cease such conduct as a result of this change. These external factors do not represent any additional costs for the Department.

In addition to costs in the form of transfers to borrowers and administrative burden for the Department, there may be an increase in the time it takes to resolve disputes through non-arbitration means, as litigation proceedings rely on more detailed discovery and presentation of evidence than arbitration. Finally, bringing additional cases to court that have generally been resolved through arbitration may create a burden on the courts, leading to longer litigation time and increased costs for students and institutions.

Benefits of the Regulatory Changes

Borrowers will see benefits due to a prohibition on arbitration clauses and class-action waivers. Research indicates that the rate at which consumers receive favorable decisions in arbitration is quite low and the amounts they secure when they do are very small. Only 9 percent of disputes that go to arbitration end with relief for the consumer.[59] When a 2015 CFPB report looked at cases from one of the major arbitration companies it found that consumers won just over $172,000 in damages and $189,000 in debt forbearance across more than 1,800 disputes in six different financial markets. By contrast, the CFPB's analysis of individual cases brought in Federal court for all but one of these markets found that consumers were awarded just under $1 million in cases where the judge issued a decision. It is difficult to directly compare the success rate for an individual in arbitration compared to those who take their claims to court because the overwhelming majority of cases end in settlements in which the results are not easily ascertainable. The same CFPB study referenced above found that about 50 percent of the more than 1,200 individual cases filed in federal court that were analyzed resulted in settlement. But the analysis could not determine what share of those settlements were favorable to borrowers.[60]

Given that pre-arbitration agreements are prevalent in for profit institutions' enrollment agreements, these benefits would have a greater impact on Black students, who tend to be overrepresented at for-profit institutions compared to other educational institutions.[61] The prohibition would also support these students in filing borrower defense claims where warranted.

4. Net Budget Impacts

These proposed regulations are estimated to have a net Federal budget impact in costs over the affected loan cohorts of $85.1 billion, consisting of a modification of $46.3 billion for loan cohorts through 2022 and estimated costs of $38.7 billion for loan cohorts 2023 to 2032. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

The provisions most responsible for the costs of the proposed regulations are those related to the discharge of borrower's loans, especially the changes to borrower defense, closed school discharges, and total and permanent disability discharges. The specific costs for each provision are described in the following subsections covering the relevant topics.

4.1 Borrower Defense

As noted in this preamble, the regulatory provisions related to borrower defense have undergone revisions starting in 2016 and then again in 2019 and the patterns of claim submission and processing have not reached a steady level to serve as a clear basis for estimating future claims. Additional claims are expected from existing loan cohorts, and the level and timing of claims from older cohorts is not likely to be indicative of claims for future cohorts because borrower defense was not an active area of loan discharges during the early years in repayment of those older cohorts. In addition, the institutions that to date have been among the largest sources of borrower defense claims have been closed for many years. Therefore, we are using a revised version of the approach used to estimate the costs of borrower defense for the 2016 and subsequent regulations to generate estimates for the proposed borrower defense provisions. The Department has used the data it has available on borrower defense claims, projected loan volumes, Departmental expertise, the discussions at negotiated rulemaking, and information about past investigations into the type of institutional acts or omissions that would give rise to borrower defense claims to develop scenarios that the Department believes would capture the range of net budget impacts associated with the borrower defense proposed regulations. The estimated cost of the proposed borrower defense changes is a modification to cohorts through 2022 of $17.26 billion and a cost of $2.75 billion for cohorts 2023–2032. The Department would continue to refine these estimates, welcomes comments about the assumptions used in developing them, and would consider those comments as the final regulations are developed.

[58] Habash, Tariq, and Robert Shireman. ''How College Enrollment Contracts Limit Students' Rights.'' *The Century Foundation,* 28 Apr. 2018, *https://tcf.org/content/report/how-college-enrollment-contracts-limit-students-rights/.*

[59] Shierholz, Heidi. ''Correcting the Record: Consumers Fare Better under Class Actions than Arbitration.'' *Economic Policy Institute,* 1 Aug. 2017, *https://www.epi.org/publication/correcting-the-record-consumers-fare-better-under-class-actions-than-arbitration/.*

[60] *Arbitration Study: Report to Congress, pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act § 1028(a).* Consumer Financial Protection Bureau. (2015, March). Retrieved from *https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.*

[61] Urban Institute. (2020, June). Racial and Ethnic Representation in Postsecondary Education. Tomás Monarrez, Kelia Washington. *https://www.urban.org/research/publication/racial-and-ethnic-representation-postsecondary-education.*

Where possible, we are adjusting the assumptions made about school conduct, borrowers' chances of making a successful claim, and recovery rates to reflect information from pending claims.

Almost 90 percent of borrower defense claims are from the proprietary sector. This also includes institutions that have a significant number of claims and therefore may be more likely to have a group claim process applied to them. This is reflected in the school conduct assumption in Table 5.

While there are many factors and details that would determine the cost of the proposed regulations, ultimately a borrower defense claim entered into the student loan model (SLM) by risk group, loan type, and cohort would result in a reduced stream of cash flows compared to what the Department would have expected from a particular cohort, risk group, and loan type. The net present value of the difference in those cashflow streams generates the expected cost of the proposed regulations.

In order to generate an expected level of claims for processing in the SLM, the Department used President's Budget 2023 (PB2023) loan volume estimates to identify the maximum potential exposure to borrower defense claims for each cohort, loan type, and sector. The Department expects only a fraction of that amount to be affected by institutional behavior that results in a borrower defense claim. Other factors that would affect the cost are the rate of consolidation from the FFEL program, the percentage of claims that go through a group process, the potential deterrent effect of claims on school practices, investigative activities of State authorities, increased borrower awareness of borrower defense, and borrower eligibility for other discharges, especially closed school discharges.

As costs are estimated against a specific baseline, it is important to note that the President's Budget for 2023 assumed a higher level of borrower defense claims based more on the 2016 assumptions [62] than the 2019 regulation assumptions.[63] This was based on processing of claims and other announcements that led the Department's Budget Service to assume successful claims would be increasing. Some of the costs that could have been attributed to the proposed regulations are already in the baseline as a result of this modeling change. As the 2016 borrower defense assumptions were fairly conservative, the borrower defense adjustment for some cohort and risk group combinations may be lower than the current baseline levels. In order to provide some information about this factor, the Department ran the President's Budget Fiscal Year 2023 (PB23) baseline with any addition for borrower defense removed and also with the 2019 regulatory assumptions applied. Removing the borrower defense adjustment had a net budget impact of $-8.6 billion and using the reduced adjustment associated with the 2019 regulations resulted in a net budget impact of $-8.0 billion in savings compared to the PB23 baseline.

The model to estimate borrower defense claims under the proposed regulations relies upon the following factors:

Conduct Percent, which represents the share of loan volume estimated to be affected by institutional behavior resulting in a defense to repayment application.

Group Process percent, which is the share of affected loan volume we expect to be subject to a group claim.

Claim Balance Adjustment Factor, which captures the potential change in borrowers' balances from origination to the time of their discharge and was added because this regulation addresses claims from older cohorts, not just future loan cohorts so this factor could be more significant.

Borrower Percent, which is the percent of loan volume associated with approved defense to repayment applications; and

Recovery Percent, which estimates the percent of gross claims for which funds are recovered from institutions, with both of these varying by inclusion in a group process or not.

To generate gross claims volume (gc), loan volumes (lv) by risk group were multiplied by the Conduct Percent (cp), Group Process percent (gpp), the Claim Balance Adjustment factor (cbf), and the Borrower Percent for groups and individual claims (bp_g or bp_i). To generate net claims volume (nc) processed in the Student Loan Model, gross claims were then multiplied by the Recovery Percent. That is, gc = gc_g + gc_i when gc_g = (lv * cp * − cbf * gc − * bp_g) and gc_i − = (lv * cp * − cbf * (1 − gc) * bp_i) and nc = nc_g + nc_i where nc_g = gc_g − (gc_g * rp_g) and nc_i = gc_i − (gc_i * rp_i).

Additional discussion of these factors follows their presentation in Table 5, with the comparable values for the 2016 and 2019 borrower defense regulations presented in Table 6.

TABLE 5—ASSUMPTIONS FOR PRIMARY BORROWER DEFENSE SCENARIO

Cohort range	2-yr Proprietary %	2-yr NFPT/ Public %	4-yr Proprietary %	4-yr NPFT/ Public %	GRAD %
Loan volume related to borrower defense claims					
pre–2000	5.0	1.0	5.0	1.0	1.6
2000–2005	10.0	2.0	10.0	2.0	3.2
2006–2010	16.0	2.0	16.0	2.0	4.1
2011–2016	18.0	1.7	18.0	1.7	4.1
2017–2022	14.0	1.5	14.0	1.5	3.4
2023–2028	10.0	1.3	10.0	1.3	2.6
2028+	8.0	1.1	8.0	1.1	2.1
Percentage of borrower defense volume from group claims					
pre–2000	15.0	5.0	15.0	5.0	8.0
2000–2005	35.0	12.0	35.0	12.0	15.5
2006–2010	65.0	14.0	65.0	14.0	20.7
2011–2016	75.0	14.0	75.0	14.0	28.0
2017–2022	65.0	9.5	65.0	9.5	20.0
2023–2028	45.0	5.5	45.0	5.5	14.0

[62] 81 FR 211 p. 76057.

[63] 84 FR 184 p. 49894.

TABLE 5—ASSUMPTIONS FOR PRIMARY BORROWER DEFENSE SCENARIO—Continued

Cohort range	2-yr Proprietary %	2-yr NFPT/ Public %	4-yr Proprietary %	4-yr NPFT/ Public %	GRAD %
2028+	35.0	5.0	35.0	5.0	10.0
Percentage of borrower defense volume from individual claims					
pre–2000	85.0	95.0	85.0	95.0	92.0
2000–2005	65.0	88.0	65.0	88.0	84.6
2006–2010	35.0	86.0	35.0	86.0	79.3
2011–2016	25.0	86.0	25.0	86.0	72.0
2017–2022	35.0	90.5	35.0	90.5	80.0
2023–2028	55.0	94.5	55.0	94.5	86.0
2028+	65.0	95.0	65.0	95.0	90.0
Share of volume approved in group claims					
pre–2000	25.0	15.0	25.0	15.0	20.0
2000–2005	65.0	50.0	65.0	50.0	60.0
2006–2010	70.0	50.0	70.0	50.0	60.0
2011–2016	75.0	50.0	75.0	50.0	60.0
2017–2022	75.0	50.0	75.0	50.0	60.0
2023–2028	75.0	60.0	75.0	60.0	65.0
2028+	75.0	60.0	75.0	60.0	65.0
Share of volume approved in individual claims					
pre–2000	5.0	2.0	5.0	2.0	4.0
2000–2005	8.0	2.0	8.0	2.0	6.0
2006–2010	12.0	5.0	12.0	5.0	8.0
2011–2016	12.0	5.0	12.0	5.0	10.0
2017–2022	12.0	8.0	12.0	8.0	10.0
2023–2028	12.0	8.0	12.0	8.0	10.0
2028+	12.0	8.0	12.0	8.0	10.0
Recovery percentage on approved claims					
pre–2000	1.0	1.0	1.0	1.0	1.0
2000–2005	6.0	4.0	6.0	4.0	4.0
2006–2010	10.0	8.0	10.0	8.0	8.0
2011–2016	10.0	8.0	10.0	8.0	8.0
2017–2022	10.0	8.0	10.0	8.0	8.0
2023–2028	15.0	12.0	15.0	12.0	12.0
2028+	15.0	12.0	15.0	12.0	12.0

TABLE 6—ASSUMPTIONS FOR PRIMARY BORROWER DEFENSE SCENARIOS IN 2016 AND 2019 REGULATIONS

Cohort	2016 Regulation			2019 Regulation		
	Public	Private	Proprietary	Public	Private	Proprietary
Conduct Percent						
2017	3.0	3.0	20	N/A	N/A	N/A
2018	2.4	2.4	16	N/A	N/A	N/A
2019	2.0	2.0	13.6	N/A	N/A	N/A
2020	1.7	1.7	11.6	1.62	1.62	11.02
2021	1.5	1.5	9.8	1.43	1.43	9.31
2022	1.4	1.4	8.8	1.33	1.33	8.36
2023	1.3	1.3	8.4	1.24	1.24	7.98
2024	1.2	1.2	8.0	1.14	1.14	7.6
2025	1.2	1.2	7.8	1.14	1.14	7.41
2026	1.2	1.2	7.7	1.05	1.05	7.32
2027	N/A	N/A	N/A	1.05	1.05	7.32
2028	N/A	N/A	N/A	1.05	1.05	7.32
2029	N/A	N/A	N/A	1.05	1.05	7.32
Allowable Applications Percent						
All Cohorts	N/A	N/A	N/A	70	70	70
Borrower Percent						
2017	35	35	45	N/A	N/A	N/A

TABLE 6—ASSUMPTIONS FOR PRIMARY BORROWER DEFENSE SCENARIOS IN 2016 AND 2019 REGULATIONS—Continued

Cohort	2016 Regulation			2019 Regulation		
	Public	Private	Proprietary	Public	Private	Proprietary
2018	36.8	36.8	47.3	N/A	N/A	N/A
2019	38.6	38.6	49.6	N/A	N/A	N/A
2020	42.4	42.4	54.6	3.3	3.3	4.95
2021	46.7	46.7	60	3.75	3.75	5.475
2022	50	50	63	4.125	4.125	5.925
2023	50	50	65	4.5	4.5	6.3
2024	50	50	65	4.8	4.8	6.75
2025	50	50	65	5.25	5.25	6.975
2026	50	50	65	5.25	5.25	7.5
2027	N/A	N/A	N/A	5.25	5.25	7.5
2028	N/A	N/A	N/A	5.25	5.25	7.5
2029	N/A	N/A	N/A	5.25	5.25	7.5
Recovery Percent						
2017	75	23.8	23.8	N/A	N/A	N/A
2018	75	23.8	23.8	N/A	N/A	N/A
2019	75	26.18	26.18	N/A	N/A	N/A
2020	75	28.8	28.8	75	16	16
2021	75	31.68	31.68	75	20	20
2022	75	33.26	33.26	75	20	20
2023	75	34.93	34.93	75	20	20
2024	75	36.67	36.67	75	20	20
2025	75	37.4	37.4	75	20	20
2026	75	37.4	37.4	75	20	20
2027	N/A	N/A	N/A	75	20	20
2028	N/A	N/A	N/A	75	20	20
2029	N/A	N/A	N/A	75	20	20

Conduct Percent

As with previous estimates, the conduct percent reflects the experience with existing claims coming predominantly from the proprietary sector. This factor also captures the potential deterrent effect of the proposed regulations. As claims are processed and examples of conduct that results in claims become better known, we believe institutions would strive to avoid similar behavior. We also expect that the improvement or closing of some institutions that have significant findings against them should reduce the level of potential claims in future loan cohorts.

Group Process Percent

The share of claims suitable for a group process is expected to vary by institutional control and loan cohort. The further back a cohort of loans were originated, the less likely there is to be evidence of conduct that would support a group claims process, so the group process percent for the pre-2000 loan cohort group is lower than for more recent years. Of current pending claims, approximately 90 percent of those expected to be subject to a group claims process have come from cohorts 2006 to 2016 and we would expect that period to generate the highest share of group claims. We expect conduct that would generate a group claim to decrease following the 2016 regulation and subsequent attention to borrower defense, with more of an effect in future years when more claims have been processed through the system.

Claim Balance Factor

The assumptions generating our borrower defense claims are applied to volume estimates at origination, but borrower defense claims are likely to happen several years into repayment when payments that have been made would be subject to refund or balances will have grown through accrued interest or fees. To account for this, the Department looked at borrower defense claims in 2021 and determined the maximum potential claim between the claim amount, the current outstanding balance, and the balance when the loan entered repayment plus accumulated interest through 2021. This maximum balance was compared to the origination amount to generate an adjustment factor that was averaged across loan type. The factors applied to Stafford, PLUS, and Unsubsidized loans are 1.32, 1.68, and 1.54, respectively. These factors are based on balance comparisons for existing loans and include capitalization events that will be eliminated under this rule as well as potential interest accrual beyond the 180-day window for loan subject to a borrower defense claim established in these regulations. Other changes such as the revisions to the REPAYE plan anticipated in a separate regulatory package could also affect these adjustment factors. We are not reducing the adjustment factors for those potential effects to provide a conservative estimate of borrower defense claims, but the interaction with other regulatory or legislative actions is a source of uncertainty for the net budget impact of the borrower defense provisions.

The claim balance factor also acknowledges that borrower defense gives discharge of outstanding balance (and potentially refunds payments made) so an estimate starting from volumes (origination amounts) needs to be increased to account for interest or payments.

Borrower Percent—Group and Individual

This assumption captures the share of claims expected to lead to a discharge. Factors such as the federal standard, reconsideration process, the number of claims against individual institutions, enrollment periods associated with the claims, and type of allegations seen to date affect these figures. This is higher for group claims based on the potential

referrals and common reliance on evidence from investigations.

Recovery Percent—Group and Individual

The recovery percent would vary by cohort and institutional control. Recoveries for existing borrower defense claims have not been high, which is consistent with other discharge recoveries, particularly closed school discharges. Another factor that affects potential recoveries is the timing as the limitations period and application of a standard to all claims pending or submitted after the effective date of the regulations may limit the Department's ability to recover claims related to activities many years ago. We expect claims for future cohorts to happen earlier in the repayment period of the loans and therefore to have a somewhat increased chance of having a recovery.

As noted throughout this RIA, the Department recognizes the uncertainty associated with the factors contributing to the primary budget assumptions presented in Table 6. To provide some information about the effect of this uncertainty, the Department developed two alternate scenarios to capture a range of net budget impact from the proposed borrower defense regulations. The low budget impact scenario reduces the group percentage and increases recoveries to the 37 percent maximum assumed in the 2016 regulations. The high budget impact scenario assumes a slower deterrent effect and keeps the highest conduct percent for an additional cohort range, increases the highest group percentage and maintains that level for future cohorts, and eliminates all recoveries. The revised assumptions for these scenarios are detailed in Table 7 with the results presented in Table 8.

TABLE 7—REVISED ASSUMPTIONS FOR ALTERNATE SCENARIOS

Cohort range	Proprietary_low (%)	NPFT/public_low (%)	GRAD_low (%)	Proprietary_high (%)	NPFT/public_high (%)	GRAD_high (%)
Loan volume related to borrower defense claims						
pre–2000	5.00	1.0	1.6	5.0	1.0	1.6
2000–2005	10.00	2.0	3.2	10.0	2.0	3.2
2006–2010	16.00	2.0	4.1	16.0	2.0	4.1
2011–2016	18.0	1.7	4.1	18.0	2.0	4.1
2017–2022	14.00	1.50	3.38	18.0	1.7	4.1
2023–2028	10.00	1.30	2.61	14.00	1.50	3.38
2028+	8.00	1.10	2.14	10.00	1.30	2.61
Percentage of borrower defense volume from group claims						
pre–2000	5	2.5	4	15	5	8
2000–2005	30	6.0	8	35	12	15
2006–2010	50	7.0	11	70	14	24
2011–2016	60	7.0	14	80	14	30
2017–2022	50	5.0	10	80	10	30
2023–2028	40	3.0	7	80	6	30
2028+	30	2.5	5	80	5	30
Percentage of borrower defense volume from individual claims						
pre–2000	95	98	96	85	95	92
2000–2005	70	94	93	65	88	85
2006–2010	50	93	90	30	86	76
2011–2016	40	93	86	20	86	70
2017–2022	50	95	90	20	91	70
2023–2028	60	97	93	20	95	70
2028+	70	98	95	20	95	70
Recovery percentage on approved claims						
pre–2000	1.0	1.0	1.0	0	0	0
2000–2005	6.0	6.0	6.0	0	0	0
2006–2010	10.0	10.0	10.0	0	0	0
2011–2016	23.8	23.8	23.8	0	0	0
2017–2022	37.4	37.4	37.4	0	0	0
2023–2028	37.4	37.4	37.4	0	0	0
2028+	37.4	37.4	37.4	0	0	0

TABLE 8—BUDGET ESTIMATES FOR BORROWER DEFENSE SCENARIOS SENSITIVITY RUNS

$ (mns)	Low budget impact	Primary budget impact	High budget impact
Modification	11,535	17,259	22,158
Outlays for Cohorts 2023–2032	1,565	2,750	6,966
Total	13,100	20,010	29,124

4.2 Closed School

These proposed regulations are expected to increase closed school discharges by creating a uniform 180-day enrollment window, increasing the use of administrative data to provide discharges without an application, eliminating the re-enrollment condition, and some other process changes. To estimate the effect of these changes, the Department generated a data file summarizing borrower loan amounts for different enrollment windows prior to closure as well as any existing discharges associated with those loans. This was used to generate a ratio of potential additional claims compared to current discharges to be applied to the closed school component of the discharge assumption. The adjustment factor varied by loan model risk group from 1.11 to 7.46 and was applied to all cohorts for claims from 2023 on. Together, the changes related to the closed school provisions cost $3.47 billion for past cohorts and $3.043 billion for cohorts 2023–2032.

4.3 Total and Permanent Disability

The main driver of the Department's estimated costs for the total and permanent disability provisions of the proposed regulation is the inclusion of additional SSA determination categories that qualify a borrower for a discharge without an application and the inclusion of those receiving SSA retirement benefits who fit into those categories. These proposed changes are expected to result in additional transfers to borrowers. The Department's existing data match with SSA does not provide the data needed to estimate the increased discharge from this change. We know from SSA data that the added categories have 300,000 additional borrowers compared to approximately 323,000 borrowers included in the categories already eligible through the match from September 2021.[64] However, this is not necessarily indicative of student loan borrower distributions across those categories, since data are not currently available to the Department on the disability statuses of student loan borrowers. Additionally, these figures are inclusive of borrowers who might be eligible through the current regulations and/or who would apply for a discharge, rather than receiving the discharge automatically through a data match as under the proposed regulations. Thus, some of these borrowers would not be a new discharge but rather could simply be moving between categories. To estimate this effect, the Department used an adjustment factor in the TPD match with SSA in the Death, Disability, and Bankruptcy (DDB) assumption from 1.5 to 2.25, resulting in the $10.67 billion modification to past cohorts and $9.588 billion for cohorts 2023–2032. The initial adjustment factor was based on data related borrowers in the SSA match prior to September 2020 when it was an opt-in process that indicated total discharges were around 40 percent of total loan disbursements and around 70 percent of outstanding balances across all risk groups and cohorts. The other provisions to expand the types of medical professionals who can support an application and otherwise make the process of obtaining a discharge easier could also increase transfers to borrowers through total and permanent disability discharges. The Department does not have information to estimate this increase but assumes most of the future discharges will be through the automatic matches so the effect of these changes will be lower than the recent opt-out match provisions. We did not explicitly assign a certain percentage of the increased adjustment factor to these administrative changes but would not expect it to be more than 0.10 percent of the total effect with the additional eligibility categories being more significant. By itself, that increase in TPD discharges would increase costs by $4.1 billion. We do not estimate a significant cost impact from the elimination of the 3-year monitoring period for reinstatement of payment obligations because our baseline is conservative in assuming that many of those income monitoring issues eventually get resolved. To estimate the effect of this provision, we did run a version of the DDB assumption that excluded any reinstatements from the disability claims from the PB23 baseline, but the resulting effect was not significant enough to change the overall discharge rate at the four decimal level used in the student loan model. We welcome comments on these assumptions and will consider any received in estimating the costs of the final regulations.

4.4 PSLF

The proposed changes to the public service loan forgiveness regulations have an estimated cost of $12.7 billion as a modification to cohorts through 2022 and $13.2 billion for cohorts 2023–2032. One important factor to note is that the baseline for this estimate did not include any effect of the limited PSLF waiver announced in October 2021 as well as adjustments to the counting of progress toward income-driven repayment announced in April 2022, so the modification to past cohorts in this estimate is picking up some of that effect. The change to include certain periods of deferment or forbearance to count toward PSLF and to count payments made on underlying loans prior to consolidation will reduce the time period for some existing PSLF recipients to achieve forgiveness. The Department used information linking consolidations to underlying loans to determine the months paid prior to consolidation and used that to reduce the time to PSLF forgiveness for affected borrowers. A similar process was followed for the deferments and forbearances that count toward PSLF. Estimated deferments and forbearances are tracked for PSLF borrowers in the budget model, and for the proposed change, time associated with qualifying deferments and forbearances were included toward the 10 years of payments required for forgiveness. Together, these changes led to the $25.9 billion estimated cost increase for the PSLF changes. Allowing lump sum payments, installments, and late payments to count toward PSLF will result in borrowers being more likely to reach 120 qualifying payments at the same time they have 120 months of qualifying employment. This is in contrast to the current situation where large numbers of payments not being counted means borrowers may need far more than 120 months of qualifying employment to reach that same number of qualifying payments. Reconsideration should also help those who had issues with their initial applications. These factors are not specifically modeled in this estimate. The Department does not have data at this time regarding these factors and welcomes comments on the expected increase from them. These factors are not explicitly accounted for in the Department's baseline which is fairly conservative in assuming those assumed to have qualifying employment would make the appropriate payments other than periods of deferment or forbearance. These administrative and definitional factors are captured to some degree by a ramp up to the maximum percentage of borrowers assumed to receive PSLF forgiveness in our modeling, with levels that reflect the low percent of PSLF forgiveness in the

[64] Department of Education analysis based on estimates of United States sample SSA data as of 2019 of those with a status of MINE or MIP and data provided by the Department in August 19, 2021, press release, ''Over 323,000 Federal Student Loan Borrowers to Receive $5.8 Billion in Automatic Total and Permanent Disability Discharges,'' retrieved from *https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges.*

initial years of borrowers potentially being eligible. To provide a sense of the effect of these changes, the Department considered an alternate scenario that increased the PSLF percent to the highest level we consider reasonable given the level of employment in government or nonprofit sectors based on U.S. Census bureau data on employment sector by educational attainment.[65] In the alternate scenario, we increased the maximum PSLF percent and shifted the ramp-up so each cohort range was one level higher than in the baseline, resulting in the PSLF percentages shown in Table 5. The PSLF percent is the percentage of borrowers assumed to receive PSLF in our modeling and ramps up across years. An increase in the PSLF percent results in additional forgiveness. We are showing increases in the PSLF percent because nothing in the regulations would lead to reduced PSLF forgiveness compared to our baseline level. The alternate scenario is on top of the deferment, forbearance, and consolidation changes.

TABLE 9—ALTERNATE ASSUMPTIONS FOR PSLF

	PB23 max (%)	Alternate scenario max (%)
2-year	14.65	20.00
4-year	28.88	32.00
Graduate	30.74	38.00

Alternate scenario PSLF percents

Cohort range	2-year (%)	4-year (%)	Graduate (%)
2010 or less	6.28	10.83	13.18
2011–2015	10.46	18.05	21.96
2016–2020	14.65	28.88	30.74
2021 and above	20.00	32.00	38.00

The net budget impact of the reduced transfers from borrowers to the government from increased forgiveness in this alternate scenario is shown in Table 10.

TABLE 10—NET BUDGET IMPACTS OF PSLF IN PRIMARY AND ALTERNATE ASSUMPTIONS

$ (mns)	PSLF_primary	PSLF_alternate
Modification	12,724	36,379
Outlays for Cohorts 2023–2032	13,175	23,116
Total	25,898	59,494

The modification cost for early cohorts is significantly affected by the increase in the alternative scenario because the baseline PSLF level for the 2010 cohort and earlier are lower than the outyear cohorts. This reflects the level of forgiveness seen in the program to date.

4.5 Interest Capitalization

The proposed provisions to remove all interest capitalization on Direct Loans that is not required by the HEA is estimated to cost $12.4 billion, consisting of a modification to cohorts through 2022 of $2.2 billion and increased outlays of $10.2 billion for cohorts 2023–2032. The estimated impact of $12.4 billion is for loans in all types of repayment plans, but the estimation process differs for non-IDR and IDR loans as noted below. Interest capitalization is calculated in the Student Loan Model in accordance with specific conditions, so to estimate this cost for non-IDR loans, we must turn off that capitalization as applicable. We expect capitalization upon entering repayment to be the primary driver of the net budget impact for these provisions since it affects all borrowers from the effective date of the regulations. For this NPRM, we calculated an adjustment factor by loan type, cohort, non-IDR repayment plan, years since loan origination, and SLM risk group to represent the effect of removing capitalization upon entering repayment to generate the net budget impact for non-IDR loans. The adjustment factors vary significantly with later cohorts having increased adjustment since more of the cohort will enter repayment following the effective date of the proposed regulations. The SLM is being revised to fully incorporate the change to the rule and is expected to be completed by the publication of the final regulations.

For the interest capitalization that affects IDR borrowers, we adjusted the calculations in our IDR sub-model that capitalized interest. One limitation to note is that our current IDR modeling does not estimate borrowers leaving IDR plans so there is no capitalization for that in the baseline and no impact of that provision (leaving PAYE and REPAYE) in this estimate. However, we did create a capitalization event based on the estimated probability that a borrower would leave PAYE or REPAYE in 2023 or later. This estimate does not change the borrowers' plan or subsequent payments and just captures the effect of capitalization at that point. The proposed regulations would result in reduced repayments from borrowers by removing capitalization for leaving

[65] Data from the American Community Survey from the U.S. Census Bureau on employment by sector (employer ownership) and educational attainment among workers age 25 to 64.

PAYE or REPAYE, and we estimate a net budget impact of $108.3 million, consisting of a modification to past cohorts of $29.8 million and $79.5 million for cohorts 2023–2032. While interest capitalization is a fairly straightforward calculation, there are several sources of uncertainty for these estimates. As mentioned, the SLM is being revised to fully account for all the potential effects and our current adjustment factors may not account for the full level or timing of capitalization events that are being eliminated for non-IDR borrowers. Additionally, while entering repayment and the timing patterns for that are supported by significant history, other capitalization events affected by the proposed regulations may be more subject to behavioral changes. Predicting effects of eliminating capitalization related to forbearances or defaults does depend on having the level, timing, repayment plan, and risk group mix of those underlying events estimated accurately. If the pattern of those events changes from historical trends as borrowers return to payment following the Covid payment pause, the costs associated with eliminating capitalization for those events will vary from what we have estimated here. For IDR borrowers, the level of leaving plans or borrowers initial plan selection could be affected by other developments related to the IDR plans. The Department welcomes comments on the estimates presented here and will consider them in analysis of the final rule.

4.6 Pre-Dispute Arbitration Clauses

At this time, the Department does not estimate a significant budget impact on title IV programs from the prohibition on pre-dispute arbitration agreements and the related disclosures. It is possible that borrowers not having to go through arbitration could result in some additional borrower defense claims, but we expect those costs have been captured in the borrower defense score. Disclosure of certain judicial and arbitral records may cause some borrowers to enroll at other institutions than they would have attended, but we expect that borrowers would receive similar amounts of aid overall, so we do not estimate a significant impact on the Title IV portfolio from these changes.

4.7 False Certification

The proposed regulations would also change the false certification discharge rules to establish common false certification discharge procedures and eligibility requirements, regardless of when a loan was originated, and to clarify that the Department would rely on the borrower's status at the time the loan was originated, rather than when the loan was certified, for determining false certification discharge. The proposed revisions to the identity theft provisions would make it easier for affected borrowers to provide evidence for a discharge.

All of the provisions related to false certification should increase transfers to borrowers through additional false certification discharges. Under existing regulations, false certification discharges represent a very low share of discharges granted to borrowers. Over the past 3 years, approximately 800 borrowers have received a total of $9.4 million in false certification discharges, compared with approximately 455,000 borrowers and $10.67 billion in disability discharges or 573 closed institutions and $1.38 billion in closed school discharges. The Department does not expect an increase in false certification claims to result in a significant budget impact. The Department would continue to evaluate the changes to the false certification discharge and welcomes comments to consider as the final analysis of the proposed regulations is developed.

5. Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these proposed regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers.

TABLE 11—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category		Benefits	
Updated and clarified borrower defense process and Federal standard to increase protection for student borrowers and taxpayers.		not quantified	
Improved awareness and usage of closed school, TPD, and false certification discharges and PSLF		not quantified	
Improved consumer information about institutions' performance and practices		not quantified	
Category		**Costs**	
		7%	3%
Costs of compliance with paperwork requirements		$5.83	$5.85
Category		**Transfers**	
		7%	3%
Borrower Defense claims from the Federal government to affected borrowers	Primary	2,632.3	2,292.2
Reimbursements of borrower defense claims from affected institutions to the Federal government	Primary	51.2	48.6
Closed school discharges from the Federal government to affected students		763	697
Total and Permanent discharges from the Federal government to affected students		2,375	2,172
Increased PSLF amounts to eligible borrowers from administrative changes, better definitions of qualifying employment, allowing lump sum and installment payments, and counting payments prior to consolidation, and counting certain periods of deferment and forbearance.		3,000	2,761
Elimination of non-statutory interest capitalization		$1,290	$1,260.5

6. Alternatives Considered

As part of the development of these regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, consumer

advocates, students, financial aid administrators, accrediting agencies, and State attorneys general, among others. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our rulemaking website at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

6.1 Borrower Defense

Some non-Federal negotiators believed that State standards should be a primary consideration rather than secondary, such as during reconsideration. The Department believes that a single Federal standard for initial adjudication would be easier for borrowers and affected parties to understand. Requiring adjudication of State laws at the outset would be confusing, burdensome, and can lead to inconsistent treatment across States. The Department thinks that the proposed single Federal standard for initial review of claims encompasses most items that would be in State standards and would result in fewer situations where something would be approved under a State standard but not a Federal one. While the Department believes there would be few circumstances where a claim could be approved under State law but not the Federal standard, we propose allowing claims to be reconsidered under a State law. In the case of group claims brought by a State requestor this review could occur prior to the issuance of a formal denial.

It was also suggested during the negotiations that the Department should allow more types of third parties to propose group claims, including individual borrowers and legal assistance organizations. However, the Department believes the State requestors have been the most consistent source of high-quality external evidence that have led to the approval of claims so far. While legal assistance organizations have provided useful information as well, the Department is concerned about the administrability of allowing dozens more entities to submit requests for a group process. The Department also already has existing collaborative oversight responsibilities with States as both are members of the regulatory triad that also includes accreditation agencies. With respect to individual borrowers, the Department thinks it is unlikely that an individual borrower would possess the type of evidence needed for forming a group claim. Having legal assistance organizations and individuals instead work with States to put together a group claim would thus result in applications that are more likely to be turned into group claims.

The Department had considered tying together recovery from institution to adjudication for borrower defense to repayment cases, as under the 2016 rule, but ultimately decided against proposing that. The Department is concerned that the recovery process could significantly slow the process of providing relief to borrowers, which could result in significant costs for borrowers who are forced to put their lives on hold while they wait for relief. The Department would continue to recoup liabilities once claims have been approved and liabilities assessed, consistent with the Department's practices in other types of discharges where the school may be liable. The Department expects the deterrent effect that would result from the proposed regulation to be similar to that of the 2016 rule. Some non-Federal negotiators recommended that the Department identify broader instances in which it would not recoup funds out of concern that the Department would only approve claims in which it is going to be able to recoup funds. While the Department has a strong commitment to recoupment, it also recognizes that there are many instances of institutional conduct that could lead to approved borrower defense claims that either occurred at institutions that have since closed and lack assets to recoup against or that occurred outside the limitations period for recoupment.

The Department also considered whether it should provide a full discharge for all borrowers with approved claims or adopt a higher evidentiary standard to rebut the presumption of full relief. The Department believes that adopting a higher evidentiary standard for rebutting the presumption of full relief would be inappropriate because the rest of the borrower defense regulation uses preponderance of the evidence, and it should use a consistent standard. Similarly, while borrowers are presumed to have a full discharge when their cases are approved in the proposed regulations, the Department believes that there would be circumstances where a borrower was subject to a substantial misrepresentation or other conduct that led to an approved claim, but the degree of harm suffered by the borrower is less than the amount of a full discharge. The Department believes that the use of a rebuttable presumption in limited circumstances balances the goal of erring on the side of full discharges while preserving flexibility to discharge lesser amounts when warranted.

Some non-Federal negotiators noted that it is difficult for the Department to ensure that collection is in fact stopped after a borrower has submitted a borrower defense application. These negotiators proposed that the Secretary should reimburse the borrower for the amount collected if the Secretary collects on a loan placed in forbearance or stopped collections in violation of proposed § 685.403(d) or § 685.403(e). While the Department appreciates the concerns of negotiators and agrees that forbearances must be implemented accurately, the Department does not believe it is necessary or appropriate to mandate a reimbursement amount in regulations, as other remedies exist for correcting such administrative errors.

The Department also considered whether it should mandate that borrower defense claims be reviewed and decided by an individual who is completely independent from the rest of the Department. The Department, however, does not think it could mandate such a structure in regulations since it would require promising resources that are subject to annual appropriations.

6.2 False Certification

The Department previously considered a new form for a common law forgery loan discharge for borrowers whose signature was forged by someone other than a school employee. This applied only to Department-held Federal student loans, but the Department is encouraging other loan holders to create a process like this one. Until we launched this form, the Department evaluated all forgery claims using the discharge forms that only apply where the school falsified a signature or if there was a judicially proven crime of identity theft. This new form for a common law forgery loan discharge provides borrowers an alternative option. But it would not benefit many borrowers who do not fit into the false certification categories since the number of applications under the FFEL Program is very small and would continue to shrink.

The Department considered relying on the disbursement date as an alternative to relying on the origination date, but the Department is concerned that relying on the disbursement date allows institutions time to remedy an already completed false certification that a student was eligible for a loan (*e.g.,* a student without a high school diploma or equivalent did not meet the ability to benefit requirement of having completed six credits toward their

credential at the time of origination, but did at the time of disbursement). Instead, relying on the origination date would ensure that institutions may be held accountable for their misconduct even if it is subsequently corrected prior to disbursement.

The Department considered whether to expand eligibility for false certification discharges to cover circumstances such as barriers to employment. However, we are concerned that de facto barriers to employment (*e.g.,* jobs that likely would not hire someone with a criminal background, despite there being no specific related requirement for state licensure in that field) rather than being explicit prohibitions (*e.g.,* jobs that cannot legally be held by someone with a criminal background) would create a substantial burden on institutions to be aware of such barriers and may not reliably identify borrowers eligible for such discharge.

6.3 PSLF

Several alternatives to better define and improve PSLF were recommended by non-Federal negotiators. Currently, government employees and those who work for a nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of the Internal Revenue Code are eligible for qualifying PSLF employment. Furthermore, employees of other organizations (other than a business organized for profit, a labor union, or a partisan political organization) can only have their employment qualify if their organization provides one of the other public services identified in the HEA and mirrored in regulations.

One alternative proposed was to include PSLF eligibility for borrowers working to provide public services at nonprofit hospitals in certain states who are employed by for-profit organizations because they are barred by state law from working directly for the hospital. This negotiator stated that most of those borrowers provide public services under a for-profit organization. Other negotiators and documents submitted by negotiators mentioned low-wage workers in areas such as home health care or early childhood education who are similarly more likely to work at a for-profit employer and are thus ineligible for PSLF under existing regulations. Some suggested that the Department assess eligibility based on SOC codes that classify workers into occupational categories. While the Department agrees that the other occupations identified by the negotiators provide valuable services, the Department lacks the resources to review for-profit employers, which also have far less required transparency than nonprofit organizations and which would thus require an even more extensive investigation, or to assess individual borrowers' job descriptions to determine whether their occupations should qualify for PSLF. The Department's longstanding position has been that there are meaningful distinctions between for-profit and nonprofit organizations that have been encoded in broader tax law and that it should honor those distinctions. Because of these concerns the Department is seeking additional comments on this issue from the public, as discussed in greater detail in the preamble.

The Department also heard from public commenters who expressed concerns about the presence of laws in certain states that prevent physicians from being directly employed by private nonprofit hospitals. The result is that those doctors are legally unable to get access to PSLF as employees. The Department is considering whether this issue could be addressed by creating a separate eligibility test for situations such as these. We have included requests for additional public comment on this issue as described in the preamble.

The Department also considered whether it should count all deferments and forbearances toward PSLF, or all deferments or forbearances used before a certain date to capture when the Department made improvements to discourage practices that steered borrowers into deferments or forbearances unnecessarily. The Department is concerned that counting all forbearance and deferments could create a disincentive to make PSLF payments. In addition, there are some deferments and forbearances that directly conflict with PSLF employment requirements, for example, unemployment and rehabilitation training. The Department intends for those qualifying forbearances and deferments to align with the purpose of PSLF.

Several non-federal negotiators brought up forbearance-steering and wanted to include situations of forbearance steering as qualifying payments. While the Department is concerned about instances where borrowers have ended up in forbearances due to poor advice, there is not a clear definition of what forbearance-steering would include. In addition, this would require the borrower to prove steering, which the Department believes is a difficult and unattainable bar for most borrowers and would have the effect of creating a process akin to borrower defense for loan repayment counting. Instead, the hold harmless period would provide borrowers a way to gain credit for those months in deferment or forbearance without needing to adjudicate why they ended up in that status.

6.4 Interest Capitalization

While the Department put forth a proposal eliminating interest capitalization on non-statutory capitalizing events, some non-Federal negotiators suggested eliminating it for all capitalizing events in order to reduce confusion and inconsistency. However, certain capitalizing events are statutory, such as for IBR, FFEL, and deferments. The Department proposes to eliminate interest capitalization where we have the discretion to do so in order to reduce the cost of borrowing for students.

Some federal negotiators proposed not capitalizing interest when a borrower consolidates their federal student loans. The Department considered this proposal but thinks the capitalization that occurs in this instance is different than the other areas where the Department is eliminating it. A borrower must take intentional steps to consolidate their loans and is not required to do so. By contrast, many of the other instances of interest capitalization occur either without the borrower understanding that capitalization would occur or as an added penalty for a borrower who is already struggling on their loan and pauses their payments.

The Department also considered whether the concerns of capitalization could instead be addressed by providing borrowers with greater education on what is capitalization and why it occurs. However, the Department concluded that such an approach would be unlikely to work because many instances of capitalization are either unavoidable or reflect borrower struggles. In the former category, all borrowers must eventually enter repayment, so educating them more about capitalization in that instance would not provide any benefits. The area where education could potentially make a greater difference is capitalization tied to forbearance usage. However, many borrowers rely on forbearance in times of struggle, so it is unclear that greater education could work.

6.5 Total and Permanent Disability Discharge

Some proposed that the Department fully eliminate monitoring of borrowers' eligibility for loans following a total and permanent disability discharge. However, while the Department supports removing the income monitoring period, we feel it should be maintained for new loans. The Department is concerned that we should not be distributing new loans if borrowers have a demonstrated disability that prevents them from working and ultimately repaying that loan. A student's borrowing eligibility is made under the assumption that repayment can be made. If a borrower is trying to take out loans already knowing that repayment will not be possible, then the Department is taking on the risk of default and should not distribute the loan. We have a duty to protect taxpayer money, and if there is no probability of repayment, we do not deem it prudent to provide such loans.

6.6 Closed School Discharge

Some non-federal negotiators suggested a different definition of closure that would have restricted discharges in circumstances where other nearby institutions were willing to allow the borrower to continue their program, among other conditions. The Department believes such an approach would have unfairly made discharges unavailable to borrowers for reasons we would struggle to judge, such as how accessible a nearby program is for specific borrowers. Negotiators also wrestled with difficulties in defining adequate proximity regarding closed schools. However, the Department is concerned that identifying nearby programs within ''reasonable proximity'' would be highly subjective, and a narrowed definition could mean that a borrower loses their discharge unfairly.

When looking at automatic discharges, the Department decided to reduce the period before automatic discharges occur following closure from 3 years (as provided for under the 2016 regulations) to 1 year. GAO noted in its report on college closures that a majority of the borrowers who received automatic discharges were in default, and that without automatic relief, only a small percentage of eligible borrowers ever got the relief they were owed. This change would make it less likely that borrowers who do not apply for closed school discharges could end up in default before receiving automatic relief.

Regarding the window to qualify for a discharge, some non-Federal negotiators questioned whether this period of time should be increased, but the Department notes that 180 days is consistent with past regulations. Our expanded list of exceptional circumstances would address other circumstances where the path to closure begins earlier.

At present, a borrower loses access to a discharge if they transfer any of their credits to another program. The Department assessed the potential value of retaining that requirement but is proposing to eliminate the requirement that the borrower cannot have transferred credits (other than through an approved teach-out that they complete) because we are concerned it is confusing to borrowers and may be preventing them from accessing discharges. We believe that, instead, it is preferable to ensure borrowers are able to access the loan relief benefits to which they are entitled. Looking ahead, the Department believes the improvement of data sources would allow us to better identify and automate closed school discharges.

Negotiators also suggested making the set of exceptional circumstances included in the regulations as required rather than possible extensions of the eligibility window for closed school discharges. The Department feels that this standard should be on a case-by-case basis, and notes that the use of the exceptional circumstance's provisions would require individualized determinations to assess the individual case of each school closure. However, the Department believes that its proposal to expand the non-exhaustive list would send clear signals on how the Secretary may use this authority going forward.

6.7 Pre-Dispute Arbitration

During rulemaking sessions, negotiators considered expanding the proposed prohibition on pre-dispute arbitration clauses to include all types of complaints, not just those related to borrower defense. The Department's legal authority is based on the relevance of arbitration to the making of a Direct Loan or provision of educational services for which the Direct Loan was intended. In this NPRM, the Department takes the position that, in order to protect the interests of the United States and to promote the purposes of the Direct Loan Program in accordance with the HEA and the Department's PPA with institutions, mandatory pre-dispute arbitration agreements cannot foreclose on borrowers' right to file a borrower defense claim with the Secretary.

Additionally, some negotiators proposed that the Department should not collect arbitral and judicial records. However, the Department needs to be able to see and understand the patterns of complaints to anticipate and investigate possible claims since these arbitral records and outcomes from arbitration are largely not publicly accessible but are highly relevant for enforcement and investigation purposes.

Negotiators also proposed allowing institutions to require arbitration clauses through enrollment agreements. At the crux of these proposed rules, the Department aims to protect borrowers by prohibiting mandatory arbitration clauses and believes borrowers should have an opportunity to have their day in court. Allowing borrowers the opportunity to go through the judicial system could help deter bad acting schools from engaging in behaviors that the Department does not endorse or allow. Borrowers' ability to litigate can also provide a certain level of transparency to the general public and to the Department and allows for understanding of resolutions in instances of litigation. Litigation may also allow claimants to band together to bring class action lawsuits and reduce potential legal costs, as well as bring about attention to misconduct that may also be affecting other students.

Additionally, although arbitration is conducted by a third party, there is some evidence of bias in favor of the company over the consumer, at least where the company is regularly involved in such claims.[66] With litigation, that problem is eliminated as the judge acts as an impartial body without receiving payment from either of the parties.

7. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act (5 U.S.C. 603(a)) allows an agency to certify a rule if the rulemaking does not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) defines ''small institution'' using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are postsecondary institutions, however, which do not report such data to the

[66] Horton, D. and Chandrasekher, A. After the Revolution: An Empirical Study of Consumer Arbitration (June 4, 2015), *Georgetown Law Journal,* Vol. 104, 2015, Forthcoming, UC Davis Legal Studies Research Paper No. 436, Available at SSRN: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2614773.* ''. . . consumers facing corporations that arbitrate routinely suffer a pronounced disadvantage'' (page 110).

Department. As a result, for purposes of this NPRM, the Department proposes to continue defining ''small entities'' by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions.[67]

TABLE 12—SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	328	1,182	27.75
2-year	Private	182	199	91.46
2-year	Proprietary	1,777	1,952	91.03
4-year	Public	56	747	7.50
4-year	Private	789	1,602	49.25
4-year	Proprietary	249	331	75.23
Total		3,381	6,013	56.23

Source: 2018–19 data reported to the Department.

Table 12 summarizes the number of institutions affected by these proposed regulations.

TABLE 13—ESTIMATED COUNT OF SMALL INSTITUTIONS AFFECTED BY THE PROPOSED REGULATIONS

	Small institutions affected	As percent of small institutions
Borrower Defense	50	1.47
False Certification	0	0
PSLF	0	0
Eliminate Interest Capitalization	0	0
Total Permanent Disability Discharge	0	0
Closed School Discharge	0	0
Pre-dispute Arbitration	1,285	38.0

The Department has determined that the negative economic impact on small entities affected by the regulations would not be significant. The proposed changes to False Certification, PSLF, Total Permanent Disability Discharge, and Closed School Discharge would not have an impact on small institutions. These types of discharges are between the borrower and the lender, which often is the Department. The Department anticipates this will impact 310 small lenders that will be required to expand their current reporting and will take approximately 50 hours to update their systems. A few small institutions could be impacted by the proposed regulations where there is a large group Borrower Defense claim. Based on recent experience of the Department, adjudicating borrower defense to repayment cases and recouping from institutions, small institutions are not expected to be impacted by the proposed regulations in BD because the Department is unlikely to recoup from isolated BD cases from small institutions. The proposed changes to eliminate interest capitalization will not have an impact on small institutions as this is also an action between the borrower and lender.

The Department anticipates approximately 38 percent of small institutions will be impacted by these pre-dispute arbitration proposed regulations. We derived the percentage that would be impacted from a report by the Century Foundation which sampled schools using arbitration clauses in their enrollment contracts.[68] Of the sampled schools, 62 percent of proprietary institutions and 2.9 percent of private nonprofit institutions used arbitration clauses. The study found public schools did not utilize arbitration clauses. We applied those proportions to the number of small proprietary institutions (both 2 year and 4 year) and Private nonprofit (both 2 year and 4 year) and arrived at 1,285 or 38.01 percent of total small business institutions. We would not anticipate there is a significant cost impact to amend future contracts.

[67] In previous regulations, the Department categorized small businesses based on tax status. Those regulations defined ''non-profit organizations'' as ''small organizations'' if they were independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organization as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. Using FY2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition captures a similar share of proprietary institutions, allowing consistent comparison to other types of institutions.

[68] *How College Enrollment Contracts Limit Students' Rights.* (2016, April 28). The Century Foundation. *https://tcf.org/content/report/how-college-enrollment-contracts-limit-students-rights/.*

TABLE 14—ESTIMATED COST RANGE FOR SMALL INSTITUTIONS AFFECTED BY THE PROPOSED REGULATIONS

Compliance area	Small institutions affected	Cost range per institution		Estimated overall cost range	
BD employment rate background check	50	500	750	25,000	37,500
Pre-dispute arbitration update future agreements	1,285	125	160	160,625	205,600
Lenders	310	2,231	2,343	691,622.40	726,330

While these proposed regulations would have an impact on some small institutions, there will not be a significant cost and compliance impact.

8. Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 668.41, 668.74, 674.33, 674.61, 682.402, 682.414, 685.213, 685.214 685.215, 685.219, 685.300, 685.304, 685.402, 685.403, and 685.407, of this proposed rule contain information collection requirements. Under the PRA, the Department has or will at the required time submit a copy of these sections and an Information Collections Request to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Section 668.41 Reporting and Disclosure of Information

Requirements: The Department proposes to remove the requirements in current § 668.41(h).

Burden Calculation: With the removal of the regulatory language in § 668.41(h) the Department would remove the associated burden of 4,720 hours under OMB Control Number 1845–0004.

STUDENT ASSISTANCE GENERAL PROVISIONS—STUDENT RIGHT TO KNOW (SRK)—OMB CONTROL NUMBER: 1845–0004

Affected entity	Respondent	Responses	Burden hours	Cost $44.41 per institution from the 2019 final rule
For-Profit	−944	−944	−4,720	−$209,615

Section 668.74 Employability of Graduates

Requirements: In the course of adjudicating borrower defense claims, the Department has persistently seen misrepresentations about the employability of graduates. In this NPRM, the Department is explicitly including as a form of job placement rate misrepresentation placement rates that are inflated through manipulation of data inputs. Proposed section 668.74(g)(2) contains a provision that allows the Department to verify that an institution correctly calculated its job placement rate by requiring an institution to furnish to the Secretary, upon request, documentation and other data that was used to calculate the institution's employment rate calculations.

Burden Calculation: The Department believes that such a request will impose only a modest burden on the part of any institution to provide the existing background data upon which the employment rates that are presented were calculated. We believe that such required reporting would be made by 2 Private Not-for-profit, 2 For-Profit and 2 Public institutions annually. It is anticipated that 6 institutions will receive such a request and that it will take 8 hours to copy and prepare for submission to the Department such evidence of their calculated employment rates for a total of 48 burden hours (6 institutions X 1 response x 8 hours = 48 burden hours).

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER 1845–0022

Affected entity	Respondent	Responses per respondent	Burden hours = 8 hours per response	Cost $46.59 per hour for institutions
Private Not-for-Profit	2	1	16	$745
For-Profit	2	1	16	$745
Public	2	1	16	$745
Total	6		48	$2,235

Sections 674.33(g), 682.402(d), and 685.214 Closed School Discharge

Requirements: The proposed regulations would amend the Perkins, FFEL, and Direct Loan regulations to simplify the closed school discharge process. Proposed §§ 674.33(g)(4), 682.402(d)(3) and 685.214(d)(1) would provide that the borrower must submit a completed closed school discharge application to the Secretary and that the factual assertions in the application must be true and made by the borrower under penalty of perjury. Additionally, the number of days that a borrower had withdrawn from a closed school to qualify for a closed school discharge would be extended from 120 days to 180 days.

Burden Calculation: These changes would require an update to the current closed school discharge application form. We do not believe that the language update will significantly change the amount of time currently assessed for the borrower to complete the form from those which has already been approved. The form update would be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes would be assessed to OMB Control Number 1845–0058, Loan Discharge Applications (DL/FFEL/Perkins).

Sections 674.61, 682.402(d), and 685.213 Total and Permanent Disability (TPD) Discharge

Requirements: Under proposed changes to §§ 674.61(b)(2)(iv), 682.402(c)(2)(iv), and 685.213(b)(2), a TPD discharge application would be allowed to be certified by a nurse practitioner, a physician's assistant licensed by a State, or a licensed certified psychologist at the independent practice level in addition to a physician who is a Doctor of Medicine or Osteopathy legally authorized to practice in a State. The type of Social Security Administration (SSA) documentation that may qualify a borrower for a TPD discharge would be expanded to include an SSA Benefit Planning Query or other SSA documentation deemed acceptable by the Secretary. The NPRM also proposes to amend the Federal Perkins Loan (Perkins), Direct Loan, and Federal Family Education Loan (FFEL) Program regulations to improve the process for granting total and permanent disability (TPD) discharges by eliminating the income monitoring period. Proposed §§ 674.61(b)(6)(i), 682.402(c)(6), and 685.213(b)(7)(i) would eliminate the existing reinstatement requirements, except for the provision which provides that a borrower's loan is reinstated if the borrower receives a new TEACH Grant or a new title IV loan within 3 years of the date the TPD discharge was granted.

Burden Calculation: These proposed changes would require an update to the current total and permeant disability discharge application form. We do not believe that the language update will significantly change the amount of time currently assessed for the borrower to complete the Discharge Application (TPD–APP) application form from those which has already been approved. These proposed rules would eliminate the Post-Discharge Monitoring form (TPD–PDM) from the collection and will create a decrease in overall burden from the 1845–0065 collection. The forms update would be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes would be assessed to OMB Control Number 1845–0065, Direct Loan, FFEL, Perkins and TEACH Grant Total and Permanent Disability Discharge Application and Related Forms.

682.402(e), 685.215(c) and 685.215(d) False Certification Discharge

Requirements: These proposed regulations streamline the FFEL and Direct Loan false certification regulations to provide one set of regulatory standards that would cover all false certification discharge claims. Sections 682.402(e) and 685.215(c)(5) state that a borrower qualifies for a false certification discharge if the school certified the borrower's eligibility for a FFEL or Direct Loan as a result of the crime of identity theft. Additionally, 685.215(c)(10) would provide for a new application to allow a state Attorney General or nonprofit legal services representative to submit a request to the Secretary for a group discharge under section (c).

Burden Calculation: These changes would require an update to the current false certification discharge application forms. We do not believe that the language update will significantly change the amount of time currently assessed for the borrower to complete the forms from those which has already been approved. The forms update would be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. New forms to capture the requirements of the identity theft section and the group discharge request will be created and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes would be assessed to OMB Control Number 1845–0058, Loan Discharge Applications (DL/FFEL/Perkins).

Requirements: Under proposed § 682.402(e)(6)(i) if a holder of a borrower's FFEL loan determines that a borrower may be eligible for a false certification discharge the holder provides the borrower with the appropriate application and explanation of the process for obtaining a discharge. The borrower burden to complete the form is captured under the form collection 1845–0058. Under proposed § 682.402(e)(6)(iii) if a FFEL borrower submits an application for discharge that a FFEL program loan holder determines is incomplete, the loan holder would notify the borrower of that determination and allow the borrower 30 days to amend the application and provide supplemental information.

Burden Calculation: The Department believes that such a request will require burden on the part of any FFEL lender. Of the 310 FFEL lenders it is anticipated that 31 lenders will make such determinations of borrower discharge eligibility and that it will take 20 minutes to send an estimated 100 borrowers the correct form for completion for a total of 33 burden hours (100 borrowers applications × 20 minutes per application (.33 hours) = 33 burden hours).

It is anticipated that 15 lenders would make a determination of 25 borrower's incomplete application and that it would take 15 minutes to send borrowers the notice to amend their application for a total of 6 burden hours (25 borrowers receiving lender notices × 15 minutes (.25 hours) = 6 burden hours).

It is anticipated that of the 25 borrowers who receive notice of an incomplete application, 20 will resubmit an amended application or provide additional documentation and it would take 30 minutes to make such amendments for a total of 10 burden hours (20 borrowers amending initial filings × 30 minutes (.50 hours) = 10 hours under OMB Control Number 1845–0020.

Requirements: Proposed § 682.402(e)(6)(vii) would require a guaranty agency to issue a decision that explains the reasons for any adverse determination on a false certification discharge application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The

guaranty agency would consider any response or additional information from the borrower and notify the borrower as to whether the determination is changed.

Burden Calculation: The Department believes that such a request will require burden on the part of any guaranty agency. Of the 18 guaranty agencies it is anticipated that the guaranty agencies will make such adverse determinations of 75 borrower discharge eligibility and that it will take 30 minutes to send borrowers the decision for a total of 38 burden hours (75 borrowers receiving adverse determination notifications × 30 minutes (.50 hours) = 38 burden hours) under OMB Control Number 1845–0020.

Requirements: Proposed § 682.402(e)(6)(ix) would provide the borrower with the option to request that the Secretary review the guaranty agency's decision.

Burden Calculation: The Department believes that such a request will require burden on the part of any borrower. Of the 75 borrowers whose applications were denied by the guaranty agency, it is anticipated that 30 borrowers will request Secretarial review of the guaranty agencies decision and that it will take 30 minutes to send such a borrower request for a total of 15 burden hours (30 borrowers × 30 minutes (.50 hours) = 15 burden hours) under OMB Control Number 1845–0020.

FEDERAL FAMILY EDUCATION LOAN PROGRAM REGULATIONS—OMB CONTROL NUMBER 1845–0020

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 institutional $22.00 individual
Individual	50	50	25	$550
Private Not-for-Profit	14	55	23	1,071.57
For-Profit	24	99	31	1,444.29
Public	11	46	23	1,071.57
Total	99	250	102	4,137.43

Section 682.414 Reports

Requirements: In § 682.414(b)(4), the Department proposes to require FFEL Program lenders to report detailed information related to a borrower's deferments, forbearances, repayment plans, delinquency, and contact information on any FFEL loan to the Department by an established deadline.

Burden Calculation: The Department believes that such a request will require burden on the part of any FFEL lender. It is anticipated that 310 lenders will be required to expand their current reporting and that it will take 50 hours to update systems and to initially provide the additional data for a total of 15,500 burden hours (310 institutions × 50 hours = 15,500 burden hours) under OMB Control Number 1845–0020.

FEDERAL FAMILY EDUCATION LOAN PROGRAM REGULATIONS—OMB CONTROL NUMBER 1845–0020

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 institutional
Private Not-for-Profit	64	64	3,200	$149,088
For-Profit	246	246	12,300	573,057
Totals	310	310	15,500	722,145

Section 685.219 Public Service Loan Forgiveness

Requirements: The Department proposes new, modified, and restructured definitions in § 685.219(b) which would expand the use of the form.

Burden Calculation: These changes would require an update to the current Public Service Loan Forgiveness form. We do not believe that the language update will significantly change the amount of time currently assessed for the borrower to complete the form from those which has already been approved. The form update would be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes would be assessed to OMB Control Number 1845–0110, Application and Employment Certification for Public Service Loan Forgiveness.

Requirements: In this NPRM, the Department also proposes regulations to create a reconsideration process under proposed § 685.219(g) for borrowers whose applications for Public Service Loan Forgiveness were denied or who disagree with the Department's determination of the number of qualifying payments or months of qualifying employment that have been earned by the borrower which formalizes the current non-regulatory process.

Burden Calculation: The Department is currently in the clearance process for an electronic Public Service Loan Forgiveness Reconsideration Request, OMB Control Number 1845–0164. Public comment on the web-based format is currently being accepted through the normal information clearance process under docket number ED–2022–SCC–0039.

Section 685.300 Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program

Requirements: The Department proposes to reinstate prior regulations that barred institutions, as a condition of participating in the Direct Loan program, from requiring borrowers to accept pre-dispute arbitration agreements and class action waivers as they relate to borrower defense claims. Specifically, in proposed § 685.300(e), institutions would be prohibited from relying on a pre-dispute arbitration agreement, or any other pre-dispute agreement with a student who obtained or benefitted from a Direct Loan, in any aspect of a class action related to a borrower defense claim, until the

presiding court rules that the case cannot proceed as a class action. In proposed § 685.300(f) of the regulations, the Department proposes to require that certain provisions relating to notices and the terms of the pre-dispute arbitration agreements be included in any agreement with a student who receives a Direct Loan to attend the school or for whom a Direct PLUS Loan was obtained.

Burden Calculation: There will be burden on any school that meets the conditions for supplying students with the changes to any agreements. Based on the Academic Year 2020–2021 Direct Loan information available, there were 1,026,437 Unsubsidized Direct Loan recipients at 1,587 for-profit institutions. Assuming 66 percent of these students will continue to be enrolled at the time these regulations become effective, about 677,448 students will be required to receive the agreements or notices required in § 685.300(e) or (f). We anticipate that it will take 1,587 for-profit institutions .17 hours (10 minutes) per student to develop these agreements or notices, research who is required to receive them, and forward the information accordingly for 115,166 burden hours (677,448 students × .17 hours) under OMB Control Number 1845–0021.

Requirements: Under the proposed rules at § 685.300(g) and (h), institutions would be required to submit certain arbitral records and judicial records connected with any borrower defense claim filed against the school to the Secretary by certain deadlines.

Burden Calculation: The Department believes that such a request will require burden on any school that meets the conditions for supplying the records to the Secretary. We continue to estimate that 5 percent of 1,587 for-profit institutions or an estimated 79 for-profit institutions would be required to submit documentation to the Secretary to comply with the proposed regulations. We anticipate that each of the 79 schools will have an average of four filings thus there will be an average of four submissions for each filing. Because these are copies of documents required to be submitted to other parties, we anticipate 5 burden hours to produce the copies and submit to the Secretary for an increase in burden of 6,320 hours (79 institutions × 4 filings × 4 submissions/filing × 5 hours) under OMB Control Number 1845–0021.

WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM (DL) REGULATIONS—OMB CONTROL NUMBER 1845–0021

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 institutional
For-Profit	1,587	678,712	121,486	$5,660,033
Total	1,587	678,712	121,486	$5,660,033

Section 685.304 Counseling Borrowers

Requirements: The Department proposes to remove § 685.304(a)(6)(xiii) through (xv). The proposed regulations at § 685.300 would state the conditions under which disclosures would be required and provide deadlines for such disclosures.

Burden Calculation: With the removal of the regulatory language in § 685.304(a)(6)(xiii) through (xv) the Department would remove the associated burden of 30,225 hours under OMB Control Number 1845–0021.

WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM (DL) REGULATIONS—OMB CONTROL NUMBER 1845–0021

Affected entity	Respondent	Responses	Burden hours	Cost $44.41 per institution; $16.30 per individual from 2019 final rule
Individual	−342,407	−342,407	−27,393	−$446,506
For-Profit	−944	−944	−2,832	−$125,769
Total	−343,351	−343,351	−30,225	−$572,275

Section 685.402 Group Process for Borrower Defense

Requirements: In these proposed § 685.402(c), the Department may initiate a group process upon request from a state requestor, on the condition that the state requestor submit an application and other required information to the Department to adjudicate the claim.

Burden Calculation: A new form to capture the requirements of § 685.402(c) will be created and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations.

Section 685.405 Institutional response

Requirements: In proposed § 685.405, the Department proposes to continue to provide for an institutional response process to borrower defense claims. Under the proposed regulations in § 685.405(a), the Department official would notify the institution of the borrower defense claim and its basis for any group or individual borrower defense claim. Under the proposed regulations in § 685.405(b) the institution would have 90 days to respond. Under the proposed regulations in § 685.405(c), with its response, the institution would be required to execute an affidavit confirming that the information contained in the response is true and correct under penalty of perjury on a form approved by the Secretary.

Burden Calculation: A new form to capture the requirements of § 685.405(c) will be created and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations.

Section 685.407 Reconsideration

Requirements: Proposed § 685.407 sets forth the circumstances under which a borrower or a State requestor may seek reconsideration of a Department official's denial of their borrower defense claim. Proposed § 685.407(a)(4) identifies the reconsideration process, which includes an application approved by the Secretary.

Burden Calculation: A new form to capture the requirements of § 685.407(a) will be created and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations.

Consistent with the discussions above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net cost of the increased burden for institutions, lenders, guaranty agencies and students, using wage data developed using Bureau of Labor Statistics (BLS) data. For individuals we have used the median hourly wage for all occupations, $22.00 per hour according to BLS. *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.* For institutions, lenders, and guaranty agencies we have used the median hourly wage for Education Administrators, Postsecondary, $46.59 per hour according to BLS. *https://www.bls.gov/oes/current/oes119033.htm.*

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control number and estimated burden	Estimated cost $46.59 institutional $22.00 individual unless otherwise noted
§ 668.41	The Department proposes to remove the requirements in current § 668.41(h).	1845–0004; −4,720 hrs	Cost from the 2019 Final Rule ($44.41 per institution) −$209,615.
§ 668.74	Proposed section 668.74(g)(2) contains a provision that allows the Department to verify that an institution correctly calculated its job placement rate by requiring an institution furnish to the Secretary, upon request, documentation and other data that was used to calculate the institution's employment rate calculations.	1845–0022 +48 hrs	+$2,235
§§ 674.33(g), 682.402(d), 685.214.	Proposed §§ 674.33(g)(4), 682.402(d)(3) and 685.214(d)(1) would provide that the borrower must submit a completed closed school discharge application to the Secretary and that the factual assertions in the application must be true and made by the borrower under penalty of perjury.	1845–0058 Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form.
§§ 674.61, 682.402(d), 685.213.	Proposed changes expand the type of medical professional who can certify the Total Permanent Disability (TPD) application. The proposed changes also include an expansion of the acceptable Social Security Administration documentation for filing a TPD application. The proposed regulations also eliminate the income monitoring period for all TPD applicants except those who receive a new TEACH Grant or new title IV loan within 3 years of the TPD discharge.	1845–0065 Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form.
§§ 682.402(e), 685.215(c) and 685.215(d).	These proposed regulations streamline the FFEL and Direct Loan false certification regulations to provide one set of regulatory standards that would cover all false certification discharge claims. Sections 682.402(e) and 685.215(c)(5) adds qualification for a false certification discharge if the school certified the borrower's eligibility for a FFEL or Direct Loan as a result of the crime of identity theft. Additionally, 685.215(c)(10) provides for a new application to allow a state Attorney General or nonprofit legal services representative to submit a request to the Secretary for a group discharge.	1845–0058 Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB control number and estimated burden	Estimated cost $46.59 institutional $22.00 individual unless otherwise noted
§ 682.402(e)(6)	Under proposed § 682.402(e)(6)(i) if a holder of a borrower's FFEL loan determines that a borrower may be eligible for a false certification discharge the holder provides the borrower with the appropriate application and explanation of the process for obtaining a discharge. Under proposed § 682.402(e)(6)(iii) if a FFEL borrower submits an application for discharge that a FFEL program loan holder determines is incomplete, the loan holder would notify the borrower of that determination and allow the borrower 30 days to amend the application and provide supplemental information. Proposed § 682.402(e)(6)(vii) would require a guaranty agency to issue a decision that explains the reasons for any adverse determination on a false certification discharge application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The guaranty agency would consider any response or additional information from the borrower and notify the borrower as to whether the determination is changed. Proposed § 682.402(e)(6)(ix) would provide the borrower with the option to request that the Secretary review the guaranty agency's decision.	1845–0020 +102 hrs	+$4,137.43
§ 682.414(b)	In § 682.414(b)(4), the Department proposes to require FFEL Program lenders to report detailed information related to a borrower's deferments, forbearances, repayment plans, delinquency, and contact information on any FFEL loan to the Department by an established deadline.	1845–0020 +15,500	+$722,145
§ 685.219	The Department proposes new, modified, and restructured definitions for the Public Service Loan Forgiveness Program in § 685.219(b) which would expand the use of the form.	1845–0110 Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form.
§ 685.219(g)	The Department proposes regulations to create a reconsideration process for borrowers whose applications for Public Service Loan Forgiveness were denied or who disagree with the Department's determination of the number of qualifying payments or months of qualifying employment that have been earned by the borrower which formalizes the current non-regulatory process.	1845–0164 This process is currently in public review under docket number ED–2022–SCC–0039..	Costs will be cleared through separate information collection for the form.
§ 685.300	The Department proposes to reinstate prior regulations that barred institutions, as a condition of participating in the Direct Loan program, from requiring borrowers to accept pre-dispute arbitration agreements and class action waivers. Also, institutions would be required to submit certain arbitral records and judicial records connected with any borrower defense claim filed against the school to the Secretary by certain deadlines.	1845–0021 +121,486	+$5,660,033
§ 685.304	The Department proposes to remove§ 685.304(a)(6)(xiii) through (xv). The proposed regulations at § 685.300 would state the conditions under which disclosures would be required and provide deadlines for such disclosures..	1845–0021 −27,393 individual hrs.; −2,832 institutional hrs. = −30,225 hrs.	Costs from 2019 Final Rule ($44.41 per institution; $16.30 per individual) −$446,506 individual costs; −$125,769 institutional costs = −$572,275.
§ 685.402	In these proposed § 685.402(c), the Department may initiate a group process upon request from a State requestor, on the condition that the State requestor submit an application and other required information to the Department to adjudicate the claim.	1845–NEW Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB control number and estimated burden	Estimated cost $46.59 institutional $22.00 individual unless otherwise noted
§ 685.405	Under the proposed regulations in § 685.405(a), the Department official would notify the institution of the borrower defense claim and its basis for any group or individual borrower defense claim. Under the proposed regulations in § 685.405(b) the institution would have 90 days to respond. Under the proposed regulations in § 685.405(c), with its response, the institution would be required to execute an affidavit confirming that the information contained in the response is true and correct under penalty of perjury on a form approved by the Secretary.	1845–NEW Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form.
§ 685.407	Proposed § 685.407 sets forth the circumstances under which a borrower or a State -requestor may seek reconsideration of a Department official's denial of their borrower defense claim. Proposed § 685.407(a)(4) identifies the reconsideration process, which includes an application approved by the Secretary.	1845–NEW Burden will be cleared at a later date through a separate information collection for the form..	Costs will be cleared through separate information collection for the form.

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845–0004	24,016	−4,720
1845–0020	8,265,122	+15,602
1845–0021	831,007	+91,261
1845–0022	2,288,248	+48
Total	11,413,065	+102,191

We have prepared Information Collection Requests for these information collection requirements. If you wish to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notification. Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at *www.regulations.gov.*

In preparing your comments, you may want to review the Information Collection Requests, including the supporting materials, in *www.regulations.gov* by using the Docket ID number specified in this notification. These proposed collections are identified as proposed collections 1845–0004, 1845–0020, 1845–0021, 1845–0022.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed regulations. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by [MONTH DAY, YEAR]. This does not affect the deadline for your comments to us on the proposed regulations. If your comments relate to the Information Collection Requests for these proposed regulations, please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would 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(s) 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.

(Assistance Listing Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600, 668, 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.41 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, and (a)(1)(i) to read as follows:

§ 600.41 Termination and emergency action proceedings.

(a) If the Secretary believes that a previously designated eligible institution as a whole, or at one or more of its locations, does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may—

(1) Terminate the institution's eligibility designation in whole or as to a particular location—

(i) Under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.83, 668.86, 668.88, 668.89, 668.90(a)(1) and (4) and (c) through (f), and 668.91; or

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, and 1231a, unless otherwise noted.

Section 668.14 also issued under 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141.

Section 668.41 also issued under 20 U.S.C. 1092, 1094, 1099c.

Section 668.91 also issued under 20 U.S.C. 1082, 1094.

Section 668.171 also issued under 20 U.S.C. 1094 and 1099c and section 4 of 92 Stat. 1101–1109.

Section 668.172 also issued under 20 U.S.C. 1094 and 1099c and section 4 of 92 Stat. 1101–1109.

Section 668.175 also issued under 20 U.S.C. 1094 and 1099c.

■ 4. Section 668.41 is amended by revising paragraph (c)(2) introductory text and removing paragraph (h).

The revision reads as follows:

§ 668.41 Reporting and disclosure of information.

* * * * *

(c) * * *

(2) An institution that discloses information to enrolled students as required under paragraph (d), (e), or (g) of this section by posting the information on an internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

* * * * *

■ 5. Subpart F is revised to read as follows:

Subpart F—Misrepresentation

Sec.

668.71 Scope and special definitions.
668.72 Nature of educational program or institution.
668.73 Nature of financial charges or financial assistance.
668.74 Employability of graduates.
668.75 Omission of fact.
668.79 Severability.

Subpart F—Misrepresentation

§ 668.71 Scope and special definitions.

(a) If the Secretary determines that an eligible institution has engaged in substantial misrepresentation, the Secretary may—

(1) Revoke the eligible institution's program participation agreement, if the institution is provisionally certified under § 668.13(c);

(2) Impose limitations on the institution's participation in the title IV, HEA programs, if the institution is provisionally certified under § 668.13(c);

(3) Deny participation applications made on behalf of the institution; or

(4) Initiate a proceeding against the eligible institution under subpart G of this part.

(b) This subpart establishes the types of activities that constitute substantial misrepresentation by an eligible institution. An eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation about the nature of its educational program, its financial charges, or the employability of its graduates. Substantial

misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(c) The following definitions apply to this subpart:

Misrepresentation. Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to mislead under the circumstances. A misleading statement may be included in the institution's marketing materials, website, or any other communication to students or prospective students. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required such an endorsement or testimonial to participate in a program. Misrepresentation also includes the omission of facts as defined under § 668.75.

Prospective student. Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.

Substantial misrepresentation. Any misrepresentation, including omission of facts as defined under § 668.75, on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

§ 668.72 Nature of educational program or institution.

Misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

(b)(1) The general or specific transferability of course credits earned at the institution to other institution(s); or

(2) Acceptance of credits earned through prior work or at another institution toward the educational program at the institution.

(c) Whether successful completion of a course of instruction qualifies a student—

(1) For acceptance into a labor union or similar organization; or

(2) To receive, to apply to take, or to take the examination required to receive a local, State, or Federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the States in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by:

(1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or

(2) Governmental officials for governmental employment;

(f) Its size, location, facilities, equipment, or institutionally-provided equipment, books, or supplies;

(g) The availability, frequency, and appropriateness of its courses and programs in relation to the employment objectives that it states its programs are designed to meet;

(h) The number, availability, and qualifications, including the training and experience, of its faculty, instructors, and other personnel;

(i) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide to its students before, during or after the completion of a course;

(j) The nature or extent of any prerequisites established for enrollment in a course;

(k) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;

(l) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency;

(m) Actual institutional selectivity rates, rankings, or student admissions profiles or requirements, if they are materially different from those included in the institution's marketing materials, website, or other communications made to the student or from those provided by the institution to national ranking companies, accrediting agencies, the Secretary, or others;

(n) The classification of the institution (nonprofit, public or proprietary) for purposes of its participation in title IV, HEA programs, if that is different from the classification determined by the Secretary;

(o) Specialized, programmatic, or institutional certifications, accreditation, or approvals that were not actually obtained, or that the institution fails to remove from marketing materials, websites, or other communications to students within a reasonable period of time after such certifications or approvals are revoked or withdrawn;

(p) Assistance that will be provided in securing required externships or the existence of contracts with specific externship sites;

(q) Assistance that will be provided to obtain a high school diploma or General Educational Development Certificate (GED);

(r) The pace of completing the program or the time it would take to complete the program contrary to the stated length of the educational program; or

(s) Any matters required to be disclosed to prospective students under §§ 668.42, 668.43, and 668.45.

§ 668.73 Nature of financial charges or financial assistance.

Misrepresentation concerning the nature of an eligible institution's financial charges, or the financial assistance provided includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge;

(b) Whether a particular charge is the customary charge at the institution for a course;

(c) The cost of the program and the institution's refund policy if the student does not complete the program;

(d) The availability, amount, or nature of any financial assistance available to students from the institution or any other entity to pay the costs of attendance at the institution, including part-time employment, housing, and transportation assistance;

(e) A student's responsibility to repay any loans provided, regardless of whether the student is successful in completing the program and obtaining employment;

(f) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution; or

(g) The amount, method, or timing of payment of tuition and fees that the student would be charged for the program.

§ 668.74 Employability of graduates.

Misrepresentation regarding the employability of an eligible institution's graduates includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;

(b) The institution's intentions to maintain a placement service for graduates or to otherwise assist its graduates to obtain employment, including any requirements to receive such assistance;

(c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;

(d) Whether employment is being offered by the institution exclusively for graduates of the institution, or that a talent hunt or contest is being conducted, including, but not limited to, through the use of phrases such as ''Men/women wanted to train for . . . ,'' ''Help Wanted,'' ''Employment,'' or ''Business Opportunities'';

(e) Government job market statistics in relation to the potential placement of its graduates;

(f) Actual licensure passage rates, if they are materially lower than those included in the institution's marketing materials, website, or other communications made to the student or prospective student; or

(g)(1) Actual employment rates, if they are materially lower than those included in the institution's marketing materials, website, or other communications made to the student or prospective student, including but not limited to:

(i) Rates that are calculated in a manner that is inconsistent with the standards or methodology set forth by the institution's accreditor or a State agency that regulates the institution, or in its institutional policy.

(ii) Actual rates that the institution discloses are inflated by means such as:

(A) Including individuals in an employment rate calculation who are not bona fide employees, such as individuals placed on a 1-day job fair, an internship, externship, or in employment subsidized by the institution;

(B) Including students in the employment rate calculation who were employed in the field prior to graduation;

(C) Excluding students from an employment rate calculation due to the difficulty of placing that student; or

(D) Excluding non-respondents to a survey for calculating an employment rate.

(2) Upon request, the institution must furnish to the Secretary documentation and other information used to calculate the institution's employment rate calculations.

§ 668.75 Omission of fact.

An omission of fact includes the concealment, suppression, or absence of material information relating to the nature of the institution's educational programs, financial charges, or the employability of the institution's graduates. An omission of fact is a misrepresentation under § 668.71 if a reasonable person would have considered the omitted information in making a decision to enroll or continue attendance at the institution. An omission of fact includes, but is not limited to, the concealment, suppression, or absence of material information or statement concerning—

(a) The entity that is actually providing the educational instruction, or implementing the institution's recruitment, admissions, or enrollment process;

(b) The availability of enrollment openings, or requirements for obtaining admission;

(c) The factors that would prevent an applicant from meeting the legal or other requirements to be employed in the field for which the training is provided, for reasons such as prior criminal record or preexisting medical conditions;

(d) The factors that would prevent an applicant from meeting the legal or other requirements to be employed, licensed, or certified in the field for which the training is provided because the academic, professional, or occupational degree or credential that the institution will confer upon completion of the course of study has not been authorized by the appropriate State educational or licensure agency, or requires specialized accreditation that the institution does not have; or,

(e) The nature of the institution's educational programs, the institution's financial charges, or the employability of the institution's graduates.

§ 668.79 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 6. Section 668.81 is amended by revising paragraph (a)(5)(i) to read as follows:

§ 668.81 Scope and special definitions.

(a) * * *

(5) * * *

(i) Borrower defense to repayment claims that are brought by the Department against an institution under § 685.206, § 685.222 or part 685, subpart D, of this chapter; and

* * * * *

§ 668.87 [Removed and Reserved]

■ 7. Section 668.87 is removed and reserved.

■ 8. Section 668.89 is amended by revising paragraph (b)(3)(iii) to read as follows:

§ 668.89 Hearing.

* * * * *

(b) * * *

(3) * * *

(iii) For borrower defenses under §§ 685.206(c) and (e) and 685.222 of this chapter, the designated department official has the burden of persuasion in a borrower defense and recovery action; however, for a borrower defense claim based on a substantial misrepresentation under § 682.222(d) of this chapter, the designated department official has the burden of persuasion regarding the substantial misrepresentation, and the institution has the burden of persuasion in establishing any offsetting value of the education under § 685.222(i)(2)(i).

* * * * *

§ 668.91 [Amended]

■ 9. Section 668.91 is amended by:

■ a. Removing paragraph (a)(2)(ii);

■ b. Redesignating paragraph (a)(2)(i) as (a)(2); and

■ c. Removing paragraph (c)(2)(x).

■ 10. Section 668.100 is added to subpart G to read as follows:

§ 668.100 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 11. Subpart R is added to read as follows:

Subpart R—Aggressive and Deceptive Recruitment Tactics or Conduct

Sec.
668.500 Scope and purpose.
668.501 Aggressive and deceptive recruitment tactics or conduct.
668.509 Severability.

Subpart R—Aggressive and Deceptive Recruitment Tactics or Conduct

§ 668.500 Scope and purpose.

(a) This subpart identifies the types of activities that constitute aggressive and deceptive recruitment tactics or conduct by an eligible institution. An eligible institution has engaged in aggressive and deceptive recruitment tactics or conduct when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, lead generation, recruiting or admissions services, engages in one or more of the prohibited practices in § 668.501. Aggressive and deceptive recruitment tactics or conduct are prohibited in all forms, including the effects of those tactics or conduct reflected in the institution's advertising or promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(b) If the Secretary determines that an eligible institution has engaged in aggressive and deceptive recruitment tactics or conduct, the Secretary may:

(1) Revoke the eligible institution's program participation agreement, if the institution is provisionally certified under § 668.13(c);

(2) Impose limitations on the institution's participation in the title IV, HEA programs, if the institution is provisionally certified under § 668.13(c);

(3) Deny participation applications made on behalf of the institution;

(4) Initiate a proceeding against the eligible institution under subpart G of this part.

§ 668.501 Aggressive and deceptive recruitment tactics or conduct.

(a) Aggressive and deceptive recruitment tactics or conduct include but are not limited to actions by the institution, any of its representatives, or any institution, organization, or person with whom the institution has an agreement to provide educational programs, marketing, recruitment, or lead generation that:

(1) Demand or pressure the student or prospective student to make enrollment or loan-related decisions immediately, including on the same day of first contact;

(2) Falsely claim that the student or prospective student would lose the opportunity to attend the institution if they did not enroll immediately or otherwise place an unreasonable emphasis on unfavorable consequences of delay;

(3) Take advantage of a student's or prospective student's lack of knowledge about, or experience with, postsecondary institutions, postsecondary programs, or financial aid to pressure the student into enrollment or borrowing funds to attend the institution;

(4) Discourage the student or prospective student from consulting an adviser, a family member, or other resource or individual prior to making enrollment or loan-related decisions;

(5) Fail to respond to the student's or prospective student's requests for more information, including about the cost of the program and the nature of any financial aid;

(6) Obtain the student's or prospective student's contact information through websites that:

(i) Falsely appear to offer assistance to individuals seeking Federal, state or local benefits;

(ii) Falsely advertise employment opportunities; or,

(iii) Present false rankings of the institution or its programs;

(7) Use threatening or abusive language or behavior toward the student or prospective student; or,

(8) Repeatedly engage in unsolicited contact for the purpose of enrolling or reenrolling after the student or prospective student has requested not to be contacted further.

(b) [Reserved].

§ 668.509 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 12. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

■ 13. Section 674.33 is amended by:
■ a. Revising paragraph (g)(1);
■ b. In paragraph (g)(2)(iv) removing the words ''credit bureaus'' and adding in their place the words ''consumer reporting agencies'';
■ c. Revising paragraphs (g)(3) and (4);
■ d. In paragraph (g)(6)(i) introductory text, removing the words ''In order to'' and adding in their place the word ''To'';
■ e. In paragraph (g)(8)(i), removing the number ''120'' and adding in its place the number ''180'';
■ f. Revising paragraphs (g)(8)(v) and (vii); and
■ g. Adding paragraph (g)(9).

The revisions and addition read as follows:

§ 674.33 Repayment.

* * * * *

(g) * * *

(1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) A school's closure date is the earlier of the date that the school ceases to provide educational instruction in most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the school ceased to provide educational instruction for most of its students;

(B) ''School'' means a school's main campus or any location or branch of the main campus regardless of whether the school or its location or branch is considered title IV eligible;

(C) The ''holder'' means the Secretary or the school that holds the loan; and

(D) ''Program'' means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if—

(*1*) The enrollment occurred at the same school in closely proximate periods;

(*2*) The school granted a credential in a program while the student was enrolled in a different program; or

(*3*) The programs must be taken in a set order or were presented as necessary for students to complete in order to succeed in the relevant field of employment.

* * * * *

(3) *Discharge without an application.* (i) The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application from the borrower if the—

(A) Borrower qualified for and received a discharge on a loan pursuant to § 682.402(d) (Federal Family Education Loan Program) or § 685.214 (Federal Direct Loan Program) of this chapter, and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan; or

(B) Secretary determines that the borrower qualifies for a discharge based on information in the Secretary's possession. The Secretary discharges the loan without an application from the borrower if the borrower did not complete an institutional teach-out plan performed by the school or a teach-out agreement with another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) If the borrower accepts but does not complete an institutional teach-out plan performed by the school or a teach-out agreement at another school approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, then the Secretary discharges the loan within 1 year of the borrower's last date of attendance in the teach-out program.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a completed closed school discharge application on a form approved by the Secretary, and the factual assertions in the application must be true and must be made by the borrower under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to—

(i) State that the borrower—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986, to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 180 days before the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances such as those described in paragraph (g)(9) of this section justify an extension; and

(C) On or after July 1, 2023, did not complete an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if the applicable, the school's State authorizing agency.

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

* * * * *

(v) If the borrower fails to submit the completed application described in paragraph (g)(4) of this section within 90 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

* * * * *

(vii) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination and the reasons for the determination.

* * * * *

(9) *Exceptional circumstances.* For purposes of this section, exceptional circumstances include, but are not limited to—

(i) The revocation or withdrawal by an accrediting agency of the school's institutional accreditation;

(ii) The school is or was placed on probation or issued a show-cause order, or placed on an equivalent accreditation status, by its accrediting agency for failing to meet one or more of the agency's standards;

(iii) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;

(iv) The termination by the Department of the school's participation in a title IV, HEA program;

(v) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;

(vi) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

(vii) The teach-out of the student's educational program exceeds the 180-day look back period for a closed school discharge;

(viii) The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study;

(ix) The school discontinued a significant share of its academic programs;

(x) The school permanently closed all or most of its in-person locations while maintaining online programs;

(xi) The Department placed the school on the heightened cash monitoring payment method as defined in § 668.162(d)(2).

■ 14. Section 674.61 is amended by:

■ a. Revising paragraphs (b)(2) through (6);

■ b. Removing paragraph (b)(7);

■ c. Redesignating paragraph (b)(8) as paragraph (b)(7);

■ d. Revising newly redesignated paragraph (b)(7); and

■ e. Revising paragraphs (d) and (e).

The revisions read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(b) * * *

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) If the borrower notifies the institution that the borrower claims to be totally and permanently disabled as defined in § 674.51(aa)(1), the institution must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (b)(2)(ii)(C) of this section will end after 120 days and the collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans.

(iv) The borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1);

(B) A certification by a nurse practitioner or physician's assistant licensed by a State or a licensed certified psychologist at the independent practice level, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1);

(C) A Social Security Administration (SSA) Benefit Planning Query (BPQY) or an SSA notice of award or other documentation deemed acceptable by the Secretary indicating that—

(*1*) The borrower qualifies for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits and the borrower's next scheduled disability review will be within 5 to 7 years;

(*2*) The borrower qualifies for SSDI or SSI benefits and the borrower's next scheduled disability review will be within 3 years, and that the borrower's eligibility for disability benefits in the 3-year review category has been renewed at least once;

(3) The borrower has a disability onset date for SSDI or SSI of at least 5 years prior to the application for a disability discharge or has been receiving benefits for a least 5 years prior to the application for a disability discharge;

(*4*) The borrower qualifies for the SSA compassionate allowance program; or

(*5*) For borrowers currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met the requirements in paragraph (b)(2)(iv)(C) of this section.

(v) The borrower must submit the application described in paragraph (b)(2)(iv) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician's assistant or psychologist certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (b)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the physician, nurse practitioner, physician's assistant or psychologist who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (b)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives a disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the data described in paragraph (b)(2) of this section supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date—

(A) The physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's application; or

(B) The Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section.

(ii) If the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary may require the borrower to submit additional medical evidence. As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician or other medical professional identified by the Secretary at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section and directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary.

(iv) The institution must assign the loan to the Secretary within 45 days of the date of the notice described in paragraph (b)(3)(iii) of this section.

(v) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(6) of this section. Any payments received after the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section are returned to the person who made the payments on the loan in accordance with paragraph (b)(7) of this section.

(vi) If the Secretary determines that the physician, nurse practitioner, physician's assistant, or psychologist certification or the SSA data described in paragraph (b)(2)(iv)(C) of this section provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the institution under the

terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to reevaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests reevaluation in accordance with paragraph (b)(3)(vi)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(3)(vi)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the certification or the date the Secretary received the SSA data until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's discharge application or before the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section and a disbursement of that loan or grant is made during the period from the date of the physician, nurse practitioner, physician's assistant, or psychologist certification or the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge application will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the certification or after the date the Secretary received the SSA data.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's discharge application or on or after the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(v) of this section if, within 3 years after the date the Secretary granted the discharge, the borrower receives a new TEACH Grant or new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed had the total and permanent disability discharge application not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 90 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Payments received after the certification of total and permanent disability.* (i) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must return the payments to the sender.

(ii) At the same time that the institution returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability unless the loan is reinstated in accordance with § 674.61(b)(6), or the Secretary directs the borrower otherwise.

(iii) When the Secretary discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

* * * * *

(d) *Discharge without an application.* (1) The Secretary will discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary—

(i) Obtains data from the Department of Veterans Affairs (VA) showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) described in paragraph (b)(2)(iv)(C) of this section.

(e) *Notifications and return of payments.* (1) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (d) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(2) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge, the Secretary notifies the borrower's lenders that the borrower has been approved for a disability discharge.

(3) In the case of a discharge based on a disability determination by VA—

(i) The notification—

(A) Provides the effective date of the disability determination by VA; and

(B) Directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to discharge the loan; and

(ii) The institution returns to the person who made the payments any payments received on or after the effective date of the determination by VA that the borrower is unemployable due to a service-connected disability.

(4) In the case of a discharge based on a disability determination by the SSA—

(i) The notification—

(A) Provides the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section; and

(B) Directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary within 45 days of the notice described in paragraph (e)(2) of this section; and

(ii) After the loan is assigned, the Secretary discharges the loan in accordance with paragraph (b)(3)(v) of this section.

(5) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

* * * * *

■ 15. Section 674.65 is added to read as follows:

§ 674.65 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 16. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

■ 17. Section 682.402 is amended by:
■ a. Revising paragraphs (c)(2)(iv) through (vii) and (c)(3) through (6);
■ b. Removing paragraph (c)(7);
■ c. Redesignating paragraphs (c)(8) through (11) as paragraphs (c)(7) through (10), respectively;
■ d. Revising newly redesignated paragraphs (c)(7),(9), and (10);
■ e. Revising paragraphs (d)(1) through (3);
■ f. In paragraph (d)(6)(ii)(B) introductory text, removing the number ''120'' and adding in its place the number ''180'';
■ g. In paragraph (d)(6)(ii)(B)(*2*), removing the number ''120'' and adding in its place the number ''180'';
■ h. In paragraph (d)(6)(ii)(H), removing the number ''60'' and adding in its place the number ''90'';
■ i. In paragraph (d)(7)(ii), removing the number ''60'' and adding in its place the number ''90'';
■ j. Revising paragraph (d)(8);
■ k. Adding paragraph (d)(9);
■ l. Revising paragraph (e)(1);
■ m. In paragraph (e)(2)(v) removing the citation ''(e)(1)(ii)'' and adding in its place the citation ''(e)(1)(iii)'';
■ n. Revising paragraph (e)(3);
■ o. Removing paragraph (e)(13);
■ p. Redesignating paragraphs (e)(6) through (12) as (e)(7) through (13), respectively;
■ q. Adding a new paragraph (e)(6);
■ r. Revising redesignated paragraphs (e)(7) through (13) and paragraphs (e)(14) and (15); and
■ s. Adding paragraph (e)(16).

The revisions and additions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c) * * *

(2) * * *

(iv) The borrower must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b);

(B) A certification by a nurse practitioner or physician's assistant licensed by a State, or a licensed or certified psychologist at the independent practice level, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b); or

(C) An SSA Benefit Planning Query (BPQY) or an SSA notice of award or other documentation deemed acceptable by the Secretary, indicating that—

(*1*) The borrower qualifies for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits and the borrower's next scheduled disability review will be within 5 to 7 years;

(*2*) The borrower qualifies for SSDI or SSI benefits and the borrower's next scheduled disability review will be within 3 years, and that the borrower's eligibility for disability benefits in the 3-year review category has been renewed at least once;

(*3*) The borrower has a disability onset date for SSDI or SSI of at least 5 years prior or has been receiving benefits for a least 5 years prior to the application for a disability discharge;

(*4*) The borrower qualifies for the SSA compassionate allowance program; or

(*5*) For a borrower who is currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met any of the requirements in paragraph (c)(2)(iv)(C) of this section.

(v) The borrower must submit the application described in paragraph (c)(2)(iv) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician's assistant, or psychologist certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (c)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agency that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower or the physician, nurse practitioner, physician's assistant or psychologist who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

* * * * *

(3) *Secretary's review of total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the data described in paragraph (c)(2)(iv) of this section supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician, nurse practitioner, physician's assistant or psychologist certified the borrower's application; or

(B) As of the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section.

(ii) If the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b) the Secretary may require the borrower to submit additional medical evidence. As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician or other medical professional identified

by the Secretary at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section and directs each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The Secretary returns any payment received by the Secretary after the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's loan discharge application or received the SSA data described in paragraph (c)(2)(iv)(C) of this section to the person who made the payment.

(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the lender that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(6)(i) of this section.

(v) If the Secretary determines that the physician, nurse practitioner, physician's assistant, or psychologist certification or SSA data described in paragraph (c)(2)(iv)(C) of this section does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vi) If the borrower requests re-evaluation in accordance with paragraph (c)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (c)(3)(v)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician, nurse practitioner, physician's assistant or psychologist certification or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's discharge application or before the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section and a disbursement of that loan or grant is made during the period from the date of the physician, nurse practitioner, physician's assistant, or psychologist certification or the Secretary's receipt of the SSA data described in paragraph (c)(2)(iv)(C) of this section until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician, nurse practitioner, physician's assistant, or psychologist certification or after the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, nurse practitioner, physician's assistant or psychologist certified the borrower's discharge application or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with (c)(3)(iii) of this section if, within 3 years after the date the Secretary granted the discharge, the borrower receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 90 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Lender and guaranty agency actions.* (i) If the Secretary approves the borrower's total and permanent disability discharge application—

(A) The lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section;

(B) If the claim satisfies the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency must pay the claim submitted by the lender;

(C) After receiving a claim payment from the guaranty agency, the lender must return to the sender any payments received by the lender after the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's loan discharge application or after the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section as well as any payments received after claim payment from or on behalf of the borrower;

(D) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender; and

(E) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the disability claim and receives the reimbursement payment, or within 45 days of the date the guaranty agency receives the notice described in paragraph (c)(3)(iii) of this section if a guaranty agency is the lender.

(ii) If the Secretary does not approve the borrower's total and permanent disability discharge request, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except if the lender is a guaranty agency it may not capitalize accrued interest.

* * * * *

(9) *Discharge without an application.* The Secretary will discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary—

(i) Obtains data from the Department of Veterans Affairs (VA) showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) described in paragraph (c)(2)(iv)(C) of this section.

(10) *Notifications and return of payments.* (i) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (c)(9) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(ii) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge, the Secretary notifies the borrower's loan holders that the borrower has been approved for a disability discharge. With this notification the Secretary provides the effective date of the determination by VA or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section and directs the holder of each FFEL Program loan made to the borrower to submit a disability claim to the guaranty agency in accordance with paragraph (g)(1) of this section.

(iii) If the claim meets the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency pays the claim and must—

(A) Discharge the loan, in the case of a discharge based on data from VA; or

(B) Assign the loan to the Secretary, in the case of a discharge based on data from the SSA.

(iv) The Secretary reimburses the guaranty agency for a disability claim after the agency pays the claim to the lender.

(v) Upon receipt of the claim payment from the guaranty agency, the loan holder returns to the person who made the payments any payments received on or after—

(A) The effective date of the determination by VA that the borrower is unemployable due to a service-connected disability; or

(B) The date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section.

(vi) For a loan that is assigned to the Secretary for discharge based on data from the SSA, the Secretary discharges the loan in accordance with paragraph (c)(3)(iv) of this section.

(vii) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

* * * * *

(d) * * *

(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled closed, or the borrower (or student) withdrew from the school not more than 180 days prior to the date the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (d)(9) of this section, justify an extension.

(ii) For purposes of the closed school discharge authorized by this section—

(A) A school's closure date is the earlier of the date that the school ceases to provide educational instruction in most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the school had ceased to provide educational instruction for most of its students;

(B) The term ''borrower'' includes all endorsers on a loan;

(C) A ''school'' means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered title IV eligible, and

(D) ''Program'' means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if—

(*1*) The enrollment occurred at the same school in closely proximate periods;

(*2*) The school granted a credential in a program while the student was enrolled in a different program; or

(*3*) The programs must be taken in a set order or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment.

(2) *Relief available pursuant to discharge.* (i) Discharge under this paragraph (d) relieves the borrower of any existing or past obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was otherwise obligated to pay.

(ii) A discharge of a loan under this paragraph (d) qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under this paragraph (d).

(iii) A borrower who has defaulted on a loan discharged under this paragraph (d) is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the title IV, HEA programs.

(iv) A discharge of a loan under this paragraph (d) must be reported by the loan holder to all consumer reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) *Borrower qualification for discharge.* Except as provided in paragraph (d)(8) of this section, to qualify for a discharge of a loan under this paragraph (d), a borrower must submit a completed closed school discharge application on a form approved by the Secretary and the factual assertions in the application must be true and must be made under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to state that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986, to attend a school;

(ii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 180 calendar days before the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (d)(9) of this section, justify an extension;

(iii) On or after July 1, 2023, state that the borrower did not complete an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency; and

(iv) State that the borrower (or student)—

(A) Agrees to provide to the Secretary or the Secretary's designee upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (d)(4) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (d)(5) of this section.

* * * * *

(8) *Discharge without an application.* (i) A borrower's obligation to repay a FFEL Program loan may be discharged without an application from the borrower if the—

(A) Borrower received a discharge on a loan pursuant to § 674.33(g) of this chapter under the Federal Perkins Loan Program, or § 685.214 of this chapter under the William D. Ford Federal Direct Loan Program; or

(B) Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession. The Secretary or guaranty agency discharges the loan without an application from the borrower if the borrower did not complete an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) If the borrower accepts but does not complete an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, then the Secretary or guaranty agency discharges the loan within 1 year of the borrower's last date of attendance in the teach-out program.

(9) *Exceptional circumstances.* For purposes of this section, exceptional circumstances include, but are not limited to—

(i) The revocation or withdrawal by an accrediting agency of the school's institutional accreditation;

(ii) The school is or was placed on probation or issued a show-cause order, or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards;

(iii) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;

(iv) The termination by the Department of the school's participation in a title IV, HEA program;

(v) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;

(vi) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

(vii) The teach-out of the student's educational program exceeds the 180-day look back period for a closed school discharge;

(viii) The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study;

(ix) The school discontinued a significant share of its academic programs.

(x) The school permanently closed all or most of its ground-based or in -person locations while maintaining online programs.

(xi) The school was placed on the heightened cash monitoring payment method as defined in § 668.162(d)(2).

(e) * * *

(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of this paragraph (e), if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. On or after July 1, 2006, the Secretary reimburses the holder of a loan, and discharges a borrower's obligation with respect to the loan in accordance with the provisions of this paragraph (e), if the borrower's eligibility to receive the loan was falsely certified as a result of a crime of identity theft. For purposes of a false certification discharge, the term ''borrower'' includes all endorsers on a loan.

(ii) A student's or other individual's eligibility to borrow will be considered to have been falsely certified by the school if the school—

(A) Certified the eligibility for a FFEL Program loan of a student who—

(*1*) Reported not having a high school diploma or its equivalent; and

(*2*) Did not satisfy the alternative to graduation from high school requirements in 34 CFR 668.32(e) and section 484(d) of the Act that were in effect at the time the loan was certified, as applicable.

(B) Certified the eligibility of a student who is not a high school graduate based on—

(*1*) A high school graduation status falsified by the school; or

(*2*) A high school diploma falsified by the school or a third party to which the school referred the borrower;

(C) Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was certified) in the occupation for which the training program supported by the loan was intended;

(D) Signed the borrower's name without authorization by the borrower on the loan application or promissory note; or

(E) Certified the eligibility of an individual for a FFEL Program loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (e)(14) of this section.

(iii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(iv) If a loan was made as a result of the crime of identity theft that was committed by an employee or agent of the lender, or if at the time the loan was made, an employee or agent of the lender knew of the identity theft of the individual named as the borrower—

(A) The Secretary does not pay reinsurance, and does not reimburse the holder, for any amount disbursed on the loan; and

(B) Any amounts received by a holder as interest benefits and special allowance payments with respect to the loan must be refunded to the Secretary, as provided in paragraphs (e)(8)(ii)(B)(*4*) and (e)(10)(ii)(D) of this section.

* * * * *

(3) *Borrower qualification for discharge.* Except as provided in paragraph (e)(15) of this section, to qualify for a discharge of a loan under this paragraph (e), the borrower must submit to the holder of the loan an application for discharge on a form approved by the Secretary. The application need not be notarized, but must be made by the borrower under penalty of perjury, and, in the application, the borrower must—

(i) State whether the student has made a claim with respect to the school's false certification with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) In the case of a borrower requesting a discharge based on not having had a high school diploma and not having met the alternative to graduation from high school eligibility requirements in 34 CFR 668.32(e) and under section 484(d) of the Act applicable when the loan was certified, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986, to attend a school;

(B) Reported not having a valid high school diploma or its equivalent when the loan was certified; and

(C) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable when the loan was certified.

(iii) In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan) did not meet State requirements for employment in the student's State of residence in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(iv) In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization state that he or she did not sign the document in question or authorize the school to do so.

(v) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower must—

(A) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so; and

(B) State that the proceeds of the contested disbursement were not received either through actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student.

(vi) In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge—

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual; and

(C) Provide a statement of facts and supporting evidence that demonstrate, to the satisfaction of the Secretary, that the individual's eligibility for the loan in question was falsely certified as a result of identity theft committed against that individual. Supporting evidence may include—

(*1*) A judicial determination of identity theft relating to the individual;

(*2*) A Federal Trade Commission identity theft affidavit;

(*3*) A police report alleging identity theft relating to the individual;

(*4*) Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and

(*5*) Other evidence acceptable to the Secretary.

(vii) That the borrower agrees to provide upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in this paragraph (e); and

(viii) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(5) of this section.

* * * * *

(6) *Discharge procedures—general.* (i) If the holder of the borrower's loan determines that a borrower's FFEL Program loan may be eligible for a

discharge under this section, the holder provides the borrower the application described in paragraph (e)(3) of this section and an explanation of the qualifications and procedures for obtaining a discharge. The holder also promptly suspends any efforts to collect from the borrower on any affected loan. The holder may continue to receive borrower payments.

(ii) If the borrower fails to submit the application for discharge and supporting information described in paragraph (e)(3) of this section within 60 days of the holder providing the application, the holder resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iii) If the borrower submits an application for discharge that the holder determines is incomplete, the holder notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the holder the borrower's application is closed as incomplete and the holder resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iv) If the borrower submits a complete application described in paragraph (e)(3) of this section, the holder files a claim with the guaranty agency no later than 60 days after the holder receives the borrower's complete application.

(v) The guaranty agency determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the guaranty agency's records or gathered by the guaranty agency from other sources, including the Secretary, other guaranty agencies, Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations.

(vi) The guaranty agency issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The guaranty agency considers any response from the borrower and any additional information from the borrower and notifies the borrower whether the determination is changed.

(vii) If the guaranty agency determines that the borrower meets the applicable requirements for a discharge under this paragraph (e), the guaranty agency notifies the borrower in writing of that determination.

(viii) If the guaranty agency determines that the borrower does not qualify for a discharge, the guaranty agency notifies the borrower in writing of that determination and the reasons for the determination.

(ix) If the guaranty agency determines that the borrower does not qualify for a discharge, the borrower may request that the Secretary review the guaranty agency's decision.

(x) A borrower is not precluded from re-applying for a discharge under this paragraph (e) if the discharge request is closed as incomplete, or if the guaranty agency or Secretary determines that the borrower does not qualify for a discharge if the borrower provides additional supporting evidence.

(7) *Guaranty agency responsibilities—general.* (i) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating that a school may have falsely certified a student's eligibility or caused an unauthorized disbursement of loan proceeds, as described in paragraph (e)(3) of this section. The designated guaranty agency in the State in which the school is located shall promptly investigate whether the school has falsely certified a student's eligibility and, within 30 days after receiving information indicating that the school may have done so, report the results of its preliminary investigation to the Secretary.

(ii) If the guaranty agency receives information it believes to be reliable indicating that a borrower whose loan is held by the agency may be eligible for a discharge under this paragraph (e), the agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and inform the borrower of the procedures for requesting a discharge.

(iii) If the borrower fails to submit the Secretary's approved application described in paragraph (e)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity.

(iv) If the borrower submits an application for discharge that the guaranty agency determines is incomplete, the guaranty agency notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the guaranty agency the borrower's application is closed as incomplete and the guaranty agency resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(v) Upon receipt of a discharge claim filed by a lender or a complete application submitted by a borrower with respect to a loan held by the guaranty agency, the agency shall have up to 90 days to determine whether the discharge should be granted. The agency shall review the borrower's application in light of information available from the records of the agency and from other sources, including other guaranty agencies, State authorities, and cognizant accrediting associations.

(vi) A borrower's application for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, the Secretary or the guaranty agency.

(8) *Guaranty agency responsibilities with respect to a claim filed by a lender.* (i) The agency shall evaluate the borrower's application request and consider relevant information it possesses and information available from other sources, and follow the procedures described in this paragraph (e)(8).

(ii) If the agency determines that the borrower satisfies the requirements for discharge under this paragraph (e), it shall, not later than 30 days after the agency makes that determination, pay the claim in accordance with paragraph (h) of this section and—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(ii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the amount of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or

costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(iii)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(*1*) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(*2*) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's written statement described in paragraph (e)(8)(iii)(B)(*1*) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(v) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(12) of this section.

(vi) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(8)(iii)(B) of this section.

(9) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in this paragraph (e)(9).

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it shall, within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(9)(ii)(B) of this section;

(B) Notify the lender that the borrower's liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay;

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(*3*) Refund to the borrower, within 30 days, all amounts paid by the borrower with respect to the loan disbursement that was discharged, including any charges imposed or costs incurred by the lender related to the discharged loan amount;

(*4*) Refund to the Secretary, within 30 days, all interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(C) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to a loan disbursement that was discharged because the borrower did not sign the loan check.

(iii) If the agency determines that a borrower who asserts that he or she did not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with paragraph (h) of this section and—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(9)(iii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(9)(iv)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(*1*) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(*2*) Requests the Secretary to review the agency's decision.

(v) Within 30 days after receiving the borrower's written statement described in *p*aragraph (e)(9)(iv)(B)*(1)* of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(vi) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review

and take the actions required under paragraph (e)(12) of this section.

(vii) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(9)(iv)(B) of this section.

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower.* (i) The agency shall evaluate the borrower's application and consider relevant information it possesses and information available from other sources, and follow the procedures described in this paragraph (e)(10).

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e)(3) of this section, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was otherwise obligated to pay and, not later than 30 days after the agency makes the determination that the borrower satisfies the requirements for discharge—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination, notify the borrower that the borrower's liability with respect to the amount of the loan is not discharged, state the reasons for that conclusion, and if the borrower is not then making payments in accordance with a repayment arrangement with the agency on the loan, advise the borrower of the consequences of continued failure to reach such an arrangement, and that collection action will resume on the loan unless within 30 days the borrower—

(A) Acknowledges the debt and, if payments are due, reaches a satisfactory arrangement to repay the loan or resumes making payments under such an arrangement to the agency; or

(B) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review and take the actions required under paragraph (e)(12) of this section.

(v) The agency shall resume collection action if within 30 days of giving notice of its determination the borrower fails to seek review by the Secretary or agree to repay the loan.

(11) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's application request and consider relevant information it possesses and information available from other sources, and follow the procedures described in this paragraph (e)(11).

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it shall refund to the Secretary the amount of reinsurance payment received with respect to the amount discharged on that loan less any repayments made by the lender under paragraph (e)(11)(ii)(D)(*2)* of this section, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount;

(D) Notify the lender to whom a claim payment was made that the lender must refund to the Secretary, within 30 days—

(*1*) All interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(*2*) The amount of the borrower's payments that were refunded to the borrower by the guaranty agency under paragraph (e)(11)(ii)(C) of this section that represent borrower payments previously paid to the lender with respect to the loan disbursement that was discharged;

(E) Notify the lender to whom a claim payment was made that the lender must, within 30 days, reimburse the agency for the amount of the loan that was discharged, minus the amount of borrower payments made to the lender that were refunded to the borrower by the guaranty agency under paragraph (e)(11)(ii)(C) of this section; and

(F) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to the loan disbursement that was discharged.

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer or master check authorization, if the agency determines that the borrower meets the conditions for discharge, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) The agency shall take the actions required under paragraphs (e)(10)(iii) through (v) of this section if the agency determines that the borrower does not qualify for a discharge.

(12) *Guaranty agency responsibilities if a borrower requests a review by the Secretary.* (i) Within 30 days after receiving the borrower's request for review under paragraph (e)(8)(iii)(B)(*2*), (e)(9)(iv)(B)(*2*), (e)(10)(iii)(B), or (e)(11)(iv) of this section, the agency

shall forward the borrower's discharge application request and all relevant documentation to the Secretary for review.

(ii) The Secretary notifies the agency and the borrower of a determination on review. If the Secretary determines that the borrower is not eligible for a discharge under this paragraph (e)n, within 30 days after being so informed, the agency shall take the actions described in paragraphs (e)(9)(iv) through (vii) or (e)(10)(iii) through (v) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (e) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraph (e)(8)(ii), (e)(9)(ii) or (iii), (e)(10)(ii), or (e)(11)(ii) or (iii) of this section, as applicable.

(13) *Lender responsibilities.* (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that a current or former borrower may be eligible for a discharge under this paragraph (e), the lender shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments) and, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the Secretary's approved application within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity on the loan. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iii) If the borrower submits an application for discharge that the lender determines is incomplete, the lender notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the lender the borrower's application is closed as incomplete and the lender resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iv) The lender shall file a claim with the guaranty agency in accordance with paragraph (g) of this section no later than 60 days after the lender receives the borrower's complete application described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(v) The lender shall comply with all instructions received from the Secretary or a guaranty agency with respect to loan discharges under this paragraph (e).

(vi) The lender shall review a claim that the borrower did not endorse and did not receive the proceeds of a loan check. The lender shall take the actions required under paragraphs (e)(9)(ii)(A) and (B) of this section if it determines that the borrower did not endorse the loan check, unless the lender secures persuasive evidence that the proceeds of the loan were received by the borrower or the student for whom the loan was made, as provided in paragraph (e)(1)(iii) of this section. If the lender determines that the loan check was properly endorsed or the proceeds were received by the borrower or student, the lender may consider the borrower's objection to repayment as a statement of intention not to repay the loan and may file a claim with the guaranty agency for reimbursement on that ground but shall not report the loan to consumer reporting agencies as in default until the guaranty agency, or, as applicable, the Secretary, reviews the claim for relief. By filing such a claim, the lender shall be deemed to have agreed to the following—

(A) If the guarantor or the Secretary determines that the borrower endorsed the loan check or the proceeds of the loan were received by the borrower or the student, any failure to satisfy due diligence requirements by the lender prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default will be waived by the Secretary; and

(B) If the guarantor or the Secretary determines that the borrower did not endorse the loan check and that the proceeds of the loan were not received by the borrower or the student, the lender will comply with the requirements specified in paragraph (e)(9)(ii)(B) of this section.

(vii) Within 30 days after being notified by the guaranty agency that the borrower's request for a discharge has been denied, the lender shall notify the borrower of the reasons for the denial and, if payments are due, resume collection against the borrower. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(14) *Definition of Identity theft.* (i) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to—

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(C) Unique electronic identification number, address, or routing code; or

(D) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(15) *Discharge without an application.* A borrower's obligation to repay all or a portion of an FFEL Program loan may be discharged without an application from the borrower if the Secretary, or the guaranty agency with the Secretary's permission, determines based on information in the Secretary's or the guaranty agency's possession that the borrower qualifies for a discharge. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in § 668.34 of this chapter.

(16) *Application for a group discharge from a State Attorney General or non profit legal services representative.* A State Attorney General or nonprofit legal services representative may submit to the Secretary an application for a group discharge under this section.

* * * * *

■ 18. Section 682.414 is amended by revising paragraph (b)(4) to read as follows:

§ 682.414 Reports.

* * * * *

(b) * * *

(4) A report to the Secretary of the borrower's enrollment and loan status information, details related to the loans

or borrower's deferments, forbearances, repayment plans, delinquency and contact information, or any title IV loan-related data required by the Secretary, by the deadline date established by the Secretary.

* * * * *

■ 19. Section 682.424 is added to subpart D to read as follows:

§ 682.424 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 20. The authority citation for part 685 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 21. Section 685.103 is amended by revising paragraph (d) to read as follows:

§ 685.103 Applicability of subparts.

* * * * *

(d) Subpart D of this part contains provisions regarding borrower defense to repayment in the Direct Loan Program.

■ 22. Section 685.109 is added to subpart A to read as follows:

§ 685.109 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 23. Section 685.202 is amended by:

■ a. Removing paragraphs (b)(2), (4), and (5);

■ b. Redesignating paragraph (b)(3) as paragraph (b)(2) and revising it.

The revision reads as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

* * * * *

(b) * * *

(2) Notwithstanding § 685.208(l)(5), for a Direct Loan not eligible for interest subsidies during periods of deferment, the Secretary capitalizes the unpaid interest that has accrued on the loan upon the expiration of the deferment.

* * * * *

■ 24. Section 685.205 is amended by revising paragraph (b)(6) to read as follows:

§ 685.205 Forbearance.

* * * * *

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.206(c) through (e);

(ii) Under § 685.214;

(iii) Under § 685.215;

(iv) Under § 685.216;

(v) Under § 685.217;

(vi) Under § 685.222;

(vii) Under subpart D of this part; or

(viii) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

■ 25. Section 685.206 is amended by revising paragraph (e) to read as follows:

§ 685.206 Borrower Responsibilities and Defenses.

* * * * *

(e) *Borrower defense to repayment for loans first disbursed on or after July 1, 2020, and before July 1, 2023.* This paragraph (e) applies to borrower defense to repayment for loans first disbursed on or after July 1, 2020, and before July 1, 2023.

(1) *Definitions.* For the purposes of this paragraph (e), the following definitions apply:

(i) A ''Direct Loan'' under this paragraph (e) means a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan.

(ii) ''Borrower'' means:

(A) The borrower; and

(B) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

(iii) A ''borrower defense to repayment'' under this paragraph (e) includes—

(A) A defense to repayment of amounts owed to the Secretary on a Direct Loan, or a Direct Consolidation Loan that was used to repay a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act; and

(B) Any accompanying request for reimbursement of payments previously made to the Secretary on the Direct Loan or on a loan repaid by the Direct Consolidation Loan.

(iv) The term ''provision of educational services'' under this paragraph (e) refers to the educational resources provided by the institution that are required by an accreditation agency or a State licensing or authorizing agency for the completion of the student's educational program.

(v) The terms ''school'' and ''institution'' under this paragraph (e) may be used interchangeably and include an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services.

(2) *Federal standard for loans first disbursed on or after July 1, 2020, and before July 1, 2023.* For a Direct Loan or Direct Consolidation Loan first disbursed on or after July 1, 2020, and before July 1, 2023, a borrower may assert a defense to repayment under this paragraph (e), if the borrower establishes by a preponderance of the evidence that—

(i) The institution at which the borrower enrolled made a misrepresentation, as defined in § 685.206(e)(3), of material fact upon which the borrower reasonably relied in deciding to obtain a Direct Loan, or a loan repaid by a Direct Consolidation Loan, and that directly and clearly relates to:

(A) Enrollment or continuing enrollment at the institution or

(B) The provision of educational services for which the loan was made; and

(ii) The borrower was financially harmed by the misrepresentation.

(3) *Misrepresentation.* A ''misrepresentation,'' for purposes of this paragraph (e), is a statement, act, or omission by an eligible school to a borrower that is false, misleading, or deceptive; that was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth; and that directly and clearly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made. Evidence that a misrepresentation defined in this paragraph (e) may have occurred includes, but is not limited to:

(i) Actual licensure passage rates materially different from those included in the institution's marketing materials, website, or other communications made to the student;

(ii) Actual employment rates materially different from those included in the institution's marketing materials, website, or other communications made to the student;

(iii) Actual institutional selectivity rates or rankings, student admission profiles, or institutional rankings that

are materially different from those included in the institution's marketing materials, website, or other communications made to the student or provided by the institution to national ranking organizations;

(iv) The inclusion in the institution's marketing materials, website, or other communication made to the student of specialized, programmatic, or institutional certifications, accreditation, or approvals not actually obtained, or the failure to remove within a reasonable period of time such certifications or approvals from marketing materials, website, or other communication when revoked or withdrawn;

(v) The inclusion in the institution's marketing materials, website, or other communication made to the student of representations regarding the widespread or general transferability of credits that are only transferrable to limited types of programs or institutions or the transferability of credits to a specific program or institution when no reciprocal agreement exists with another institution, or such agreement is materially different than what was represented;

(vi) A representation regarding the employability or specific earnings of graduates without an agreement between the institution and another entity for such employment or sufficient evidence of past employment or earnings to justify such a representation or without citing appropriate national, State, or regional data for earnings in the same field as provided by an appropriate Federal agency that provides such data. (In the event that national data are used, institutions should include a written, plain language disclaimer that national averages may not accurately reflect the earnings of workers in particular parts of the country and may include earners at all stages of their career and not just entry level wages for recent graduates.);

(vii) A representation regarding the availability, amount, or nature of any financial assistance available to students from the institution or any other entity to pay the costs of attendance at the institution that is materially different in availability, amount, or nature from the actual financial assistance available to the borrower from the institution or any other entity to pay the costs of attendance at the institution after enrollment;

(viii) A representation regarding the amount, method, or timing of payment of tuition and fees that the student would be charged for the program that is materially different in amount, method, or timing of payment from the actual tuition and fees charged to the student;

(ix) A representation that the institution, its courses, or programs are endorsed by vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, governmental officials, Federal or State agencies, the United States Armed Forces, or other individuals or entities when the institution has no permission or is not otherwise authorized to make or use such an endorsement;

(x) A representation regarding the educational resources provided by the institution that are required for the completion of the student's educational program that are materially different from the institution's actual circumstances at the time the representation is made, such as representations regarding the institution's size; location; facilities; training equipment; or the number, availability, or qualifications of its personnel; and

(xi) A representation regarding the nature or extent of prerequisites for enrollment in a course or program offered by the institution that are materially different from the institution's actual circumstances at the time the representation is made, or that the institution knows will be materially different during the student's anticipated enrollment at the institution.

(4) *Financial harm.* Under this paragraph (e), financial harm is the amount of monetary loss that a borrower incurs as a consequence of a misrepresentation, as defined in paragraph (e)(3) of this section. Financial harm does not include damages for nonmonetary loss, such as personal injury, inconvenience, aggravation, emotional distress, pain and suffering, punitive damages, or opportunity costs. The Department does not consider the act of taking out a Direct Loan or a loan repaid by a Direct Consolidation Loan, alone, as evidence of financial harm to the borrower. Financial harm is such monetary loss that is not predominantly due to intervening local, regional, or national economic or labor market conditions as demonstrated by evidence before the Secretary or provided to the Secretary by the borrower or the school. Financial harm cannot arise from the borrower's voluntary decision to pursue less than full-time work or not to work or result from a voluntary change in occupation. Evidence of financial harm may include, but is not limited to, the following circumstances:

(i) Periods of unemployment upon graduating from the school's programs that are unrelated to national or local economic recessions;

(ii) A significant difference between the amount or nature of the tuition and fees that the institution represented to the borrower that the institution would charge or was charging, and the actual amount or nature of the tuition and fees charged by the institution for which the Direct Loan was disbursed or for which a loan repaid by the Direct Consolidation Loan was disbursed;

(iii) The borrower's inability to secure employment in the field of study for which the institution expressly guaranteed employment; and

(iv) The borrower's inability to complete the program because the institution no longer offers a requirement necessary for completion of the program in which the borrower enrolled and the institution did not provide for an acceptable alternative requirement to enable completion of the program.

(5) *Exclusions.* The Secretary will not accept the following as a basis for a borrower defense to repayment under this paragraph (e)—

(i) A violation by the institution of a requirement of the Act or the Department's regulations for a borrower defense to repayment under paragraph (c) or (d) of this section or under § 685.222, unless the violation would otherwise constitute the basis for a successful borrower defense to repayment under this paragraph (e); or

(ii) A claim that does not directly and clearly relate to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made, including, but not limited to—

(A) Personal injury;

(B) Sexual harassment;

(C) A violation of civil rights;

(D) Slander or defamation;

(E) Property damage;

(F) The general quality of the student's education or the reasonableness of an educator's conduct in providing educational services;

(G) Informal communication from other students;

(H) Academic disputes and disciplinary matters; and

(I) Breach of contract unless the school's act or omission would otherwise constitute the basis for a successful defense to repayment under this paragraph (e).

(6) *Limitations period.* A borrower must assert a defense to repayment under this paragraph (e) within 3 years from the date the student is no longer enrolled at the institution. A borrower

may only assert a defense to repayment under this paragraph (e) within the timeframes set forth in this paragraph (e)(6) and paragraph (e)(7) of this section.

(7) *Extension of limitation periods and reopening of applications.* For loans first disbursed on or after July 1, 2020, and before July 1, 2023, the Secretary may extend the time period when a borrower may assert a defense to repayment under § 685.206(e)(6) or may reopen a borrower's defense to repayment application to consider evidence that was not previously considered only if there is:

(i) A final, non-default judgment on the merits by a State or Federal Court that has not been appealed or that is not subject to further appeal and that establishes the institution made a misrepresentation, as defined in paragraph (e)(3) of this section; or

(ii) A final decision by a duly appointed arbitrator or arbitration panel that establishes that the institution made a misrepresentation, as defined in paragraph (e)(3) of this section.

(8) *Application and forbearance.* To assert a defense to repayment under this paragraph (e), a borrower must submit an application under penalty of perjury on a form approved by the Secretary and sign a waiver permitting the institution to provide the Department with items from the borrower's education record relevant to the defense to repayment claim. The form will note that pursuant to § 685.205(b)(6)(i), if the borrower is not in default on the loan for which a borrower defense has been asserted, the Secretary will grant forbearance and notify the borrower of the option to decline forbearance. The application requires the borrower to—

(i) Certify that the borrower received the proceeds of a loan, in whole or in part, to attend the named institution;

(ii) Provide evidence that supports the borrower defense to repayment application;

(iii) State whether the borrower has made a claim with any other third party, such as the holder of a performance bond, a public fund, or a tuition recovery program, based on the same act or omission of the institution on which the borrower defense to repayment is based;

(iv) State the amount of any payment received by the borrower or credited to the borrower's loan obligation through the third party, in connection with a borrower defense to repayment described in paragraph (e)(2) of this section;

(v) State the financial harm, as defined in paragraph (e)(4) of this section, that the borrower alleges to have been caused and provide any information relevant to assessing whether the borrower incurred financial harm, including providing documentation that the borrower actively pursued employment in the field for which the borrower's education prepared the borrower if the borrower is a recent graduate (failure to provide such information results in a presumption that the borrower failed to actively pursue employment in the field); whether the borrower was terminated or removed for performance reasons from a position in the field for which the borrower's education prepared the borrower, or in a related field; and whether the borrower failed to meet other requirements of or qualifications for employment in such field for reasons unrelated to the school's misrepresentation underlying the borrower defense to repayment, such as the borrower's ability to pass a drug test, satisfy driving record requirements, and meet any health qualifications; and

(vi) State that the borrower understands that in the event that the borrower receives a 100 percent discharge of the balance of the loan for which the defense to repayment application has been submitted, the institution may, if allowed or not prohibited by other applicable law, refuse to verify or to provide an official transcript that verifies the borrower's completion of credits or a credential associated with the discharged loan.

(9) *Consideration of order of objections and of evidence in possession of the Secretary under this paragraph (e).* (i) If the borrower asserts both a borrower defense to repayment and any other objection to an action of the Secretary with regard to a Direct Loan or a loan repaid by a Direct Consolidation Loan under this paragraph (e), the order in which the Secretary will consider objections, including a borrower defense to repayment under this paragraph (e), will be determined as appropriate under the circumstances.

(ii) With respect to the borrower defense to repayment application submitted under this paragraph (e), the Secretary may consider evidence otherwise in the possession of the Secretary, including from the Department's internal records or other relevant evidence obtained by the Secretary, as practicable, provided that the Secretary permits the institution and the borrower to review and respond to this evidence and to submit additional evidence.

(10) *School response and borrower reply under this paragraph (e).* (i) Upon receipt of a borrower defense to repayment application under this paragraph (e), the Department will notify the school of the pending application and provide a copy of the borrower's request and any supporting documents, a copy of any evidence otherwise in the possession of the Secretary, and a waiver signed by the student permitting the institution to provide the Department with items from the student's education record relevant to the defense to repayment claim to the school, and invite the school to respond and to submit evidence, within the specified timeframe included in the notice, which shall be no less than 60 days.

(ii) Upon receipt of the school's response, the Department will provide the borrower a copy of the school's submission as well as any evidence otherwise in possession of the Secretary, which was provided to the school, and will give the borrower an opportunity to submit a reply within a specified timeframe, which shall be no less than 60 days. The borrower's reply must be limited to issues and evidence raised in the school's submission and any evidence otherwise in the possession of the Secretary.

(iii) The Department will provide the school a copy of the borrower's reply.

(iv) There will be no other submissions by the borrower or the school to the Secretary unless the Secretary requests further clarifying information.

(11) *Written decision under this paragraph (e).* (i) After considering the borrower's application and all applicable evidence under this paragraph (e), the Secretary issues a written decision—

(A) Notifying the borrower and the school of the decision on the borrower defense to repayment under this paragraph (e);

(B) Providing the reasons for the decision; and

(C) Informing the borrower and the school of the relief, if any, that the borrower will receive, consistent with paragraph (e)(12) of this section and specifying the relief determination.

(ii) If the Department receives a borrower defense to repayment application that is incomplete and is within the limitations period in paragraph (e)(6) or (7) of this section, the Department will not issue a written decision on the application and instead will notify the borrower in writing that the application is incomplete and will return the application to the borrower.

(12) *Borrower defense to repayment relief under this paragraph (e).* (i) If the Secretary grants the borrower's request

for relief based on a borrower defense to repayment under this paragraph (e), the Secretary notifies the borrower and the school that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay or will be reimbursed for amounts paid toward the loan voluntarily or through enforced collection. The amount of relief that a borrower receives under this paragraph (e) may exceed the amount of financial harm, as defined in paragraph (e)(4) of this section, that the borrower alleges in the application pursuant to paragraph (e)(8)(v) of this section. The Secretary determines the amount of relief and awards relief limited to the monetary loss that a borrower incurred as a consequence of a misrepresentation, as defined in paragraph (e)(3) of this section. The amount of relief cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense to repayment under this paragraph (e). In awarding relief under this paragraph (e), the Secretary considers the borrower's application, as described in paragraph (e)(8) of this section, which includes information about any payments received by the borrower and the financial harm alleged by the borrower. In awarding relief under this paragraph (e), the Secretary also considers the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary, which was previously provided to the borrower and the school, as described in paragraph (e)(10) of this section. The Secretary also updates reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan or loans repaid by the borrower's Direct Consolidation Loan under this paragraph (e).

(ii) The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(13) *Finality of borrower defense to repayment decisions under this paragraph (e).* The determination of a borrower's defense to repayment by the Department included in the written decision referenced in paragraph (e)(11) of this section is the final decision of the Department and is not subject to appeal within the Department.

(14) *Cooperation by the borrower under this paragraph (e).* The Secretary may revoke any relief granted to a borrower under this section who refuses to cooperate with the Secretary in any proceeding under this paragraph (e) or under part 668, subpart G. Such cooperation includes, but is not limited to—

(i) Providing testimony regarding any representation made by the borrower to support a successful borrower defense to repayment under this paragraph (e); and

(ii) Producing, within timeframes established by the Secretary, any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(15) *Transfer to the Secretary of the borrower's right of recovery against third parties under this paragraph (e).* (i) Upon the grant of any relief under this paragraph (e), the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the provision of educational services for which the loan was received, against the school, its principals, its affiliates and their successors, or its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense to repayment and for the same loan for which the discharge was granted under this section.

(ii) The provisions of this paragraph (e)(15) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this paragraph (e)(15) limits or forecloses the borrower's right to pursue legal and equitable relief arising under applicable law against a party described in this paragraph (e)(15) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

(16) *Recovery from the school under this paragraph (e).* (i) The Secretary may initiate an appropriate proceeding to require the school whose misrepresentation resulted in the borrower's successful borrower defense to repayment under this paragraph (e) to pay to the Secretary the amount of the loan to which the defense applies in accordance with part 668, subpart G. This paragraph (e)(16) would also be applicable for provisionally certified institutions.

(ii) Under this paragraph (e), the Secretary will not initiate such a proceeding more than 5 years after the date of the final determination included in the written decision referenced in paragraph (e)(11) of this section. The Department will notify the school of the borrower defense to repayment application within 60 days of the date of the Department's receipt of the borrower's application.

■ 26. Section 685.209 is amended by:

■ a. Revising paragraph (a)(2)(iv);

■ b. In paragraph (b)(1)(vii), removing the parenthetical phrase ''(including amount capitalized)'';

■ c. Removing and reserving paragraph (b)(3)(iv);

■ d. Removing paragraph (c)(2)(iv);

■ e. Redesignating paragraphs (c)(2)(v) and (vi) as paragraphs (c)(2)(iv) and (v), respectively.

■ f. In paragraph (c)(4)(iii)(B), removing the words ''paragraphs (c)(2)(iv) and'', and adding in their place ''paragraph''.

The revision reads as follows:

§ 685.209 Income-contingent repayment plans.

(a) * * *

(2) * * *

(iv) Except as provided in paragraph (a)(2)(iii) of this section, accrued interest is capitalized when a borrower is determined to no longer have a partial financial hardship.

* * * * *

■ 27. Section 685.212 is amended by adding paragraph (k)(4) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(k) * * *

(4) If a borrower's application for a discharge of a loan based on a borrower defense is approved under 34 CFR part 685, subpart D, the Secretary discharges the obligation of the borrower, in whole or in part, in accordance with the

procedures described in subpart D of this part.

■ 28. Section 685.213 is amended by:

■ a. Revising paragraphs (b)(2) through (7);

■ b. Removing paragraph (b)(8); and

■ c. Revising paragraphs (d) and (e).

The revisions read as follows:

§ 685.213 Total and permanent disability discharge.

* * * * *

(b) * * *

(2) *Disability certification or Social Security Administration (SSA) disability determination.* The application must contain—

(i) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b);

(ii) A certification by a nurse practitioner or physician's assistant licensed by a State, or a licensed certified psychologist at the independent practice level, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b);

(iii) An SSA Benefit Planning Query (BPQY) or an SSA notice of award, or other documentation deemed acceptable by the Secretary, indicating that—

(A) The borrower qualifies for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits and the borrower's next scheduled disability review will be within 5 to 7 years;

(B) The borrower qualifies for SSDI or SSI benefits and the borrower's next scheduled disability review will be within 3 years, and that the borrower's eligibility for disability benefits in the 3-year review category has been renewed at least once;

(C) The borrower has a disability onset date for SSDI or SSI of at least 5 years prior to the application for a disability discharge or has been receiving benefits for at least 5 years prior to the application for a TPD discharge;

(D) The borrower qualifies for the SSA compassionate allowance program; or

(E) For borrowers currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met the requirements in paragraphs (b)(2)(iii)(A) through (D) of this section.

(3) *Deadline for application submission.* The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician's assistant, or psychologist certifies the application, if applicable. Upon receipt of the borrower's application, the Secretary—

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician, nurse practitioner, physician's assistant, or psychologist who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(4) *Determination of eligibility.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the data described in paragraph (b)(2) of this section supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in § 685.102(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's application; or

(B) As of the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section.

(ii) If the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary may require the borrower to submit additional medical evidence. As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician or other medical professional identified by the Secretary at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(7)(i) of this section.

(iv) If the Secretary determines that the physician, nurse practitioner, physician's assistant, or psychologist certification or the SSA data described in paragraph (b)(2)(iii) of this section provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(v) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) *Treatment of disbursements made during the period from the date of the certification or the date the Secretary received the SSA data until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's discharge application or before the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section and a disbursement of that loan or grant is made during the period from the date of the physician, nurse practitioner, physician's assistant, or psychologist certification or the receipt of the SSA data described in paragraph (b)(2)(iii) of this section until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(6) *Receipt of new title IV loans or TEACH Grants certification, or after the date the Secretary received the SSA data.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's discharge application or on or after the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

(7) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(4)(iii) of this section if, within 3 years after the date the Secretary granted the discharge, the borrower receives a new TEACH Grant or a new loan under the Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(7)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 90 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

* * * * *

(d) *Discharge without an application.* (1) The Secretary will discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary:

(i) Obtains data from the Department of Veterans Affairs showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) described in paragraph (b)(2)(iii) of this section.

(2) [Reserved].

(e) *Notification to the borrower.* (1) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (d) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(2) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge the Secretary discharges the loan:

(i) In accordance with paragraph (b)(4)(iii) of this section for a discharge based on data from the SSA; or

(ii) In accordance with paragraph (c)(2)(i) of this section for a discharge based on data from VA.

(3) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

■ 29. Section 685.214 is amended by:
■ a. Revising paragraph (a)(2);
■ b. Removing paragraph (g);
■ c. Redesignating paragraphs (c) through (f) as paragraphs (d) through (g), respectively;
■ d. Adding a new paragraph (c);
■ e. Revising redesignated paragraphs (d) through (g); and
■ f. Adding a new paragraph (h).

The revisions and additions read as follows:

§ 685.214 Closed school discharge.

(a) * * *

(2) For purposes of this section—

(i) A school's closure date is the earlier of the date that the school ceases to provide educational instruction in most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the school had ceased to provide educational instruction for most of its students;

(ii) ''School'' means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered title IV eligible;

(iii) ''Program'' means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if:

(A) The enrollment occurred at the same institution in closely proximate periods;

(B) The school granted a credential in a program while the student was enrolled in a different program; or

(C) The programs must be taken in a set order or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment;

* * * * *

(c) *Discharge without an application.* (1) If the Secretary determines based on information in the Secretary's possession that the borrower qualifies for the discharge of a loan under this section, the Secretary discharges the loan without an application from the

borrower, if the borrower did not complete an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(2) If a borrower accepts but does not complete an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, then the Secretary discharges the loan within 1 year of the borrower's last date of attendance in the teach-out program.

(d) *Borrower qualification for discharge.* (1) Except as provided in paragraph (h) of this section, to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a completed application and the factual assertions in the application must be true and must be made by the borrower under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986, to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 180 calendar days before the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (i) of this section, justify an extension; and

(C) On or after July 1, 2023, state that the borrower did not complete an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(2) [Reserved]

(e) *Cooperation by borrower in enforcement actions.* (1) To obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(f) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(g) *Discharge procedures.* (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 180 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(2) of this section.

(4) If a borrower fails to submit the application described in paragraph (d) of this section within 90 days of the Secretary's providing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(6) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(7) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

(h) *Exceptional circumstances.* For purposes of this section, exceptional circumstances include, but are not limited to—

(1) The revocation or withdrawal by an accrediting agency of the school's institutional accreditation;

(2) The school is or was placed on probation or issued a show-cause order, or was placed on an equivalent accreditation status, by its accrediting agency for failing to meet one or more of the agency's standards;

(3) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;

(4) The termination by the Department of the school's participation in a title IV, HEA program;

(5) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;

(6) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

(7) The teach-out of the student's educational program exceeds the 180-day look-back period for a closed school discharge;

(8) The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study;

(9) The school discontinued a significant share of its academic programs;

(10) The school permanently closed all or most of its in-person locations while maintaining online programs; and

(11) The school was placed on the heightened cash monitoring payment method as defined in § 668.162(d)(2) of this chapter.

■ 30. Section 685.215 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Adding paragraph (a)(3);

■ c. Revising paragraphs (c) introductory text and (c)(1) through (5);

■ d. Redesignating paragraphs (c)(6) through (8) as paragraphs (c)(7) through (9), respectively;

■ e. Adding a new paragraph (c)(6);

■ f. Adding paragraph (c)(10);

■ g. Revising paragraph (d); and

■ h. Removing paragraphs (e) and (f).

The revisions and additions read as follows:

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

(a) *Basis for discharge*—(1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the proceeds of a Direct Loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the eligibility of a student who—

(A) Reported not having a high school diploma or its equivalent; and

(B) Did not satisfy the alternative to graduation from high school requirements under section 484(d) of the Act and 34 CFR 668.32(e) of this chapter that were in effect when the loan was originated;

(ii) Certified the eligibility of a student who is not a high school graduate based on—

(A) A high school graduation status falsified by the school; or

(B) A high school diploma falsified by the school or a third party to which the school referred the borrower;

(iii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization;

(iv) Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended; or

(v) Certified the eligibility of a student for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(6) of this section.

* * * * *

(3) *Loan origination.* For purposes of this section, a loan is originated when the school submits the loan record to the Department's Common Origination and Disbursement (COD) System. Before originating a Direct Loan, a school must determine the student's or parent's eligibility for the loan. For each Direct Loan that a school disburses to a student or parent, the school must first submit a loan award record to the COD system and receive an accepted response.

* * * * *

(c) *Borrower qualification for discharge.* To qualify for discharge under this paragraph, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraphs (c)(1) through (7) of this section have been met. If the Secretary determines the application does not meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

(1) *High school diploma or equivalent.* In the case of a borrower requesting a discharge based on not having a high school diploma and not having met the alternative to graduation from high school eligibility requirements under section 484(d) of the Act and 34 CFR 668.32(e) of this chapter applicable when the loan was originated, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student on whose behalf a parent received a PLUS loan)—

(i) Reported not having a valid high school diploma or its equivalent when the loan was originated; and

(ii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable when the loan was originated.

(2) *Disqualifying condition.* In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan) did not meet State requirements for employment in the student's State of residence in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(3) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower must state that he or she did not sign the document in question or authorize the school to do so.

(4) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the

borrower's authorization for electronic funds transfer, the borrower must—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so; and

(ii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(5) *Identity theft.* In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual must—

(i) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(ii) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual; and

(iii) Provide a statement of facts and supporting evidence that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of identity theft committed against that individual. Supporting evidence may include—

(A) A judicial determination of identity theft relating to the individual;

(B) A Federal Trade Commission identity theft affidavit;

(C) A police report alleging identity theft relating to the individual;

(D) Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and

(E) Other evidence acceptable to the Secretary.

(6) *Definition of identity theft.* (i) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to—

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(C) Unique electronic identification number, address, or routing code; or

(D) Telecommunication identifying information or access device (as defined in *18 U.S.C. 1029(e)*).

* * * * *

(10) *Application for group discharge.* A State Attorney General or nonprofit legal services representative may submit to the Secretary an application for a group discharge under this section.

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary provides the borrower an application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the application for discharge and supporting information described in paragraph (c) of this section within 60 days of the Secretary's providing the application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(3) If the borrower submits an application for discharge that the Secretary determines is incomplete, the Secretary notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the Secretary the borrower's application is closed as incomplete and the Secretary resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(4) If the borrower submits a completed application described in paragraph (c) of this section, the Secretary determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the Secretary's records and gathered by the Secretary from other sources, including guaranty agencies, other Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations. The Secretary issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The Secretary considers any response from the borrower and any additional information from the borrower and notifies the borrower whether the determination is changed.

(5) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(7) A borrower is not precluded from re-applying for a discharge under paragraph (c) of this section if the discharge request is closed as incomplete, or if the Secretary determines that the borrower does not qualify for a discharge if the borrower provides additional supporting evidence.

■ 31. Section 685.219 is revised to read as follows:

§ 685.219 Public Service Loan Forgiveness Program (PSLF).

(a) *Purpose.* The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

(b) *Definitions.* The following definitions apply to this section:

AmeriCorps service means service in a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

Civilian service to the military means providing services to or on behalf of members, veterans, or the families or survivors of deceased members of the U.S. Armed Forces or the National Guard that is provided to a person because of the person's status in one of those groups.

Early childhood education program means an early childhood education program as defined in section 103(8) of the Act (20 U.S.C. 1003).

Eligible Direct Loan means a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct PLUS Loan, or a Direct Consolidation Loan.

Emergency management services mean services that help remediate, lessen, or eliminate the effects or potential effects of emergencies that threaten human life or health, or real property.

Employee or employed means an individual—

(i) To whom an organization issues an IRS Form W–2;

(ii) Who receives an IRS Form W–2 from an organization that has contracted with a qualifying employer to provide payroll or similar services for the qualifying employer, and which provides the Form W–2 under that contract;

Full-time means:

(i) Working in qualifying employment in one or more jobs—

(A) A minimum average of 30 hours per week during the period being certified,

(B) A minimum of 30 hours per week throughout a contractual or employment period of at least 8 months in a 12-month period, such as elementary and secondary school teachers, in which case the borrower is deemed to have worked full time; or

(C) The equivalent of 30 hours per week as determined by multiplying each credit or contact hour taught per week by at least 3.35 in non-tenure track employment at an institution of higher education.

(ii) Routine paid vacation or paid leave time provided by the employer, and leave taken under the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) will be considered when determining if the borrower is working full-time.

Law enforcement means service that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service means ''active duty'' service or ''full-time National Guard duty'' as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, does not include active duty for training or attendance at a service school.

Non-governmental public service means services provided directly by employees of a non-governmental qualified employer where the employer has devoted a majority of its full-time equivalent employees to working in at least one of the following areas (as defined above): emergency management, civilian service to military personnel military service, public safety, law enforcement, public interest law services, early childhood education, public service for individuals with disabilities and/or the elderly, public health, public education, public library services, school library, or other school-based services. Service as a member of the U.S. Congress is not qualifying public service employment for purposes of this section.

Non-tenure track employment means work performed by adjunct, contingent or part time faculty, teachers, or lecturers who are paid solely for the credit hours they teach at institutions of higher education.

Other school-based service means the provision of services to schools or students in a school or a school-like setting that are not public education services, such as school health services and school nurse services, social work services in schools, and parent counseling and training.

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

Public education service means the provision of educational enrichment and/or support to students in a public school or a school-like setting, including teaching.

Public health means physicians, nurse practitioners, and nurses in a clinical setting; and those engaged in health care practitioner occupations, health care support occupations, and counselors, social workers, and other community and social service specialist occupations, as those terms are defined by the Bureau of Labor Statistics.

Public interest law is legal services that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public library service means the operation of public libraries or services that support their operation.

Public safety service means services that seek to prevent the need for emergency management services.

Public service for individuals with disabilities means services performed for or to assist individuals with disabilities (as defined in the Americans with Disabilities Act (42 U.S.C. 12102)) that is provided to a person because of the person's status as an individual with a disability.

Public service for the elderly means services that are provided to individuals who are aged 62 years or older and that are provided to a person because of the person's status as an individual of that age.

Qualifying employer means:

(i) A United States-based Federal, State, local, or Tribal government organization, agency, or entity, including the U.S. Armed Forces or the National Guard;

(ii) A public child or family service agency;

(iii) An organization under section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code;

(iv) A Tribal college or university; or

(v) A nonprofit organization that—

(A) Provides a non-governmental public service as defined in this section, attested to by the employer on a form approved by the Secretary; and

(B) Is not a business organized for profit, a labor union, or a partisan political organization.

Qualifying repayment plan means:

(i) An income-contingent repayment plan under § 685.209 or an income-based repayment plan under § 685.221;

(ii) The 10-year standard repayment plan under § 685.208(b) or the consolidation loan standard repayment plan with a 10-year repayment term under § 685.208(b); or

(iii) Except for the alternative repayment plan, any other repayment plan if the monthly payment amount is not less than what would have been paid under the 10-year standard repayment plan under § 685.208(b).

School library services means the operations of school libraries or services that support their operation.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if the borrower—

(i) Is not in default on the loan at the time forgiveness is requested;

(ii) Is employed full-time by a qualifying employer or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower satisfied the 120 monthly payments described under paragraph (c)(1)(iii) of this section; and

(B) At the time the borrower applies for forgiveness under paragraph (e) of this section; and

(iii) Satisfies the equivalent of 120 monthly payments after October 1, 2007, as described in paragraph (c)(2) of this section, on eligible Direct loans.

(2) A borrower will be considered to have made monthly payments under paragraph (c)(1)(iii) of this section by—

(i) Paying at least the full scheduled amount due for a monthly payment under the qualifying repayment plan;

(ii) Paying in multiple installments that equal the full scheduled amount due for a monthly payment under the qualifying repayment plan;

(iii) For a borrower on an income-contingent repayment plan under § 685.209 or an income-based repayment plan under § 685.221, paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the borrower's next annual repayment plan recertification date under the qualifying

repayment plan in which the borrower is enrolled;

(iv) For a borrower on the 10-year standard repayment plan under § 685.208(b) or the consolidation loan standard repayment plan with a 10-year repayment term under § 685.208(b), paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the lesser of 12 months from that date or the date upon which the Secretary receives the borrower's next submission under subsection (e).

(v) Receiving one of the following deferments or forbearances for the month:

(A) Cancer treatment deferment under section 455(f)(3) of the Act;

(B) Economic hardship deferment under § 685.204(g);

(C) Military service deferment under § 685.204(h);

(D) Post-active-duty student deferment under § 685.204(i);

(E) AmeriCorps forbearance under § 685.205(a)(4);

(F) National Guard Duty forbearance under § 685.205(a)(7);

(G) U.S. Department of Defense Student Loan Repayment Program forbearance under § 685.205(a)(9);

(H) Administrative forbearance or mandatory administrative forbearance under § 685.205(b)(8) or (9); and

(vi) Being employed full-time with a qualifying employer, as defined in this section, at any point during the month for which the payment is credited.

(3) If a borrower consolidates one or more Direct Loans into a Direct Consolidation Loan, including a Direct PLUS Loan made to a parent borrower, the payments the borrower made on the Direct Loans prior to consolidating and that met the criteria in paragraphs (c)(2)(i) through (vi) of this section will count as qualifying payments on the Direct Consolidation Loan.

(d) *Forgiveness amount.* The Secretary forgives the principal and accrued interest that remains on all loans for which the borrower meets the requirements of paragraph (c) of this section as of the date the borrower satisfied the last required monthly payment obligation.

(e) *Application process.* (1) Notwithstanding paragraph (f) of this section, after making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested, a borrower may request loan forgiveness by filing an application approved by the Secretary.

(2) If the Secretary has sufficient information to determine the borrower's qualifying employer and length of employment, the Secretary informs the borrower if the borrower is eligible for forgiveness.

(3) If the Secretary does not have sufficient information to make a determination of the borrower's eligibility for forgiveness, the borrower must provide additional information about the borrower's employment and employer on a form approved by the Secretary.

(4) If the borrower is unable to secure a certification of employment from a qualifying employer, the Secretary may determine the borrower's qualifying employment or payments based on other documentation provided by the borrower at the Secretary's request.

(5) The Secretary may request reasonable additional documentation pertaining to the borrower's employer or employment before providing a determination.

(6) The Secretary may substantiate an employer's attestation of information provided on the form in paragraph (e)(3) of this section based on a review of information about the employer.

(7) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Forgives the outstanding balance of the eligible loans.

(8) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, grants forbearance of payment on both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection of the loan. The Secretary does not capitalize any interest accrued and not paid during this period.

(f) *Application not required.* The Secretary forgives a loan under this section without an application from the borrower if the Secretary has sufficient information in the Secretary's possession to determine the borrower has satisfied the requirements for forgiveness under this section.

(g) *Reconsideration process.* (1) Within 90 days of the date the Secretary sent the notice of denial of forgiveness under paragraph (e)(8) of this section to the borrower, the borrower may request that the Secretary reconsider whether the borrower's employer or any payment meets the requirements for credit toward forgiveness by requesting reconsideration on a form approved by the Secretary. Borrowers who were denied loan forgiveness under this section after October 1, 2017, and prior to [EFFECTIVE DATE OF FINAL RULE], have 180 days from that date to request reconsideration.

(2) To evaluate a reconsideration request, the Secretary considers—

(i) Any relevant evidence that is obtained by the Secretary; and

(ii) Additional supporting documentation not previously provided by the borrower or employer.

(3) The Secretary notifies the borrower of the reconsideration decision and the reason for the Secretary's determination.

(4) If the Secretary determines that the borrower qualifies for forgiveness, the Secretary adjusts the borrower's number of qualifying payments or forgives the loan, as appropriate.

(5) After the Secretary makes a decision on the borrower's reconsideration request, the Secretary's decision is final, and the borrower will not receive additional reconsideration unless the borrower presents additional evidence.

(6) For any months in which a borrower postponed monthly payments under a deferment or forbearance and was employed full-time at a qualifying employer as defined in this section but was in a deferment or forbearance status besides those listed in paragraph (c)(2)(v) of this section, the borrower may obtain credit toward forgiveness for those months, as defined in paragraph (d) of this section, for any months in which the borrower—

(i) Makes an additional payment equal to or greater than the amount they would have paid at that time on a qualifying repayment plan or

(ii) Otherwise qualified for a $0 payment on an income-driven repayment plan under § 685.209 and income-based repayment plan under § 685.221.

■ 32. Section 685.300 is amended by:

■ a. Revising paragraphs (b)(7) and (10);

■ b. Redesignating paragraphs (b)(11) and (12) as paragraphs (b)(12) and (13), respectively;

■ c. Adding new paragraph (b)(11);

■ d. Revising newly redesignated paragraph (b)(13); and

■ e. Adding paragraphs (d) through (i).

The revisions and additions read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

* * * * *

(b) * * *

(7) Provide assurances that the school will comply with loan information requirements established by the Secretary with respect to loans made under the Direct Loan Program;

* * * * *

(10) Provide that the school will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or for the provision of information necessary for a student or parent to receive a loan under part D of the Act or for any benefits associated with such a loan;

(11) Comply with the provisions of paragraphs (d) through (i) of this section regarding student claims and disputes;

* * * * *

(13) Accept responsibility and financial liability stemming from losses incurred by the Secretary for repayment of amounts discharged by the Secretary pursuant to §§ 685.206, 685.214, 685.215, 685.216, 685.222, and subpart D of this part.

* * * * *

(d) *Borrower defense claims in an internal dispute process.* The school will not compel any student to pursue a complaint based on allegations that would provide a basis for a borrower defense claim through an internal dispute process before the student presents the complaint to an accrediting agency or government agency authorized to hear the complaint.

(e) *Class action bans.* (1) The school will not seek to rely in any way on a pre-dispute arbitration agreement or on any other pre-dispute agreement with a student who has obtained or benefited from a Direct Loan, with respect to any aspect of a class action that is related to a borrower defense claim, unless and until the presiding court has ruled that the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved.

(2) Reliance on a pre-dispute arbitration agreement, or on any other pre-dispute agreement, with a student, with respect to any aspect of a class action includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a class action;

(ii) Seeking to exclude a person or persons from a class in a class action;

(iii) Objecting to or seeking a protective order intended to avoid responding to discovery in a class action;

(iv) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action;

(v) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed or the appeal has not been resolved; and

(vi) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action, after the trial court in that class action has granted a motion to dismiss the claim and noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed.

(3) Required provisions and notices: (i) After [EFFECTIVE DATE OF FINAL RULE], the school must include the following provision in any agreements with a student recipient of a Direct Loan for attendance at the school, or a student for whom the PLUS loan was obtained, that include pre-dispute arbitration or any other pre-dispute agreement addressing class actions: ''We agree that this agreement cannot be used to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Direct Loan or our provision of educational services for which the Direct Loan was obtained. We agree that the court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(ii) When a pre-dispute arbitration agreement or any other pre-dispute agreement addressing class actions has been entered into before [EFFECTIVE DATE OF FINAL RULE], and does not contain the provision described in paragraph (e)(3)(i) of this section, the school must either ensure the agreement is amended to contain that provision or provide the student to whom the agreement applies with written notice of that provision.

(iii) The school must ensure the agreement described in paragraph (e)(3)(ii) of this section is amended to contain the provision set forth in paragraph (e)(3)(i) or must provide the notice to students specified in that paragraph no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment, whichever is earlier.

(A) *Agreement provision.* ''We agree that neither we, nor anyone else who later becomes a party to this agreement, will use it to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit in court even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that the court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(B) *Notice provision.* ''We agree not to use any pre-dispute agreement to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that the court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(f) *Pre-dispute arbitration agreements.* (1)(i) The school will not enter into a pre-dispute agreement to arbitrate a borrower defense claim or rely in any way on a pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim.

(ii) A student may enter into a voluntary post-dispute arbitration agreement with a school to arbitrate a borrower defense claim.

(2) Reliance on a pre-dispute arbitration agreement with a student with respect to any aspect of a borrower defense claim includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a judicial action filed by the student, including joinder with others in an action;

(ii) Objecting to or seeking a protective order intended to avoid responding to discovery in a judicial action filed by the student; and

(iii) Filing a claim in arbitration against a student who has filed a suit on the same claim.

(3) Required provisions and notices: (i) The school must include the following provision in any pre-dispute arbitration agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, that include any agreement regarding arbitration and that are entered into after [EFFECTIVE DATE OF FINAL RULE]: ''We agree that neither we nor anyone else will use this agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim, or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to lawsuits concerning other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(ii) When a pre-dispute arbitration agreement has been entered into before [EFFECTIVE DATE OF FINAL RULE], that did not contain the provision specified in paragraph (f)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (f)(3)(iii)(B) of this section.

(iii) The school must ensure the agreement described in paragraph (f)(3)(ii) of this section is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or must provide the notice specified in paragraph (f)(3)(iii)(B) of this section to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment, whichever is earlier.

(A) *Agreement provision.* ''We agree that neither we, nor anyone else who later becomes a party to this pre-dispute arbitration agreement, will use it to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(B) *Notice provision.* ''We agree not to use any pre-dispute arbitration agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit regarding such a claim or you may be a member of a class action lawsuit regarding such a claim even if you do not file it. This provision does not apply to any other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Direct Loan or the provision of educational services for which the loan was obtained.''

(g) *Submission of arbitral records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any borrower defense claim filed in arbitration by or against the school:

(i) The initial claim and any counterclaim;

(ii) The arbitration agreement filed with the arbitrator or arbitration administrator;

(iii) The judgment or award, if any, issued by the arbitrator or arbitration administrator;

(iv) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the school's failure to pay required filing or administrative fees, any communication the school receives from the arbitrator or arbitration administrator related to such a refusal; and

(v) Any communication the school receives from an arbitrator or an arbitration administrator related to a determination that a pre-dispute arbitration agreement regarding educational services provided by the school does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs;

(2) A school must submit any record required pursuant to paragraph (g)(1) of this section within 60 days of filing by the school of any such record with the arbitrator or arbitration administrator and within 60 days of receipt by the school of any such record filed or sent by someone other than the school, such as the arbitrator, the arbitration administrator, or the student.

(3) The Secretary shall publish the records submitted by schools in paragraph (g)(1) of this section in a centralized database accessible to the public.

(h) *Submission of judicial records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any borrower defense claim filed in a lawsuit by the school against the student or by any party, including a government agency, against the school:

(i) The complaint and any counterclaim;

(ii) Any dispositive motion filed by a party to the suit; and

(iii) The ruling on any dispositive motion and the judgment issued by the court;

(2) A school must submit any record required pursuant to paragraph (h)(1) of this section within 30 days of filing or receipt, as applicable, of the complaint, answer, or dispositive motion, and within 30 days of receipt of any ruling on a dispositive motion or a final judgment;

(3) The Secretary shall publish the records submitted by schools in paragraph (h)(1) in a centralized database accessible to the public.

(i) *Definitions.* For the purposes of paragraphs (d) through (h) of this section, the term—

(1) *Borrower defense claim* means an act or omission that is or could be asserted as a borrower defense as defined in:

(i) § 685.206(c)(1);

(ii) § 685.222(a)(5);

(iii) § 685.206(e)(1)(iii); or

(iv) § 685.401(a);

(2) *Class action* means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23;

(3) *Dispositive motion* means a motion asking for a court order that entirely disposes of one or more claims in favor of the party who files the motion without need for further court proceedings;

(4) *Pre-dispute arbitration agreement* means any agreement, regardless of its form or structure, between a school or a party acting on behalf of a school and a student that provides for arbitration of any future dispute between the parties.

§ 685.304 [Amended]

■ 33. Section 685.304 is amended:

■ a. In paragraph (a)(6)(xi), by adding ''and'' after ''records;'';
■ b. In paragraph (a)(6)(xii), by removing the semicolon after ''loan'' and adding a period in its place; and
■ c. Removing paragraphs (a)(6)(xiii) through (xv).
■ 34. Section 685.308 is amended by revising paragraph (a)(3) to read as follows:

§ 685.308 Remedial actions.

(a) * * *

(3) The school's actions that gave rise to a successful claim for which the Secretary discharged a loan, in whole or in part, pursuant to §§ 685.206, 685.214, 685.216, 685.222, or subpart D of this part.

* * * * *

■ 35. Subpart D is added to read as follows:

Subpart D—Borrower Defense to Repayment

Sec.
685.400 Scope and purpose.
685.401 Borrower defense-general.
685.402 Group process for borrower defense.
685.403 Individual process for borrower defense.
685.404 Group process based on prior Secretarial final actions.
685.405 Institutional response.
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Subpart D—Borrower Defense to Repayment

§ 685.400 Scope and purpose.

This subpart sets forth the provisions under which a borrower defense to repayment may be asserted and applies to borrower defense applications pending with the Secretary on July 1, 2023, or received by the Secretary on or after July 1, 2023.

§ 685.401 Borrower defense-general.

(a) *Definitions.* For the purposes of this subpart, the following definitions apply:

Borrower means

(i) The borrower; and

(ii) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

Borrower defense to repayment means an act or omission of the school attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided, and includes the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan including a Direct Consolidation Loan that was used to repay a Direct Loan, a FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act; and

(ii) Any accompanying request for reimbursement of payments previously made to the Secretary on the Direct Loan or on a loan repaid by the Direct Consolidation Loan.

Department official means the employee of the Department who administers the group process described in § 685.402, the individual process as described in § 685.403, and the institutional response process in § 685.405.

Direct Loan means a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct PLUS Loan, or a Direct Consolidation Loan.

School and *institution* may be used interchangeably and include an eligible institution as defined in 34 CFR 600.2, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or to provide marketing, advertising, recruiting, or admissions services. *School* or *institution* also includes persons affiliated with the institution as described in § 668.174(b) of this chapter.

State requestor means a State as defined in 34 CFR 600.2, a State attorney general, a State oversight or regulatory agency with the authority from that State.

(b) *Federal standard for borrower defense applications received on or after July 1, 2023, and for applications pending with the Secretary on July 1, 2023.* A borrower with a balance due on a Direct Loan or other Federal student loan that is consolidated into a Federal Direct Consolidation Loan will be determined to have a defense to repayment of a Direct Loan under this subpart, if at any time the borrower establishes by a preponderance of the evidence that—

(1) The institution made a substantial misrepresentation as defined in 34 CFR part 668, subpart F, in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a Direct Loan or other Federal student loan that is consolidated into a Federal Direct Consolidation Loan;

(2) The institution made a substantial omission of fact, as defined in 34 CFR part 668, subpart F, in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a Direct Loan or other Federal student loan that is consolidated into a Federal Direct Consolidation Loan;

(3) The institution failed to perform its obligations under the terms of a contract with the student and such failure was in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a Direct Loan or other Federal student loan that is consolidated into a Federal Direct Consolidation Loan;

(4) The institution engaged in aggressive and deceptive recruitment conduct or tactics as defined in 34 CFR part 668, subpart R, in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a Direct Loan or other Federal student loan that is consolidated into a Federal Direct Consolidation Loan; or,

(5)(i) The borrower, whether as an individual or as a member of a class, or a governmental agency has obtained against the institution a favorable judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a Direct Loan or other Federal student loan that is consolidated into a Federal Direct Consolidation Loan; or,

(ii) The Secretary sanctioned or otherwise took adverse action against the institution at which the borrower enrolled under 34 CFR part 668, subpart G, for reasons that could give rise to a borrower defense claim under paragraphs (b)(1) through (4) of this section.

(c) *Violation of State law.* A borrower has a borrower defense to repayment under this subpart if the Secretary identifies an act or omission of the school attended by the student that relates to the making of the loan for enrollment at the school or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law.

(d) *Exclusions.* An institution's violation of an eligibility or compliance requirement in the Act or its implementing regulations is not a basis for a borrower defense under this

subpart unless the violation would otherwise constitute a basis for a borrower defense under this subpart.

§ 685.402 Group process for borrower defense.

(a) *Group process, generally.* Upon consideration of factors including, but not limited to, common facts and claims by borrowers, and the promotion of compliance by an institution or other title IV, HEA program participant, the Secretary may initiate a process to determine whether a group of borrowers from one institution or commonly owned institutions identified by the Secretary has a borrower defense under this subpart.

(b) *Secretary initiated group process.* The Secretary may create a group based upon information from sources that include but are not limited to—

(1) Actions by the Federal Government, State attorneys general, other State agencies or officials, or other law enforcement activity;

(2) Lawsuits related to educational programs filed against the institutions which are the subject of the claims or judgments rendered against the institutions; or,

(3) Individual borrower defense claims pursuant to § 685.403.

(c) *State requestor-initiated group process.* The Secretary shall consider a request to form a group from a State requestor in which the requestor—

(1) Submits an application to the Secretary, on a form approved by the Secretary that—

(i) Identifies the requested group, including at minimum:

(A) The name of the institution or commonly owned institutions;

(B) The campuses or programs which are the subject of the claim, if applicable;

(C) A description of the conduct that forms the basis for the borrower defense claim under the Federal standard in § 685.401(b);

(D) An analysis of why the requestor believes the conduct should result in an approved borrower defense claim under the Federal standard in § 685.401(b); and,

(E) The period during which the activity in (c)(1)(i)(C) of this section occurred;

(ii) Provides evidence beyond sworn borrower statements that supports each element of the claim made in this paragraph (c)(1); and

(iii) Provides the names and other identifying information of borrowers in the group to the extent available; and,

(2) Provides any other information or supporting documentation reasonably requested by the Secretary within 90 days of the Secretary's request.

(3) The Secretary may consolidate multiple group applications related to the same institution or institutions.

(4) The Secretary shall provide a response to any materially complete State requestor group request under this paragraph (c) within 365 days of receipt. That response shall include:

(i) Whether the Secretary will choose to form a group and a definition of the group formed;

(ii) If the Secretary chooses not to form a group, the reasons for not doing so; and

(iii) Any additional information needed from the Sate requestor to continue the State requested group process.

(5)(i) If the Secretary denies in whole or in part a State request to form a group under the process described in this paragraph (c), for reasons other than that the Secretary already has formed a group that includes the members of the proposed group or has findings that cover the members of the proposed group, the State requestor submitting the group claim may request that the Secretary reconsider the decision upon the identification of new evidence that was not previously available to the Secretary in forming the group.

(ii) The State requestor submitting the group claim under this paragraph (c) must request reconsideration of the group formation no later than 90 days from the date of the Secretary's initial decision regarding formation of the group.

(iii) The Secretary shall provide a response to the State requestor that requested reconsideration of the group's formation within 90 days of receipt of the reconsideration request.

(d) *Process after group formation.* Upon formation of a group of borrowers under this section, the Secretary—

(1) Designates a Department official to present the group's claim in the institutional response process described in § 685.405;

(2) For borrowers who have an application pending with the Secretary prior to the formation of the group, notifies those borrowers that they are an identified member of the group formed under this section and follows § 685.403(d) or (e) as appropriate;

(3) For borrowers whose names were submitted by the State requestor and that can be identified by the Secretary, or that can otherwise be identified by the Secretary, if the borrower is not in default and does not have a separate application pending with the Secretary, follows the procedures under § 685.403(d) except that interest on the loan shall stop accumulating immediately;

(4) For borrowers whose names were submitted by the State requestor and that can be identified by the Secretary, or that can otherwise be identified by the Secretary, if the borrower is in default and does not have a separate application pending with the Secretary, follows the procedures under § 685.403(e) except that the interest on the loan shall stop accumulating immediately;

(5) For possible group members that the Secretary cannot identify, the Secretary will take reasonable steps to identify and notify potential members of the group, and if the Secretary ultimately is able to identify any additional members, then it shall follow the process under paragraphs (d)(3) and (4) of this section to allow those additional members to opt-in the group formed; and,

(6) If the Secretary later identifies a borrower that should have received the benefits as described under paragraph (d)(3) or (4) of this section, either prior to the adjudication of the group or after an adjudication that results in the approval of a group borrower defense, the Secretary shall retrospectively apply the benefits available to the borrower under those subparagraphs and no other consequences shall apply.

§ 685.403 Individual process for borrower defense.

(a) *Individual process, generally.* (1) If § 685.402 does not apply to an individual borrower who has submitted a borrower defense application, the Secretary shall initiate a process to determine whether the individual borrower has a borrower defense under this subpart.

(2) If § 685.402 applies to an individual borrower who is covered under a group borrower defense application being considered by the Secretary, that group borrower defense application shall toll the timelines under § 685.406 on adjudicating the individual borrower application.

(3) Paragraph (a)(1) of this section shall not apply to claims covered by a group claim under § 685.402, including claims submitted prior to the formation of such a group, until after the Secretary makes a decision on that group claim.

(b) *Individual process.* (1) The Secretary shall consider a borrower defense claim from an individual borrower in which the borrower—

(i) Submits an application to the Secretary, on a form approved by the Secretary; and,

(ii) Provides additional supporting evidence for the claims made under subparagraph (b)(1)(i) of this section, if any;

(2) The individual must provide any other information or supporting documentation reasonably requested by the Secretary.

(c) *Individual borrower status.* Upon receipt of a materially complete application under this section, the Secretary—

(1) Designates a Department official to present the individual's claim in the institutional response process described in § 685.405;

(2) Notifies the borrower that it will adjudicate the claim under § 685.406(c); and

(3) Places all the borrower's loans in forbearance in accordance with paragraph (d) of this section or stopped enforcement collections in accordance with paragraph (e) of this section, as applicable.

(d) *Forbearance.* The Secretary grants forbearance on all of the borrower's title IV loans that are not in default in accordance with § 685.205 and—

(1) Notifies the borrower of the option to decline forbearance and to continue making payments on the borrower's loans, and the availability of income-contingent repayment plans under § 685.209 and the income-based repayment plan under § 685.221; and,

(2) Does not charge interest on the borrower's loans beginning 180 days from the date the borrower was initially granted forbearance under this paragraph (d) if the Department official has failed to make a determination on the borrower's claim by that date and continuing until the Department notifies the borrower of the decision.

(e) *Loan collection activities during adjudication of borrower defense claim.* The Secretary—

(1) Suspends collection activity on all defaulted title IV loans until the Secretary issues a decision on the borrower defense claim;

(2) Does not charge interest on the borrower's loans beginning 180 days from the date the Secretary initially suspended collection activity under subparagraph (e)(1) of this section if the Secretary has not made a determination on the borrower's claim by that date and continuing until the Department notifies the borrower of the decision;

(3) Notifies the borrower of the suspension of collection activity and explains that collection activity will resume no earlier than 90 days following final adjudication of the borrower defense claim if the Secretary determines that the borrower does not qualify for a full discharge; and

(4) Notifies the borrower of the option to begin or continue making payments under a rehabilitation agreement or other repayment agreement on the defaulted loan.

§ 685.404 Group process based on prior Secretarial final actions.

(a) For purposes of forming a Secretary-initiated group process in accordance with § 685.402(b), the Department official may consider final actions as described in § 685.401(b)(5)(ii). Such final actions include but are not limited to:

(1) Actions arising from a final audit determination or final program review determination regarding the relevant institution;

(2) An institution's failure to meet the administrative capability requirements that relate to the provision of educational services provided by the institution, in accordance with § 668.16 of this chapter;

(3) An institution's loss of eligibility due to its cohort default rates, in accordance with part 668, subpart N;

(4) Fines, limitations, suspension, termination, or emergency actions against the institution taken by the Secretary in accordance with 34 CFR part 668, subpart G; and,

(5) Other final actions as determined by the Secretary.

(b) For groups based on prior Secretarial final actions in accordance with this section, § 685.405 shall not apply to the affected institutions.

§ 685.405 Institutional response.

(a) For purposes of adjudicating a borrower defense claim, the Department official notifies the institution of the group claim under § 685.402 or individual claim under § 685.403, and requests a response from the school. Such notification also may include, but is not limited to, requests for documentation to substantiate the school's response.

(b)(1) The notification in paragraph (a) of this section tolls any limitation period by which the Secretary may recover from the institution under § 685.409.

(2) The Department official requests a response from the institution within 90 days of the Department official's notification.

(c) With its response, the institution must submit an affidavit, on a form approved by the Secretary, certifying under penalty of perjury that the information submitted to the Department official is true and correct.

(d) If the institution does not respond to the Department official's information request within 90 days, the Department official shall presume that the institution does not contest the borrower defense to repayment claim.

§ 685.406 Adjudication of borrower defense applications.

(a) *Adjudication.* The Department official adjudicates a borrower defense claim in accordance with this section.

(b) *Group process, adjudication.* (1) For a group formed under § 685.402, the Department official considers any evidence related to the claim, including materials submitted as part of the group application, individual claims that are part of the group, evidence in the Secretary's possession, evidence provided by the institution during the institutional response process described in § 685.405, and any other relevant information.

(2) For a group of borrowers under § 685.402 for which the Department official determines there may be a borrower defense under § 685.401(b), there is a rebuttable presumption that each member of the group relied on the act or omission giving rise to the borrower defense in deciding to attend, or continue attending, the institution, and that such reliance was reasonable.

(c) *Individual process, adjudication.* For an individual process under § 685.403, the Department official adjudicates the borrower defense using the information available to it. The Department official considers any evidence related to the claim, including materials submitted as part of the individual application, evidence in the Secretary's possession, evidence provided by the institution during the institutional response process described in § 685.405, and any other relevant information.

(d) *Additional information needed from the school.* If the Department official requires additional information from the school, the school must respond to the Department official's information request within 90 days. If the Department official requires additional information from the individual, the individual must respond within a reasonable timeframe.

(e) *Written decision.* The Department official issues a written decision as follows:

(1) *Full or partial approval.* If the Department official approves the borrower defense claim in full or in part—

(i) The written decision states that Secretary's determination and any discharge provided under § 685.408 on the basis of that claim.

(ii) The Secretary places a borrower's Direct Loans associated with a group borrower defense claim into forbearance until the Secretary discharges the loan obligations under § 685.212(k). If any balance remains on the Direct Loans not associated with the borrower defense

claim or for loans that were not fully discharged, those loans will return to their status prior to the claim process. The Secretary resumes collection activities on those Direct Loans not associated with the borrower defense claim or for loans that were not fully discharged no earlier than 90 days from the date the Department official issues a written decision. No interest will be charged on the loans during the forbearance period.

(2) *Full denial*—(i) *Full denial, group.* If the Department official denies the borrower defense in full, the written decision states the reasons for the denial, the evidence upon which the decision was based, and the portion of the loans that is due and payable to the Secretary. The Department official informs the borrowers that for the Direct Loans associated with the group borrower defense claim, those loans will return to their status prior to the group claim process. The Secretary resumes collection activities on the Direct Loans associated with the group borrower defense claim no earlier than 90 days from the date the Department official issues a written decision. The Department official also informs individual borrower from the group claim initially adjudicated under § 685.406(b)(1) the option to file a new borrower defense application under an individual process in accordance with § 685.403.

(ii) *Full denial, individual.* If the Department official denies the borrower defense in full, the written decision states the reasons for the denial, the evidence upon which the decision was based, and the portion of the loans that is due and payable to the Secretary. The Department official informs the borrowers that if any balance remains on the Direct Loans associated with the borrower defense claim, those loans will return to their status prior to the claim process. The Secretary resumes collection activities on the loans under which a forbearance or stopped collection was granted during adjudication of the claim in accordance with §§ 685.403(d) and (e) and 685.402(d)(2) through (4), no earlier than 90 days from the date the Department official issues a written decision. The Department official also informs the borrower of the opportunity to request reconsideration of the claim pursuant to § 685.407.

(3) *Copies of written decisions.* The Secretary provides copies of the written decision in this subsection to:

(i) An individual whose claim was adjudicated under § 685.406(c), as applicable;

(ii) The members of the group whose claims were adjudicated under § 685.406(b)(1), as applicable;

(iii) The school, to the extent practicable; and,

(iv) The State requestor who requested the group claims process, as applicable.

(f) *Adjudication, timelines.* (1) The Secretary shall adjudicate a group or individual borrower defense claim under the following timelines:

(2) For a group claim under § 685.402(c), within 2 years of the date the Department official notified the State requestor under § 685.402(c)(4).

(3) For an individual claim under § 685.403, within 3 years of the date the Department determines the borrower submitted a materially complete application.

(4) The timelines in paragraph (f)(2) or (3) of this section shall not apply for additional adjudications carried out as part of the reconsideration process in § 685.407.

(5) An individual claim under § 685.403 that is included in a group claim under § 685.402 shall be subject to the adjudication timeline for that group under paragraph (f)(2) of this section, and any timelines associated with individual adjudication in paragraph (f)(3) of this section shall be tolled until the Department official renders a decision on the claim under § 685.402.

(6) The Secretary shall provide an interim update to the individual borrower submitting a claim under § 685.403 or to the State requestor requesting a group process under § 685.402 no later than 1 year after the dates in paragraphs (f)(2) and (3) of this section. Such notification shall—

(i) Indicate the Secretary's progress in adjudicating the claim or claims; and,

(ii) Provide an expected timeline for rendering a decision on the claim.

(7) Only those loans covered by claims on which the Secretary has not yet issued the written decision under paragraph (e) of this section by the dates identified in paragraph (f)(2) or (3) of this section shall be deemed unenforceable.

§ 685.407 Reconsideration.

(a) The decision of the Department official is final as to the merits of the borrower defense and any discharge that may be granted on the claim. Notwithstanding the foregoing—

(1) If the borrower defense is denied in full or in part, an individual may request that the Secretary reconsider their individual borrower defense claim on the following grounds for:

(i) Administrative or technical errors;

(ii) Consideration under an otherwise applicable State law standard under § 685.401(c) in lieu of the Federal standard; or,

(iii) Identification of evidence that was not previously provided by the borrower and that was not identified in the final decision as a basis for the Department official's determination;

(2)(i) If the borrower defense is denied in full or in part for a group claim adjudicated under § 685.406(b)(1), any of the State requestors that requested to form a group under § 685.402(c) may request that the Secretary reconsider the borrower defense for the reasons provided under (a)(1)(i) through (iii) of this section. A State entity's reconsideration request made in accordance with subparagraph (a)(1)(ii) of this section must provide:

(A) The applicable State law standard;

(B) Why the State requestor requests use of such State law standard;

(C) Why application of the State law standard would result in a different outcome for the group than adjudication under the Federal standard; and

(D) Why the applicable State law standard would lead to a borrower defense.

(ii) An individual borrower from a group claim initially adjudicated under § 685.406(b)(1) may not file a reconsideration request under this section.

(3) The borrower or State requestor that requested to form a group under § 685.402(c) must request reconsideration under this section no later than 90 days from the date of the Department official's written decision, for any decisions issued on or after the effective date of these regulations.

(4)(i) The Secretary shall consider a reconsideration request under paragraph (a)(1) or (a)(2)(i) of this section in which the individual or State requestor—

(A) Submits an application to the Secretary, on a form approved by the Secretary; and,

(B) Provides additional supporting evidence for the reconsideration claims made in this paragraph (a)(4)(i), if any;

(ii) The borrower or State requestor entity submitting the reconsideration request must provide any other information or supporting documentation reasonably requested by the Secretary regarding the reconsideration request.

(b) The Secretary designates a different Department official for the reconsideration process than the one who conducted the initial adjudication.

(c) If accepted for reconsideration by the Secretary, the Department official follows the procedures in § 685.405 to notify the institution of the claim and the basis for the group's borrower defense under § 685.402 or individual's

borrower defense under § 685.403 for purposes of adjudicating reconsideration of the borrower defense claim and to request a response from the school to the reconsideration request.

(d) If accepted for reconsideration by the Secretary, the Department official follows the procedures in § 685.403(d) for granting forbearance and § 685.403(e) for defaulted loans, as applicable.

(e) The Department official adjudicates the borrower's reconsideration request under § 685.406 and provides notice of the final decision upon reconsideration in accordance with § 685.406(e).

(f)(1) The Secretary may reopen at any time a borrower defense application that was partially or fully denied. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedures in § 685.403(d) for granting forbearance and for § 685.403(e) for defaulted loans, as applicable.

(2) Upon reopening a borrower defense application under (f) of this section, the Department official adjudicates the claim under § 685.406 and provides notice of the final decision on the reopened case in accordance with § 685.406(e).

§ 685.408 Discharge.

(a)(1) There is a presumption that a borrower with an approved borrower discharge claim adjudicated under § 685.406(b) or (c) is eligible for full discharge of the Federal student loans associated with the approved claim unless the Department official is presented with a preponderance of evidence to the contrary.

(2) The Secretary does not limit the period on a borrower's ability to receive a reimbursement of payments previously made that are associated with a fully or partially approved claim.

(b) The Department official may rebut the presumption that the borrower or borrowers are eligible for full discharge if—

(1) The conduct that resulted in the approved borrower defense claim relates to an easily quantifiable sum that is related to books, supplies and materials, or other charges that are not direct academic expenses, in which case the discharge amount is equal to that sum;

(2) The conduct that resulted in the approved borrower defense claim relates to a substantial misrepresentation, substantial omissions of fact, breaches of contract, or aggressive or deceptive recruitment tactics or conduct, that did not involve the educational services provided. In that case, the amount of the discharge is tied to the full amount of harm experienced by the borrower as a result of the act or omission, but in no case shall be greater than the full amount of the loan; or,

(3) The conduct that resulted in the approved borrower defense claim relates to a substantial misrepresentation, substantial omissions of fact, breaches of contract, or aggressive or deceptive recruitment tactics or conduct, that did not involve the outcomes of the borrower's education. In that case, the amount of the discharge is tied to the full amount of harm experienced by the borrower as a result of the act or omission, but in no case shall be greater than the full amount of the loan.

(c)(1) If the Department official determines that the presumption of full discharge has been rebutted, the official recommends an appropriate discharge amount to the Secretary. The discharge amount shall be an easily quantifiable amount that is less than the full amount of the loan or loans related to the claim, or 50 percent of the disbursed balance of the loan if the amount is not easily quantifiable.

(2) For a group process under § 685.406(b), the Department official shall recommend the same discharge amount to the Secretary for all members of the group, either in dollars or as a percentage of the loan amount.

(d) In determining whether an amount is easily quantifiable, the Department official—

(1) May consider factors such as the amount of debt taken on by borrowers at that program compared to the median debt level at all programs of the same level and classification of instructional program (CIP) code offered by all other institutions of higher education;

(2) May consider publicly available information on the price of books, supplies, or other materials; and

(3) May not base the determination upon individual or group measurements of the borrower's earnings or employment.

(e) The Department official recommends an appropriate amount of discharge to the Secretary, which may include a discharge of all amounts owed to the Secretary on the loan at issue and the reimbursement of amounts previously collected by the Secretary on the loan, an easily quantifiable amount that is less than the full amount of the loan or loans related to the claim, or 50 percent of the disbursed balance of the loan if the amount is not easily quantifiable.

(f) The Secretary makes a final decision after taking into account the Department official's recommendation and the record compiled under §§ 685.402, 685.403, 685.404, 685.405, and 685.407, as applicable.

(g) The Secretary issues a written decision setting forth the amount of the discharge granted, after which the designated Department official deciding the claim notifies the borrower of the discharge provided and—

(1) Specifies the amount of the discharge;

(2) Advises that there may be State tax implications; and

(3) If the borrower does not receive a full discharge of all loans covered by the claim, advises the borrower of the option to file a request for reconsideration in accordance with § 685.407.

(h) Consistent with the discharge amount determined under this section, the Secretary discharges the borrower's obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay and, if applicable, reimburses the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(i) The Secretary affords the borrower such further relief as appropriate under the circumstances. Such further relief includes, but is not limited to, one or both of the following:

(1) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(2) Updating or deleting adverse reports the Secretary previously made to consumer reporting agencies regarding the borrower's Direct Loan.

(j) The total amount of discharge granted with respect to a borrower defense cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense. The relief to the borrower may not include non-pecuniary damages such as inconvenience, aggravation, emotional distress, or punitive damages.

§ 685.409 Recovery from institutions.

(a) For loans first disbursed on or after July 1, 2023, the Secretary shall collect from the school, or in the case of a closed school, a person affiliated with the school as described in § 668.174(b) of this chapter, any liability to the Secretary for any amounts discharged or reimbursed to borrowers under the

discharge process described in § 685.408.

(b) Notwithstanding the paragraph (a) of this section, the Secretary may choose not to collect from the school, or in the case of a closed school, a person affiliated with the school as described in § 668.174(b) of this chapter, any liability to the Secretary for any amounts discharged or reimbursed to borrowers under the discharge process described in § 685.408, under the following conditions, such as:

(1) The cost of collecting would exceed the amounts received; or

(2) The claims were approved outside of the limitations period in paragraph (c) of this section;

(c)(1) The Secretary shall initiate a proceeding to collect from the school the amount of discharge or reimbursement resulting from a borrower defense under § 685.408 no later than 6 years after the borrower's last date of attendance at the institution;

(2) The limitations period described in paragraph (c)(1) of this section shall not apply if at any time prior to the end of the limitations period—

(i) The Department official notifies the school of the borrower's claim in accordance with § 685.405(b);

(ii) The institution receives a class action complaint asserting relief for a class that may include the borrower for underlying facts that may form the basis of a claim in accordance with this subpart; or

(iii) The institution receives written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, for underlying facts that may form the basis of a claim under this subpart.

(3) For a borrower defense under § 685.401(b)(5), the Secretary may initiate a proceeding to collect at any time.

§ 685.410 Cooperation by the borrower.

To obtain a discharge under this subpart, a borrower must reasonably cooperate with the Secretary in any proceeding under this subpart.

§ 685.411 Transfer to the Secretary of the borrower's right of recovery against third parties.

(a) Upon the granting of any discharge under this subpart, the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund.

(b) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(c) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief against a party described in this section for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

§ 685.499 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[FR Doc. 2022–14631 Filed 7–12–22; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL REGISTER

Vol. 87 Wednesday,

No. 133 July 13, 2022

Part III

Federal Trade Commission

16 CFR Part 463

Motor Vehicle Dealers Trade Regulation Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 463

RIN 3084–AB72

Motor Vehicle Dealers Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') seeks comment on this notice of proposed rulemaking (''NPRM'') related to the sale, financing, and leasing of motor vehicles by motor vehicle dealers. The proposed rule would prohibit motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles, require accurate pricing disclosures in dealers' advertising and sales discussions, require dealers to obtain consumers' express, informed consent for charges, prohibit the sale of any add-on product or service that confers no benefit to the consumer, and require dealers to keep records of advertisements and customer transactions. This NPRM invites written comments on all issues raised herein and seeks answers to the specific questions set forth in Section VIII of this document.

DATES: Comments must be received on or before September 12, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Motor Vehicle Dealers Trade Regulation Rule—Rulemaking, No. P204800'' on your comment, and file it online at *https://www.regulations.gov,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Daniel Dwyer or Sanya Shahrasbi, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 202–326–2957 (Dwyer), 202–326–2709 (Shahrasbi), *ddwyer@ftc.gov, sshahrasbi@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Buying or leasing a motor vehicle is, for many consumers, both essential and expensive.[1] Millions of Americans depend on vehicles for daily living, with recent data showing that over 95% of American households own at least one motor vehicle,[2] and nearly 84% of Americans drive to work as of 2020.[3] Americans rely on their vehicles for work, school, childcare, groceries, medical visits, and many other important tasks in their daily lives. This necessity does not come cheap: a new vehicle is the second-most expensive purchase many consumers make, falling only behind purchasing a home.[4] For purchases at new car dealerships, the average new vehicle now sells for more than $42,000,[5] and the average used vehicle sells for more than $26,000.[6] All told, Americans spent more than $2.8 trillion dollars on motor vehicles and vehicle parts in 2021.[7]

Given how expensive it can be to buy a vehicle, many consumers rely on financing to complete their purchases. Indeed, according to public reports, 81% of new motor vehicle purchases, and nearly 35% of used vehicle purchases, are financed.[8] The motor vehicle financing market is the third-largest consumer credit market in the United States, after mortgages and student loans. By the end of 2021, Americans had more than 111 million outstanding auto loans, and owed more than $1.46 trillion thereon.[9] Motor vehicle financing is the third-largest source of debt for U.S. consumers under the age of 50, and the second-largest source of debt for those 50 and older.[10]

Buying or leasing a vehicle is not only an expensive endeavor, but the transaction itself is time-consuming and arduous. Consumers who purchase vehicles at a dealership may spend five hours or more—or even days—doing so.[11] And that does not include the time spent visiting dealerships when consumers do not make purchases, or the hours it can take to travel to the dealerships themselves.[12] Consumers

[1] In this proposed rulemaking, ''auto,'' ''automobile,'' ''car,'' ''motor vehicle,'' and ''vehicle'' refer to motor vehicles as defined in Section 1029 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), 15 U.S.C. 5519(f)(1).

[2] U.S. Census Bureau, *American Community Survey: Means of Transportation to Work by Selected Characteristics, 2020, https://data.census.gov/cedsci/table?q=S0802&tid=ACSST5Y2020.S0802* (last visited Apr. 25, 2022) (listing 4.2% of population as having ''[n]o vehicle available'' in 2020); *compare* U.S. Census Bureau, *American Community Survey: Selected Housing Characteristics, 2020, https://data.census.gov/cedsci/table?q=vehicle&tid=*ACSDP5Y2020.DP04 (last visited Apr. 25, 2022) (listing 8.5% of households as having ''no vehicles available'').

[3] U.S. Census Bureau, *American Community Survey: Means of Transportation to Work by Selected Characteristics, 2020, https://data.census.gov/cedsci/table?q=S0802&tid=ACSST5Y2020.S0802* (last visited Apr. 25, 2022) (including those who commute in a car, truck, or van, either alone or by carpool).

[4] Fed. Trade Comm'n, *Buying a New Car, https://www.consumer.ftc.gov/articles/0209-buying-new-car* (last visited Apr. 25, 2022); *see also* Am. Auto. Ass'n., *Average Annual Cost of New Vehicle Ownership, https://www.aaa.com/autorepair/articles/average-annual-cost-of-new-vehicle-ownership* (last visited Apr. 25, 2022) (''After a home purchase, buying a vehicle is usually a consumer's second biggest expense.''); Bureau of Lab. Stats., *Consumer Expenditures: Multiyear Tables (2013–2020)* at 2, *https://www.bls.gov/cex/tables/calendar-year/mean/cu-all-multi-year-2013-2020.pdf* (noting average annual home ownership expenditures of $7,473 and average annual vehicle purchase expenditures of $4,523 per consumer in 2020).

[5] Nat'l Auto. Dealers Ass'n, *NADA Data 2021* at 7, *https://www.nada.org/media/4695/download?inline* (noting average retail selling price of $42,379 for new vehicles sold by dealerships in 2021).

[6] *Id.* at *10* (noting average retail selling price of $26,709 for used vehicles sold by new vehicle dealerships in 2021).

[7] Bureau of Econ. Analysis, *National Data: National Income and Product Accounts, Personal Consumption Expenditures by Major Type of Product* at Table 2.3.5, *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=2&isuri=1&1921=survey* (last visited Apr. 25, 2022).

[8] Melinda Zabritski, Experian Info. Sol's, Inc., *State of the Automotive Finance Market Q4* 2020 at 5, *https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2020-quarterly-trends/v2-2020-q4-state-automotive-market.pdf.*

[9] Fed. Rsrv. Bank of N.Y., *Quarterly Report on Household Debt and Credit, 2021: Q4* at 3–4 (Feb. 2022), *https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2021Q4.pdf;* Fed. Rsrv. Bank of N.Y., *Data underlying report* at ''Page 3 Data'' and ''Page 4 Data'' tabs, *https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/hhd_c_report_2021q4.xlsx* (last visited Apr. 25, 2022) (number of open auto loan accounts and total balance outstanding).

[10] Fed. Rsrv. Bank of N.Y., *Data underlying report* at ''Page 21 Data'' tab, *https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/hhd_c_report_2021q4.xlsx* (last visited Apr. 25, 2022).

[11] Mary W. Sullivan, Matthew T. Jones & Carole L. Reynolds, Fed. Trade Comm'n, *The Auto Buyer Study: Lessons from In-Depth Consumer Interviews and Related Research* 15 (2020) [hereinafter *Auto Buyer Study*], *https://www.ftc.gov/system/files/documents/reports/auto-buyer-study-lessons-depth-consumer-interviews-related-research/bcpreportsautobuyerstudy.pdf* (noting the purchase transactions in the FTC's qualitative study often took 5 hours or more to complete, with some extending over several days); *Cf.* Cox Automotive, *2020 Cox Automotive Car Buyer Journey* 6 (2020), *available at https://b2b.autotrader.com/app/uploads/2020-Car-Buyer-Journey-Study.pdf* (reporting average consumer time spent shopping for a vehicle at 14 hours, 53 minutes, including 4 hours, 49 minutes visiting dealerships/sellers).

[12] For example, consumers have complained when they go to a dealership based on an offer that the dealer refuses to honor once they have spent hours driving there and have then spent additional time on the lot. *See, e.g.,* Complaint, *FTC & Illinois* v. *N. Am. Auto. Servs., Inc.,* No. 1:22–cv–0169 at ¶¶ 23–26 (N.D. Ill. Mar. 31, 2022) (alleging many consumers drive hours to dealerships based on the advertised prices; test-driving and selecting a vehicle, and negotiating the price and financing terms, is an often hours-long process; and, after this

may need to take time off work and arrange daycare or take young children to the dealership, and the process can be especially taxing for one-vehicle families who also need their vehicle for commuting and day-to-day tasks like buying groceries and attending medical appointments.

The Commission, the nation's consumer protection agency, is charged with enforcing key laws and regulations applicable to the motor vehicle marketplace, including sales, financing, and leasing.[13] The FTC protects consumers in motor vehicle transactions through law enforcement actions, rulemaking, consumer education, and business guidance, aided by information-gathering efforts such as agency roundtables and industry research. In the past ten years, the FTC has brought more than 50 motor vehicle-related enforcement actions, including matters involving misleading motor vehicle advertising, financing paperwork falsification, ''yo-yo'' financing, deceptive and unfair add-on fees, discrimination, and privacy and data security issues.[14] At the same time, the FTC has conducted a qualitative study of consumer experiences [15] and hosted public events to engage in a dialogue with consumer and dealer groups and other stakeholders, gather information, spotlight misleading practices, and raise awareness of issues that can affect consumers in this space, including consumers who are servicemembers.[16] The FTC also has posted many educational materials to assist consumers and dealers on motor vehicle market issues, and we have worked collaboratively with industry groups to do the same.[17]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was signed into law in 2010.[18] Section 1029 of the Dodd-Frank Act authorizes the FTC to prescribe rules with respect to unfair or deceptive acts or practices by motor vehicle dealers,[19] and to do so pursuant to the Commission's authority under the FTC Act and in accordance with the Administrative Procedure Act (''APA'').[20] Although it has engaged in law enforcement, the Commission's relatively small size and limited resources make it challenging to investigate and act upon the tens of thousands of complaints regarding dealerships. As discussed below, many of the problems observed in the motor vehicle marketplace persist in the face of repeated federal and state enforcement actions, suggesting the need for additional measures to deter deceptive and unfair practices. In addition, a rule prohibiting unfair or deceptive acts or practices in the motor vehicle marketplace would allow the FTC to seek redress for harmed consumers and obtain other forms of monetary relief in cases involving FTC Act violations.[21] Further, law-abiding dealers suffer when other dealers gain business through deceptive or unfair means. For all these reasons, the Commission believes it is appropriate to utilize its rulemaking authority to issue a rule to address unfair or deceptive acts or practices in the motor vehicle marketplace.

I. Overview of Vehicle Dealers and Motor Vehicle Financing

A. New and Used Motor Vehicle Dealerships

There are more than 21,000 new motor vehicle dealerships across the country.[22] Collectively, these dealerships sold more than 17 million new vehicles per year in each of the past three years,[23] averaging more than 800 new vehicle sales per dealership per year.[24] New- vehicle dealers spend an average of more than $600 on advertising per vehicle sold [25]—more

time, dealers falsely told consumers add-on products or packages were required to purchase or finance the vehicle, even though they were not included in the low prices advertised or disclosed to consumers who called to confirm prices).

[13] These laws include the FTC Act, 15 U.S.C. 41–58; the Truth in Lending Act, 15 U.S.C. 1601–1667f, and its implementing Regulation Z, 12 CFR parts 226 and 1026; the Consumer Leasing Act, 15 U.S.C. 1667–1667f and its implementing Regulation M, 12 CFR parts 213 and 1013; and the Used Car Rule, 16 CFR part 445.

[14] *See generally* Fed. Trade Comm'n, *The Auto Marketplace, https://www.ftc.gov/news-events/media-resources/consumer-finance/auto-marketplace.*

[15] *See, e.g.,* Carole L. Reynolds & Stephanie E. Cox, Fed. Trade Comm'n, *Buckle Up: Navigating Auto Sales and Financing* (2020), *https://www.ftc.gov/reports/buckle-navigating-auto-sales-financing* [hereinafter *Buckle Up*]; *Auto Buyer Study, supra* note 11.

[16] For example, the FTC has held public workshops: (1) in conjunction with the National Highway Traffic Safety Administration, to examine the consumer privacy and security issues posed by automated and connected motor vehicles, *see* Connected Cars: Privacy, Security Issues Related to Connected, Automated Vehicles (June 28, 2017), *https://www.ftc.gov/news-events/events-calendar/2017/06/connected-cars-privacy-security-issues-related-connected*; (2) to explore competition and related issues in the U.S. motor vehicle distribution system including how consumers and businesses may be affected by state regulations and emerging trends in the industry, Auto Distribution: Current Issues & Future Trends (Jan. 19, 2016), *https://www.ftc.gov/news-events/events-calendar/2016/01/auto-distribution-current-issues-future-trends*; (3) on military consumer financial issues including automobile purchases, financing, and leasing, Military Consumer Financial Workshop (July 2017), *https://www.ftc.gov/news-events/events-calendar/military-consumer-workshop*; and (4) through a series of three roundtables on numerous issues in selling, financing, and leasing automobiles, The Road Ahead: Selling Financing, and Leasing Motor Vehicles (Feb. 2011, Aug. 2011, and Nov. 2011), *https://www.ftc.gov/news-events/events-calendar/2011/11/road-ahead-selling-financing-leasing-motor-vehicles*, *https://www.ftc.gov/news-events/events-calendar/2011/08/road-ahead-selling-financing-leasing-motor-vehicles*, *https://www.ftc.gov/news-events/events-calendar/2011/04/road-ahead-selling-financing-leasing-motor-vehicles*; *see also* Consumers for Auto Reliability and Safety, Comment Letter on Motor Vehicle Roundtables, Project No. P104811 at 6 (Apr. 1, 2012), *https://www.ftc.gov/sites/default/files/documents/public_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00108/00108-82875.pdf* (stating that Director of the Navy-Marine Corps Relief Society in San Diego indicated before the California Assembly Committee on Banking and Finance ''the number one issue they are confronted with is used car dealers who are taking advantage of military personnel.''). These events, and others, have included speakers representing consumers, dealers, regulators, and other industry stakeholders.

[17] *See, e.g.,* Fed. Trade Comm'n, *The Auto Marketplace, https://www.ftc.gov/news-events/media-resources/consumer-finance/auto-marketplace*; *see also* Nat'l Auto. Dealers Ass'n, *Understanding Vehicle Financing,https://www.nada.org/WorkArea/DownloadAsset.aspx?id=21474839119* (prepared cooperatively by Am. Fin. Servs. Ass'n Educ. Found., Fed. Trade Comm'n & Nat'l Auto. Dealers Ass'n). Industry groups also play an important role in educating their members on how to comply with the law, including by issuing guidance in specific areas. *See, e.g.,* Nat'l Auto. Dealers Ass'n, Am. Int'l Auto. Dealers Ass'n & Nat'l Ass'n of Minority Auto. Dealers, *Voluntary Protection Products: A Model Dealership Policy* (2019), *https://www.nada.org/regulatory-compliance/voluntary-protection-products-model-dealership-policy*.

[18] Public Law 111–203 (2010).

[19] *See supra* note 1.

[20] 12 U.S.C. 5519.

[21] Under Section 19(a)(1) of the FTC Act, the Commission may sue in federal district court ''any person, partnership, or corporation'' that ''violates any rule under [the FTC Act] respecting unfair or deceptive acts or practices.'' 15 U.S.C. 57b(a)(1). Where such liability is found, under Section 19(b) a court may ''grant such relief as [it] finds necessary to redress injury . . . resulting from the rule violation,'' including the ''rescission or reformation of contracts, the refund of money or return of property, [or] the payment of damages.'' *Id.* 57b(b).

[22] U.S. Census Bureau, *All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=44111%3A44112&tid=CBP2019.CB1900CBP&hidePreview=true&nkd=EMPSZES~001,LFO~001* (listing 21,427 establishments for ''new car dealers,'' NAICS code 44111).

[23] Edmunds, *Automotive Industry Trends | 2020* at 2, *https://static.ed.edmunds-media.com/unversioned/img/industry-center/insights/2020-automotive-trends.pdf.*

[24] Nat'l Auto. Dealers Ass'n, *NADA Data 2021* at 7, *https://www.nada.org/media/4695/download?inline.* New vehicle dealerships are also a significant source of used vehicles, having sold between 13.7 million and 14.9 million such vehicles per year over the past three years. *Id.* at 10 (graph of used-vehicle sales by new-vehicle dealerships, by year).

[25] *Id.* at 15 (listing average dealership advertising per new vehicle sold of $602).

than half of which goes toward online advertising.[26] According to industry sources, these dealers averaged a gross profit of about $2,444 per vehicle.[27] More than half of this profit came from the dealers' financing and insurance, or ''F&I'', offices, which sell consumers financing and leasing, as well as add-on products and services such as vehicle service contracts.[28]

There are more than 25,000 used motor vehicle dealerships across the country,[29] and used vehicle sales are nearly evenly split between new and used car dealerships.[30] Used vehicles sold by new-vehicle dealerships cost $24,542 on average.[31] These vehicles brought in an average gross profit of about $2,675 per vehicle, more than a third of which came from the F&I office.[32] Independent used vehicle dealerships sold an average of 684 vehicles per dealership in 2019, with an average gross profit of more than $6,000 per vehicle.[33] While some independent used vehicle dealerships do not have a separate F&I office, more than half of them sell add-on products.[34]

B. Motor Vehicle Financing and Leasing Overview

Consumers can finance the purchase or use of a vehicle in several ways. Those interested in purchasing a vehicle generally use either indirect financing or direct financing. Others—particularly those with thin or damaged credit—work with a so-called ''buy here, pay here'' dealership for financing, typically without the involvement of an outside financing entity.[35] Finally, some consumers opt to lease a vehicle rather than purchase it.[36]

Approximately 70 percent of consumers use dealer-provided indirect financing at the dealership.[37] In this scenario, the dealership collects financial information on the consumer and forwards that information to prospective financing entities. These financing entities, who work with the dealer, evaluate that information and in the process determine whether, and on what terms, to provide credit.[38] These terms include the ''buy rate,'' a risk-based finance charge that reflects the interest rate at which the entity will finance the deal.[39] Dealers often add a finance charge called a ''dealer reserve'' or ''markup'' to the buy rate.[40] Unlike the buy rate, the markup is not based on the underwriting risk or credit characteristics of the applicant.[41]

Alternatively, those who use direct financing apply for and obtain financing directly from a credit union, bank, or other financing entity.[42] These consumers typically receive an interest rate quote from the entity prior to arriving at a dealership to purchase a vehicle. Then, once these consumers agree to purchase a vehicle, they can use the financing from the entity to pay for the vehicle.[43] Dealerships do not profit on the financing portion of the transaction when a consumer arranges financing directly.

''Buy here, pay here'' dealers typically finance their motor vehicle sales in-house rather than routinely assigning their financing to unaffiliated parties.[44] That means consumers borrow from and make their payments directly to the dealership. Interest rates for this financing are usually much higher than for direct or indirect financing,[45] and consumers default on this financing at

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[26] *Id.* at 16 (listing 63.6% of estimated advertising expenditures by medium as internet expenditures).

[27] Nat'l Auto. Dealers Ass'n, *Average Dealership Profile* 1 (2020), *https://www.nada.org/media/4136/download?attachment.*

[28] *Id.* (listing an average 6.3% gross as a percentage of the vehicle's selling price, and a 3.2% average F&I gross as a percentage of new-vehicle dept. sales). While many dealers have seen increased profits during the pandemic, to the extent some dealers may be profiting through unscrupulous practices, the proposed rule would help honest dealers compete on a level playing field. *See* Nora Eckert & Mike Colias, *Ford and GM Warn Dealers to Stop Charging So Much for New Cars,* Wall St. J. (Feb. 9, 2022), *https://www.wsj.com/articles/ford-gm-warn-dealers-charge-above-sticker-price-and-face-repercussions-11644323580* (discussing how many dealers have increased markups, including by requiring consumers to accept added fees and warranty protection as part of the asking price). Conditioning a vehicle sale or lease on the purchase of an add-on product or service is contrary to industry guidance. *See* Nat'l Auto. Dealers Ass'n et al., *Voluntary Protection Products: A Model Dealership Policy* 4 (2019), *https://www.nada.org/regulatory-compliance/voluntary-protection-products-model-dealership-policy* (stating dealerships should ''prominently display to customers a poster stating that [add-on products and services] offered by the dealership are optional and are not required to purchase or lease a vehicle or obtain warranty coverage, financing, financing on particular terms, or any other product or service offered by the dealership.'').

[29] U.S. Census Bureau, *All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=44111%3A44112&tid=CBP2019.CB1900CBP&hidePreview=true&nkd=EMPSZES~001,LFO~001* (listing 25,098 establishments for ''used car dealers,'' NAICS code 44112).

[30] In 2020, 52.2% of used motor vehicle sales were by new car dealerships, while 47.8% were by independent used vehicle dealerships. Melinda Zabritski, Experian Info. Sol's, Inc., *State of the Automotive Finance Market Q4* 2020 at 32, *https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2020-quarterly-trends/v2-2020-q4-state-automotive-market.pdf.*

[31] Nat'l Auto. Dealers Ass'n, *NADA Data 2021: Midyear Report* 10, *https://www.nada.org/media/4694/download?inline.*

[32] Nat'l Auto. Dealers Ass'n, *Average Dealership Profile* 1 (2020), *https://www.nada.org/media/4136/download?attachment* (listing an average 6.3% gross as a percentage of the vehicle's selling price, and a 3.2% average F&I gross as a percentage of new-vehicle dept. sales).

[33] Nat'l Indep. Auto. Dealers Ass'n, *NIADA Used Car Industry Report 2020* at 21 (2020).

[34] *Id.* at 8, 10.

[35] In some regions, ''lease here, pay here'' dealerships may provide leases to consumers through similar programs.

[36] Melinda Zabritski, Experian Info. Sol's, Inc., *State of the Automotive Finance Market Q4* 2020 at 19, *https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2020-quarterly-trends/v2-2020-q4-state-automotive-market.pdf* (more than 72% of new vehicle financing in MI is for leases; the Northeast ranges from 43% in VT to 66% in NY; other states range from 45% (OH) to less than 4% (AR)).

[37] *See* Nat'l Auto. Dealers Ass'n, *Dealer-Assisted Financing Benefits Consumers, https://www.nada.org/autofinance/* (last visited Apr. 25, 2022) (noting 7 out of 10 consumers finance through their dealership). This is also known as ''dealer financing,'' because consumers obtain financing through the dealer that partners with other entities in the financing process.

[38] Dealers often may originate the financing and then sell the financing agreements to third-parties.

[39] Lesley Fair, *FTC says Bronx Honda discriminated against African-American and Hispanic consumers,* Fed. Trade Comm'n Business Blog (May 27, 2020), *https://www.ftc.gov/business-guidance/blog/2020/05/ftc-says-bronx-honda-discriminated-against-african-american-hispanic-consumers.*

[40] *See, e.g.,* Nat'l Auto. Dealers Ass'n, Nat'l Ass'n of Minority Auto. Dealers & Am. Int'l Auto. Dealers Ass'n, *Fair Credit Compliance Policy & Program* 1, n.4 & accompanying text, *https://www.nada.org/media/4558/download?inline.*

[41] *Id.* (describing this as the amount dealers earn for arranging financing, measured as the difference between the consumer's APR and the wholesale ''buy rate'' at which a finance source buys the finance contract from the dealer, and noting finance sources typically permit dealers to retain the dealer participation).

[42] Consumer Fin. Prot. Bureau, *Automobile Finance Examination Procedures* 4 (Aug. 2019), *https://files.consumerfinance.gov/f/documents/201908_cfpb_automobile-finance-examination-procedures.pdf.*

[43] Consumer Fin. Prot. Bureau, *Consumer Voices on Automobile Financing* 5 (June 2016), *https://files.consumerfinance.gov/f/documents/201606_cfpb_consumer-voices-on-automobile-financing.pdf.*

[44] *See* Consumer Fin. Prot. Bureau, *Automobile Finance Examination Procedures* 4 (Aug. 2019), *https://files.consumerfinance.gov/f/documents/201908_cfpb_automobile-finance-examination-procedures.pdf.* (''While most Buy-Here, Pay-Here (BHPH) dealers are independently owned entities that serve as the primary lender and servicer, some larger BHPH dealers sell or assign their contracts to an affiliated BHPH finance company once the contract has been consummated with the consumer.'')

[45] As of 2017, interest rates at ''buy here, pay here'' dealerships averaged around 20%. Nat'l Indep. Auto Dealers Ass'n, *NIADA Used Car Industry Report 2019* at 14. In contrast, the average financing rate for used vehicles across the industry was 8.43% in the fourth quarter of 2020. Melinda Zabritski, Experian Info. Sol's, Inc., *State of the Automotive Finance Market Q4* 2020 at 38, *https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2020-quarterly-trends/v2-2020-q4-state-automotive-market.pdf.*

a high rate.[46] The dealer often performs its own collections and repossession operations when consumers fall behind. ''Buy here, pay here'' accounts for 6–8% of financing to purchase a vehicle.[47]

Leasing involves arranging to drive a vehicle for a set period of time—typically around three years [48]—and for a certain maximum number of miles—typically 10–15,000 miles per year—in exchange for an upfront payment, a monthly payment, and fees before, during, and at the end of the lease, including for excess wear and usage over the mileage limit.[49] When consumers lease a vehicle, they do not own it, and they must return the vehicle when the lease expires, though they may have the option to purchase the vehicle at the end of the lease period. Nearly 27% of new vehicles are leased, as are just over 8% of used vehicles.[50]

II. Deception and Unfairness in the Motor Vehicle Marketplace

For many consumers, buying or leasing a vehicle is a difficult and time-consuming experience. The process of shopping for a vehicle, conducting test drives, providing financing information, and completing stacks of paperwork at a dealership can take many hours or even days,[51] and can involve unfair or deceptive practices. The FTC received more than 100,000 complaints in each of the past three years regarding new and used motor vehicle sales, financing, service & warranties, and rentals & leasing, and complaints about motor vehicle transactions are regularly in the top ten complaint categories tracked by the agency.[52]

The FTC uses its authority under Section 5 to stop deceptive and unfair acts or practices in the motor vehicle marketplace. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers—that is, it would likely affect the consumer's conduct or decisions with regard to a product or service.[53] Some deception cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.[54] Deceptive information distorts the marketplace and thus, these false and misleading statements are unlawful regardless of an intent to deceive.[55]

A practice is considered unfair under Section 5 if: (1) it causes, or is likely to cause, substantial injury; (2) the injury is not reasonably avoidable by consumers; and, (3) the injury is not outweighed by benefits to consumers or competition.[56]

Chronic problems confronting consumers in the sales, financing, and leasing process include advertising misrepresentations and unlawful practices related to add-ons and deceptive pricing.[57]

A. Advertising Misrepresentations

Advertisements for motor vehicles are often consumers' first contact in the vehicle-buying or leasing process. Dealers utilize a variety of means to reach consumers, including television and radio commercials, social media and online advertisements, and direct mail marketing.

The FTC has brought many cases concerning misrepresentations regarding key pricing aspects of a vehicle purchase, including the price of the vehicle, the availability of discounts and rebates, the monthly payment amount for a financed purchase or lease, or the amount due at signing.[58] Other misrepresentations regarding financial terms that have been the subject of FTC complaints have included whether an offer pertains to a purchase or a lease [59] and whether the dealer or consumer is responsible for paying off ''negative equity,'' *i.e.,* the outstanding debt on a vehicle that is being traded in as part of another vehicle purchase.[60] And according to other FTC actions, some dealers have lured potential buyers through financial incentives incidental

[46] For example, approximately 37.5% of ''buy here, pay here'' consumers defaulted in 2019. Nat'l Indep. Auto. Dealers Ass'n, *NIADA Used Car Industry Report 2020* at 13. The overall motor vehicle debt default rate was 4.94% in 2019. Zhu Wang, Fed. Rsrv. Bank of Richmond, *Coronavirus and Auto Lending: A Market Outlook* (Apr. 16, 2020), *https://www.richmondfed.org/-/media/RichmondFedOrg/research/economists/bios/pdfs/wang_covid19_paper.pdf.*

[47] Melinda Zabritski, Experian Info. Sol's, Inc., *State of the Automotive Finance Market Q2* 2020 at 8, *https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2020-q2-safm-final.pdf.*

[48] Melinda Zabritski, *Experian Info. Sol's, Inc., State of the Automotive Finance Market Q4 2020* at 26, *https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2020-quarterly-trends/v2-2020-q4-state-automotive-market.pdf.*

[49] *See* Fed. Trade Comm'n, *Financing or Leasing a Car, https://www.consumer.ftc.gov/articles/0056-financing-or-leasing-car* (last visited Apr. 25, 2022) (''The mileage limit in most standard leases is typically 15,000 or fewer per year''); Consumer Fin. Prot. Bureau, *What should I know about the differences between leasing and buying a vehicle?, https://www.consumerfinance.gov/ask-cfpb/what-should-i-know-about-the-differences-between-leasing-and-buying-a-vehicle-en-815/* (last visited Apr. 25, 2022) (''Most leases include mileage restrictions of 10,000–15,000 miles per year.'').

[50] Melinda Zabritski, Experian Info. Sol's, Inc., *State of the Automotive Finance Market Q4* 2020 at 5, *https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2020-quarterly-trends/v2-2020-q4-state-automotive-market.pdf.*

[51] *Auto Buyer Study, supra* note 11, at 15 (finding the process of completing a vehicle purchase often took five hours or more, and sometimes several days); *Cf.* Cox Automotive, 2020 Cox Automotive Car Buyer Journey 5–6 (2020), *available at https://b2b.autotrader.com/app/uploads/2020-Car-Buyer-Journey-Study.pdf* (noting, on average, consumers spend 89 day in the market and 14 hours, 53 minutes shopping for a vehicle).

[52] *See, e.g.,* Fed. Trade Comm'n, *Consumer Sentinel Network Data Book 2021* at 7–8 & app. B3 at 85 (Feb. 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/CSN%20Annual%20Data%20Book%202021%20Final%20PDF.pdf* (listing motor vehicle-related complaints as the eighth most common report category in 2021, and reporting complaints about new and used motor vehicle sales, financing, service & warranties, and rentals & leasing, collectively, of more than 100,000 in 2019, 2020, and 2021).

[53] *See* Fed. Trade Comm'n, *FTC Policy Statement on Deception* 2, 5, 103 F.T.C. 174 (1984) (*appended to Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 183 (1984)), *https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.*

[54] *Id.*

[55] *In re Sears, Roebuck & Co.,* 95 F.T.C. 406, 517 n.9 (1980) (citing *Regina Corp.* v. *FTC,* 322 F.2d 765, 768 (3d Cir. 1963).

[56] 15 U.S.C. 45(n).

[57] While other issues exist in the motor vehicle sales, financing, and leasing space, including issues involving discrimination, financing application falsification, data privacy and security, and yo-yo financing, this proposal's core focus is on misrepresentations and add-on and pricing practices.

[58] See Complaint, *In re Timonium Chrysler, Inc.,* No. C–4429 (F.T.C. Jan. 28, 2014) (alleging dealership advertised internet prices and dealer discounts but failed to disclose consumer would have to qualify for multiple rebates not generally available to them); Complaint, *In re Ganley Ford West, Inc.,* No. C–4428 (F.T.C. Jan. 28, 2014) (alleging dealership advertised discounts on vehicle prices, but failed to disclose discounts were only available on the most expensive models); Complaint, *In re Progressive Chevrolet Co.,* No. C–4578 (F.T.C. June 13, 2016) (alleging deceptive failure to disclose material conditions of obtaining the lease monthly payment in their online and print advertising).

[59] See Complaint, *FTC* v. *Tate's Auto Ctr. of Winslow, Inc.,* No. 3:18–cv–08176–DJH at ¶¶ 38–46 (D. Ariz. July 31, 2018) (alleging company issued advertisements for attractive terms but concealed that the terms were only applicable to lease offers); Complaint, *United States* v. *New World Auto Imports, Inc.* No. 3:16–cv–02401–K at ¶¶ 36–38 (N.D. Tex. Aug. 18, 2016) (alleging misrepresentation that terms were for financing instead of leasing); Complaint, *FTC* v. *Universal City Nissan, Inc.,* No. 2:16–cv–07239 at ¶¶ 85–87 (C.D. Cal. Sept. 29, 2016) (alleging dealerships claimed consumers could finance the purchase of vehicles with attractive terms and buried disclosures indicating such terms were applicable to leases only).

[60] *Universal City Nissan,* No. 2:16–cv–07239 at ¶¶ 82–84 (C.D. Cal. Sept. 29, 2016) (alleging misrepresentation that dealer would pay off consumer's trade-in when in fact consumers were still responsible for outstanding debt on trade-in vehicles); Complaint, *In re TXVT Ltd. P'ship,* No. C–4508 at ¶¶ 17–19 (F.T.C. Feb. 12, 2015) (alleging failure to disclose in leasing advertising that the dealership would pay off the negative equity of consumers' trade in vehicle, when in fact, it was merely rolled into the financed amount for the consumer's newly financed vehicle).

to the purchase, such the promise of a valuable prize.[61]

Misleading advertisements can cause significant consumer harm, and reduce competition amongst law-abiding dealers. When dealerships advertise prices, discounts, or other terms that are not actually available to typical consumers, those consumers end up selecting that dealership instead of others and spending time visiting it and transacting with it under false pretenses.

B. Unlawful Practices Relating to Add-Ons and Deceptive Pricing

Another key consumer protection concern is the sale of ''add-on'' products and services in a deceptive or unfair manner. Commonly offered add-ons include extended warranties, service and maintenance plans, payment programs, guaranteed automobile or asset protection (''GAP'' or ''GAP insurance''), emergency road service, VIN etching and other theft protection devices, and undercoating. Individual add-ons can cost consumers thousands of dollars and can significantly increase the overall cost to the consumer in the transaction.

A significant consumer protection concern is consumers paying for add-ons without knowing about or expressly agreeing to them.[62] The protracted and paperwork-heavy vehicle-buying process can make it difficult for consumers to spot add-on charges, particularly when advertised prices do not mention add-ons.[63] If consumers are financing the vehicle, they then undergo a separate financing process, which can include wading through a thick stack of dense paperwork filled with fine print.[64] For example, according to an FTC complaint, consumers were required to complete a stack of paperwork that ran more than sixty pages and required more than a dozen signatures.[65] This paperwork can include hidden charges for add-on products and services, causing consumers to purchase those add-ons without knowing about or agreeing to them, or without knowing or agreeing to their costs, or other key terms.[66] Unscrupulous dealers are able to slip these additional costs past consumers unnoticed and into purchase contracts through a variety of means, including by not mentioning them at all,[67] or by focusing consumers' attention on other aspects of the complex transaction, such as monthly payments, which might increase only marginally with the addition of prorated add-on costs or even be made to decrease if the financing term is stretched out, while in fact these added costs can be considerable in aggregate.[68] Dealers

[61] *See, e.g.,* Complaint, *FTC* v. *Traffic Jam Events, LLC,* No. 9395 at ¶¶ 12, 17–19 (F.T.C. Aug. 7, 2020); Complaint, *In re Fowlerville Ford, Inc.,* No. C–4433 at ¶¶ 4, 7–9 (F.T.C. Feb. 20, 2014).

[62] *See* Nat'l Consumer Law Ctr., *Auto Add-ons Add Up: How Dealer Discretion Drives Excessive, Inconsistent, and Discriminatory Pricing* (Oct. 11, 2017), *https://www.nclc.org/images/pdf/car_sales/report-auto-add-on.pdf*; Consumers for Auto Reliability and Safety, Comment Letter on Motor Vehicle Roundtables, Project No. P104811 at 2–3 (Apr. 1, 2012), *https://www.ftc.gov/sites/default/files/documents/public_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00108/00108-82875.pdf* (citing a U.S. Department of Defense data call summary that found the vast majority of military counselors have clients with auto financing problems and cited loan packing and yo-yo financing as the most frequent auto lending abuses affecting servicemembers); Adam J. Levitin, *The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses,* 108 Geo. L.J. 1257, 1265–66 (2020), *https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2020/05/Levitin_The-Fast-and-the-Usurious-Putting-the-Brakes-on-Auto-Lending-Abuses.pdf* (discussing ''loan packing'' as the sale of add-on products falsely represented as being required in order to obtain financing.); Complaint, *FTC* v. *Liberty Chevrolet, Inc.,* No. 1:20–cv–03945 at ¶¶ 12–19 (S.D.N.Y. May 21, 2020) (alleging deceptive and unauthorized add-on charges in consumers' transactions); *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 59–64 (C.D. Cal. Sept. 29, 2016) (alleging deceptive and unauthorized add-on charges in consumers' transactions); Complaint, *In re TT of Longwood, Inc.,* No. C–4531 at ¶¶ 6, 9 (F.T.C. July 2, 2015) (alleging misrepresentations regarding prices for added features); *see also Auto Buyer Study, supra* note 11, at 14 (''Several participants who thought that they had not purchased add-ons, or that the add-ons were included at no additional charge, were surprised to learn, when going through the paperwork, that they had in fact paid extra for add-ons. This is consistent with consumers' experiencing fatigue during the buying process or confusion with a financially complex transaction, but would also be consistent with dealer misrepresentations.'').

[63] *Liberty Chevrolet* No. 1:20–cv–03945 (S.D.N.Y. May 21, 2020); *Universal City Nissan,* No. 2:16–cv–07329 (C.D. Cal. Sept. 29, 2016).

[64] *See, e.g., Buckle Up, supra* note 15, at 10–11 (noting the long, complex transaction process); *N. Am. Auto. Servs.,* No. 1:22–cv–0169 at ¶¶ 23–28 (N.D. Ill. Mar. 31, 2022) (same).

[65] *N. Am. Auto. Servs.,* No. 1:22–cv–0169 at ¶ 24 (N.D. Ill. Mar. 31, 2022); *see also Buckle Up, supra* note 15, at 10–11.

[66] *Liberty Chevrolet,* No. 1:20–cv–03945 at ¶¶ 17–19 (S.D.N.Y. May 21, 2020); The Road Ahead: Selling, Financing & Leasing Motor Vehicles, *https://www.ftc.gov/news-events/events-calendar/2011/08/road-ahead-selling-financing-leasing-motor-vehicles*; Dale Irwin, Slough Connealy Irwin & Madden LLC, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00060 (Dec. 29, 2011), *available at https://www.regulations.gov/docket/FTC-2022-0036* (consumer protection lawyer noting ''payment packing'' among problems ''that cry out for scrutiny and regulation); Michael Archer, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00041 (Aug. 6, 2011), *available at https://www.regulations.gov/docket/FTC-2022-0036* (workshop panelist stating ''I have seen cases wherein the dealer uses financing to pack in extra costs or to wipe out trade-in value.''); Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00027 (July 27, 2011), *available at https://www.regulations.gov/docket/FTC-2022-0036* (''Confusing or misleading sales terms Extra fees was added at the time of purchase and to this day I still do not understand what the fee was for, it made the payment higher.''); Carrie Ferraro, Legal Servs. of N.J, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00061 (Dec. 29, 2011), *available at https://www.regulations.gov/docket/FTC-2022-0036* (citing dealers ''engage[d] in packing'' as a common consumer complaint received by LSNJ's legal advice hotline); Rosemary Shahan, Consumers for Auto Reliability and Safety, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00069 (Jan. 31, 2012), *available at https://www.regulations.gov/docket/FTC-2022-0036* (noting ''[m]any common auto scams do not generate complaints in proportion to how pervasive or costly the practices are, simply because the consumers generally remain unaware they have been scammed,'' including as a result of ''Loan packing''); Mary W. Sullivan, Matthew T. Jones & Carole L. Reynolds, Fed. Trade Comm'n, *The Auto Buyer Study: Lessons from In-Depth Consumer Interviews and Related Research, Supplemental Appendix: Redacted Interview Transcripts* (2020) [hereinafter *Auto Buyer Study: Appendix*], *https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautobuyerstudysuppappendix.pdf* (Study participant 169810 at 525 (consumer had ''additional items'' charges on contract that consumer could not identify); Study participant 188329 at 730, 740–42 (dealer did not tell consumer about GAP insurance or service contract but consumer was charged $599 and $1950 for those add-ons, respectively)); Press Release, N.Y. State Att'y Gen., *A.G. Schneiderman Announces Nearly $14 Million Settlement With NYC And Westchester Auto Dealerships For Deceptive Practices That Resulted In Inflated Car Prices* (June 17, 2015), *https://ag.ny.gov/press-release/2015/ag-schneiderman-announces-nearly-14-million-settlement-nyc-and-westchester-auto* (''This settlement is part of the [New York] Attorney General's wider initiative to end the practice of ''jamming,'' or unlawfully charging consumers for hidden purchases by car dealerships.'').

[67] Under the Truth in Lending Act (''TILA'') and its implementing Regulation Z, required add-on products and services must be factored into the APR and the finance charge disclosed during the transaction. *See* Sections 106, 107, and 128 of the TILA (15 U.S.C. 1605, 1606 and 1638) and §§ 226.4, 226.18(b), (d), and (e), and 226.22 of Regulation Z (12 CFR 226.4, 226.18(b), (d) and (e), and 226.22). It is legally impermissible for dealers to include charges for such products into a consumer's contract without disclosing them under TILA. *See, e.g.,* Complaint, *FTC* v. *Stewart Fin. Co. Holdings, Inc.,* No. 103CV–2648 at ¶¶ 57–60 (N.D. Ga. Sept. 4, 2003) (alleging violations for failure to include the cost of required add-on products in the finance charge and annual percentage rate disclosed to consumers).

[68] *See, e.g., Buckle Up, supra* note 15, at 6; Military Consumer Financial Workshop (July 19, 2017), *https://www.ftc.gov/news-events/events-calendar/military-consumer-workshop;* The Road Ahead: Selling, Financing & Leasing Motor Vehicles, Fed. Trade Comm'n (Aug. 2011) (Public Roundtables) (Session 2 transcript at 40–41) (noting optional products and services are often already included in the monthly payment prices advertised or quoted); Christopher Kukla, Ctr. for Responsible Lending, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00071 (Feb. 2, 2012), *available at*

engaging in this type of conduct have targeted immigrants, communities of color, and servicemembers.[69]

In other instances, dealers might wait until late in the transaction to mention add-ons, and then do so in a misleading manner. For example, according to an FTC study, there were situations where dealers waited until the financing stage to mention add-ons, after consumers believed they had agreed on terms, and even though many add-ons have nothing to do with financing and were not mentioned at all during the sales process or when prices were initially negotiated.[70] According to FTC enforcement actions, dealers also have represented that add-ons are required when in fact they are not,[71] have misrepresented the purported benefits of add-ons, and have failed to disclose material limitations.[72]

Indeed, in a recent enforcement proceeding brought by the FTC, the agency cited a survey finding that 83% of consumers from ten dealership locations within the same motor vehicle dealership group—the thirteenth largest dealership group in the country in 2020, as ranked by total revenue—were charged for add-on products or services that they did not authorize or as a result of deceptive claims that they were required to purchase them.[73]

One participant in an FTC qualitative study of consumers' car buying experiences summed up these issues during an interview after having purchased a vehicle. The consumer purchased a $2,000 service contract that the dealer falsely said was free, and a $900 GAP insurance contract that the dealer falsely said was mandatory, and learned about these purchases during the study interview. This consumer remarked:

> I feel I've been taken advantage of, to be honest with you. Even though I thought that I was getting a great deal with the interest rate, but I now see that they're also very sneaky about putting stuff on your paperwork. They only let you skim through the paperwork that you have to sign and they just kind of tell you what it is. This is this, this is that, this is this, and then you just sign it away. You're so tired, you're so worn down, you don't want to be there no more. You just want to get it done and over with. They take advantage of that. Yes, they still play this friendly card, you know, thank you for your business card kind of thing. Like I said, they never lose. They never lose.[74]

III. Law Enforcement Actions and Other Responses

To address these types of unfair and deceptive practices in the motor vehicle industry, the Commission has brought enforcement actions and engaged in other efforts. In the last ten years, the Commission has brought more than fifty law enforcement actions and led two law enforcement sweeps to protect consumers in the motor vehicle marketplace, including one that involved 181 state enforcement actions.[75]

To complement its law enforcement efforts, the FTC's Bureau of Consumer Protection and the Bureau of Economics recently published two reports on the results of a qualitative study on consumer experiences while purchasing a motor vehicle.[76] The study found that many participating consumers were left in the dark about key terms. Consumers

https://www.regulations.gov/docket/FTC-2022-0036 (discussing how dealers conceal loan packing by expressing an increase in price in terms of monthly payment); Att'ys General of 31 States & DC, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00112 at 5 (Apr. 13, 2012), *available at https://www.regulations.gov/docket/FTC-2022-0036* (discussing the ''age-old auto salesperson's trick'' of quoting monthly payment prices without disclosing the quote includes the cost of optional items the customer has not yet agreed to purchase).

[69] *Liberty Chevrolet,* No. 1:20–cv–03945 at ¶¶ 9, 26 (S.D.N.Y. May 21, 2020); Press Release, N.Y. State Att'y Gen., *Attorney General James Delivers Restitution to New Yorkers Cheated by Auto Dealership* (Nov. 17, 2020), *https://ag.ny.gov/press-release/2020/attorney-general-james-delivers-restitution-new-yorkers-cheated-auto-dealership* (dealership targeted Chinese-speakers for unlawful payment packing); Military Consumer Financial Workshop (July 19, 2017), *https://www.ftc.gov/news-events/events-calendar/military-consumer-workshop* (panelist discussing servicemembers experiencing payment packing at 19:21); *see also* Fed. Trade Comm'n, *Staff Perspective: A Closer Look at the Military Consumer Financial Workshop* 2–3 (Feb. 2018), *https://www.ftc.gov/system/files/documents/reports/closer-look-military-consumer-financial-workshop-federal-trade-commission-staff-perspective/military_consumer_workshop_-_staff_perspective_2-2-18.pdf* (explaining the unique situation of servicemembers as having steady paychecks that make them attractive customers for dealers, while having no or minimal credit history means they qualify for less advantageous credit terms and higher interest rate financing).

[70] *See, e.g., Buckle Up, supra* note 15, at 6 (observing that the introduction of ''add-ons during financing discussions caused several participants' total sale price to balloon from the cash price'') & *id.* at 9 (observing for most consumers in the study, ''add-ons did not come up until the financing process, if at all, after a long car-buying process and at a time when the consumer often felt pressure to close the deal'') & *id.* at 8–9 (noting most study participants' contracts included add-ons charges, but many ''were unclear what those add-ons included, and sometimes did not realize they had purchased any add-ons at all'') & *id.* at 7 (explaining situations where the consumer reached the financing office after negotiating with the sales staff, and were then told the agreed upon price was not compatible with key financing terms—for example, a promised rebate or discount could not be combined with an advertised interest rate); *Liberty Chevrolet,* No. 1:20–cv–03945 at ¶ 17 (S.D.N.Y. May 21, 2020).

[71] *Liberty Chevrolet,* No. 1:20-cv-03945 at ¶¶ 12–19 (S.D.N.Y. May 21, 2020) (alleging deceptive and unauthorized add-on charges in consumers' transactions); *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 59–64 (C.D. Cal. Sept. 29, 2016) (deceptive and unauthorized add-on charges in consumers' transactions); *TT of Longwood,* No. C–4531 at ¶¶ 6, 9 (F.T.C. July 2, 2015) (misrepresentations regarding prices for added features); *see also Auto Buyer Study, supra* note 11, at 14 (''Several participants who thought that they had not purchased add-ons, or that the add-ons were included at no additional charge, were surprised to learn, when going through the paperwork, that they had in fact paid extra for add-ons. This is consistent with consumers' experiencing fatigue during the buying process or confusion with a financially complex transaction, but would also be consistent with dealer misrepresentations.'').

[72] Complaint, *Nat'l Payment Network, Inc.,* No. C–4521 at ¶¶ 4–14 (F.T.C. May 4, 2015) (alleging failure to disclose fees associated with financing program; misleading savings claims in advertisements); Complaint, *Matt Blatt, Inc.,* No. C–4532 at ¶¶ 4–13 (F.T.C. May 4, 2015) (alleging failure to disclose fees associated with financing program; misleading savings claims); *Buckle Up, supra* note 15, at 10 (noting some *Auto Buyer Study* participants did not fully understanding material aspects of extended warranties or service plans they purchased and ''were surprised to discover during the interview that their plans had unexpected limitations'' or ''they had to pay out-of-pocket for repairs or services that were not covered''; for example, one ''consumer purchased a 'Lifetime' maintenance plan, only to discover later that he received a one-year plan that covered periodic oil changes''). *Cf.* Consent Order, *Santander Consumer USA, Inc.,* CFPB No. 2018–BCFP–0008 at ¶¶ 10–16 (Nov. 20, 2018) (finding defendant sold GAP product allegedly providing ''full coverage'' to consumers with loan-to-value ratios (''LTVs'') above 125%, when in fact coverage is limited to 125% of LTV).

[73] *N. Am. Auto. Servs.,* No. 1:22–cv–0169 at ¶ 27 (N.D. Ill. Mar. 31, 2022); WardsAuto, *WardsAuto 2020 Megadealer 100, https://www.wardsauto.com/dealers/wardsauto-2020-megadealer-100-industry-force* (last visited Apr. 25, 2022) (listing Napleton Automotive Group at the 13th-ranked dealership group by total revenue).

[74] *Auto Buyer Study: Appendix, supra* note 66 (Study participant 152288 at 130; *see also* Study participant 180267 at 202 (dealership included a charge for GAP insurance in the final paperwork but not in retail sales contract); Study participant 146748 at 296 (consumer learned during interview with FTC that consumer purchased GAP insurance: ''maybe they're just throwing that in there without telling you.'')).

[75] Fed. Trade Comm'n, Enforcement Cases Tagged with Automobiles, *https://www.ftc.gov/legal-library/browse/cases-proceedings?sort_by=field_date&items_per_page=20&search=&field_competition_topics=All&field_consumer_protection_topics=All&field_federal_court=All&field_industry=1382&field_case_status=All&field_enforcement_type=All&search_matter_number=&search_civil_action_number=&start_date=&end_date=* (last visited Apr. 25, 2022); Press Release, Fed. Trade Comm'n, *FTC Announces Sweep Against 10 Auto Dealers* (Jan. 9, 2014), *https://www.ftc.gov/news-events/press-releases/2014/01/ftc-announces-sweep-against-10-auto-dealers*; Press Release, Fed. Trade Comm'n, *Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing* (Mar. 26, 2015), *https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown.*

[76] *Buckle Up, supra* note 15; *Auto Buyer Study, supra* note 11.

recalled dealers renegotiating vehicle prices at different stages of the transaction and being confused about the price of the vehicle.[77] Despite the lengthy transaction, many study participants felt review of the final documents was rushed and were surprised to learn of additional add-on charges in their contracts.[78]

These are long-standing issues.[79] In 2011, the agency reached out to consumers through three motor vehicle roundtable events, reviewing over 100 comments from industry representatives, consumer advocates, and state enforcement agencies, among others who attended.[80] Through these events and comments, consumers expressed confusion regarding aspects of the financing process and commented that they were surprised when they reached the dealership that the price advertised was not available to them.[81]

The Commission's law enforcement partners have also brought actions addressing unfair and deceptive practices in the motor vehicle industry. For example, the Consumer Financial Protection Bureau has taken action against third-party motor vehicle financing entities in matters that raise similar, and sometimes identical, claims of deceptive and unfair practices as were at issue in FTC cases.[82]

States have also taken measures to address consumer protection issues in the motor vehicle industry. In addition to participating in law enforcement sweeps with the FTC,[83] state regulators and Attorneys General have independently filed more than 200 actions alleging deceptive and unlawful conduct by motor vehicle dealerships across the country.[84]

Some states have also taken legislative or regulatory action.[85] For example, to ''ensure that dealers do not add in hidden or undisclosed costs after the price for a vehicle has been advertised,'' Oregon promulgated a rule that requires dealerships to state an ''offering price'' which is the actual offer and amount the consumer can pay to own the vehicle, excluding only taxes, license, registration costs, environmental fees, and a document processing fee.[86] California and Wisconsin have similarly enacted codes that make it unlawful for dealerships to advertise a total price without including additional costs to the purchaser outside the mandatory tax, title, and registration fees.[87] Other states, like Indiana, have enacted codes that prohibit the sale of add-ons in certain circumstances.[88]

IV. Section-by-Section Analysis

Based on its enforcement and other experience, the Commission proposes specific legal restrictions to address deceptive and unfair conduct by motor vehicle dealers. Thus, the Commission is proposing a rule requiring dealers, whether acting directly or indirectly, to refrain from misrepresentations, provide for material disclosures at key points in the transaction, refrain from the sale of deceptive or unfair add-on products, and require retention of dealers' advertisements and consumer transaction documents.

While the proposed rule is an important step in the effort to prevent harm to consumers in the motor vehicle marketplace, a comprehensive approach is needed to address the important consumer protections at issue. Therefore, in addition to this rulemaking initiative, the Commission intends to continue law enforcement, as well as its consumer education and other efforts, to ensure that consumers can make informed decisions about

[77] *Buckle Up, supra* note 15, at 5–7.

[78] *Buckle Up, supra* note 15, at 9.

[79] *See* The Road Ahead: Selling Financing, and Leasing Motor Vehicles, Transcript: Session 2, Washington DC (Nov. 2011), pp. 19–23.

[80] The FTC hosted three roundtable events requesting public comments to gather information about possible consumer protection issues that may arise in the sale, financing, and leasing of motor vehicles. These events took place from April to November 2011 in Detroit, Austin, and Washington DC. The Road Ahead: Selling Financing, and Leasing Motor Vehicles (Apr. 2011, Aug. 2011, and Nov. 2011), *https://www.ftc.gov/news-events/events-calendar/2011/08/road-ahead-selling-financing-leasing-motor-vehicles.*

[81] *See* Comment Letters on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission Nos. 558507–00015, 558507–00026, 558507–00046, 558507–00051, 558507–00094, 558507–00099, *available at https://www.regulations.gov/docket/FTC-2022-0036*; Consumers for Auto Reliability and Safety, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811 at 5 (Apr. 1, 2012), *https://www.ftc.gov/sites/default/files/documents/public_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00108/00108-82875.pdf* (noting military command has gone as far as banning servicemembers from conducting business from certain auto dealerships because of ''abusive auto sales and financing practices.'').

[82] The Consumer Financial Protection Bureau has brought at least 16 enforcement actions involving motor vehicles, financing, or add-on products and services. *See Santander Consumer USA Inc.,* No. 2020–BCFP–0027 at ¶¶ 8–50 (Dec. 22, 2020) (finding auto finance company provided inaccurate records to credit reporting agencies); *Nissan Motor Acceptance Corp.,* No. 2020–BCFP–0017 at ¶¶ 46–52 (Oct. 13, 2020) (finding auto finance company misrepresented financing extension agreements, repossessions, and limitations to consumer bankruptcy protections); *Lobel Fin. Corp.,* No. 2020–BCFP–0016 at ¶¶ 8–22 (Sept. 21, 2020) (finding auto-loan servicer charged consumers unfair add-on charges in the form of Loss Damage Waiver premiums); *Santander Consumer USA Inc.,* No. 2018–BCFP–0008 at ¶¶ 6–30 (Nov. 20, 2018) (finding auto finance company sold GAP to consumers with LTV over 125%, misrepresenting such consumers would be fully covered with total loss); *Wells Fargo Bank, N.A.,* No. 2018–BCFP–0001 at ¶¶ 27–39 (Apr. 20, 2018) (finding bank imposed duplicative or unnecessary forced-placed auto loan insurance on consumers); *Toyota Motor Credit Corp.,* No. 2016–CFPB–0002 at ¶¶ 12–23 (Feb. 2, 2016) (finding auto finance company engaged in discriminatory pricing markup for motor vehicle financing, without regard to credit worthiness); *Y King S. Corp.,* No. 2016–CFPB–0001 at ¶¶ 73–75 (Jan. 21, 2016) (finding used car dealer failed to disclose mandatory add-ons as financing charge); *Interstate Auto Grp., Inc. & Universal Acceptance Corp.,* No. 2015–CFPB–0032 at ¶¶ 12–51 (Dec. 17, 2015) (finding dealership and financing company reported information they knew or had reasonable cause to believe was inaccurate to credit reporting entities, harming consumer credit); *Westlake Servs., LLC,* No. 2015–CFPB–0026 at ¶¶ 7–90 (Sept. 30, 2015) (finding indirect auto financing entity used illegal debt collection tactics); *Fifth Third Bank,* No. 2015–CFPB–0024 at ¶¶ 8–23 (Sept. 28, 2015) (finding discrimination against loan applicants in credit applications based on characteristics such as race and national origin); *Am. Honda Fin. Corp.,* No. 2015–CFPB–0014 ¶¶ at 9–24 (Jul. 14, 2015) (same); *DriveTime Auto Grp., Inc.,* No. 2014–CFPB–0017 at ¶¶ 4–60 (Nov. 19 2014) (finding buy-here-pay-here dealership made harassing debt collection calls and provided inaccurate credit information to credit reporting agencies); *First Investor Fin. Servs. Grp., Inc.,* No. 2014–CFPB–0012 at ¶¶ 4–37 (Aug. 20, 2014) (finding auto financing company provided inaccurate records to credit reporting agencies); *Ally Fin. Inc.,* No. 2013–CFPB–0010 at ¶¶ 7–27 (Dec. 20, 2013) (finding auto lender charged discriminatory pricing to African-American, Hispanic, and Asian and Pacific Islander borrowers); *U.S. Bank Nat'l Ass'n,* No. 2013–CFPB–0004 at ¶¶ 14–28 (June 26, 2013) (finding bank failed to properly disclose all the fees charged to participants in the companies' Military Installment Loans and Educational Services auto loans program, and misrepresented the true cost and coverage of add-on products financed along with the auto loans); *Dealers' Fin. Servs., LLC,* No. 2013–CFPB–0004 at ¶¶ 10–22 (June 2013) (finding financing company made deceptive statements regarding the cost of add-on products and the scope of coverage of the Vehicle Service Contract).

[83] Operation Steer Clear and Operation Ruse Control brought with state law enforcement partners around the nation and Canada, encompassed over 246 enforcement actions. Press Release, Fed. Trade Comm'n, *Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing* (Mar. 26 2015), *https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown.*

[84] For example, in a recent action, California Attorney General's office sued a dealership chain under state consumer protection laws for deceiving consumers about add-on product charges and misrepresenting consumers' income on credit applications; the alleged practices specifically targeted low-income consumers with subprime credit. *People of the State of California* v. *Paul Blanco's Good Car Co. Auto Grp.,* No. RG19036081 (Alameda County Super. Ct. Sept. 2019).

[85] *See, e.g.,* Cal. Veh. Code sec. 11713.1(b)–(c); Or. Admin. R. 137–020–0020(3)(c); Wis. Admin. Code. Trans 139.03(3).

[86] Or. Admin. R. 137–020–0020(3)(c); Official Commentary, Or. Admin. R. 137–020–0020(3)(c).

[87] Cal. Veh. Code sec. 11713.1(b)–(c); Wis. Admin. Code. Trans 139.03(3).

[88] Ind. Code sec. 24–4.5–3–202 (3)(e)(ix) (2018) (prohibiting the sale of any GAP program when the LTV <80%).

purchasing, financing, and leasing motor vehicles. The Commission also intends to continue its constructive engagement with consumer and dealer groups and other stakeholders.

The Commission invites written comments on the proposed rule, and, in particular, answers to the specific questions set forth below.

A. Section 463.1: Authority

Proposed § 463.1 identifies the statutory authority under which the Commission proposes to promulgate this Rule to prevent unfair or deceptive acts or practices in connection with the sale, lease, or financing of motor vehicles.

B. Section 463.2: Definitions

Proposed § 463.2 contains definitions for the following terms: ''Add-on'' or ''Add-on Product(s) or Service(s),'' ''Add-on List,'' ''Cash Price without Optional Add-ons,'' ''Clearly and Conspicuously,'' ''Dealer'' or ''Motor Vehicle Dealer,'' ''Express, Informed Consent,'' ''GAP Agreement,'' ''Government Charges,'' ''Material'' or ''Materially,'' ''Motor Vehicle,'' and ''Offering Price.'' Each of these terms is used in the proposed rule.

C. Section 463.3: Prohibited Misrepresentations

Section 463.3 of the proposed rule would prohibit motor vehicle dealers from making certain misrepresentations, to address the deceptive practices surrounding motor vehicle transactions discussed above and emerging from the landscape of enforcement actions, workshops, industry and consumer studies, and consumer interviews and complaints. As discussed in Section III above, a representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers.[89]

This section seeks to prohibit deceptive representations to consumers, clarify dealers' obligations under the law, and ensure that motor vehicle dealers compete on a level playing field. The prohibited misrepresentations in this section of the proposed rule are material because they are likely to affect a consumer's choices, such as whether to visit a particular dealership or enter into a transaction.[90] These misrepresentations also harm consumers and divert business from reputable dealerships that provide truthful advertising to consumers. Consumers who select and travel to dealerships based on an advertised offer, only to learn late in the process (if at all) that the advertised offer does not apply, have often spent hours trying to purchase a car. Even if they notice and successfully resist later-added fees, or leave after learning that advertised discounts and rebates do not apply to them, misleading advertisements cause them to waste hours driving to and visiting the dealership.[91] For many consumers, however, walking away is not a realistic option—for example, restarting the hours-long process at another dealership might mean having to take an additional day off work, and for those who cannot afford a second car, finding other means of transportation to travel to another dealership. Thus, even if they somehow learn that they are paying more than what was advertised, consumers might just sign the deal rather than start the entire process anew. In other instances, as discussed below, consumers learn that they did not receive the offer as represented only after they enter into the contract and end up spending hundreds or even thousands of dollars more than they were led to believe.

Section 463.3(a) of the proposed rule would prohibit misrepresentations concerning ''[t]he costs or terms of purchasing, financing, or leasing a vehicle.'' This provision would bar deceptive practices surrounding, among other things, the total cost, price for added features, other charges, terms and finality of financing, and availability of discounts.[92] The cost or price of a vehicle is material—it is likely to affect a consumer's conduct, including whether to purchase a particular vehicle at a particular dealership.

Section 463.3(b) of the proposed rule would prohibit misrepresentations concerning any ''costs, limitation, benefit, or any other Material aspect of an Add-on Product or Service.'' As discussed above, add-ons are a particularly problematic area in auto sales and financing. The cost and coverage of an add-on is likely to affect a consumer's conduct, including the consumer's decision to purchase the product or service.

Section 463.3(c) of the proposed rule would prohibit misrepresentations regarding ''[w]hether the terms are, or transaction is, for financing or a lease.'' If a dealer advertises vehicles for low monthly payments or other terms that

[89] See *supra* note 53 (citing FTC Policy Statement on Deception).

[90] As noted above, ''material''—as used in the proposed rule and throughout this Notice of Proposed rulemaking—means likely to affect the consumer's conduct or decisions with regard to a product or service. *See supra* note 53 (citing FTC Policy Statement on Deception); *In re Sanctuary Belize Litig.,* 482 F. Supp. 3d 373, 397 (D. Md. 2020) (''Representations with respect to . . . [a product's] cost are also presumptively material.'') (citing *In re Thompson Med. Co., Inc.,* 104 F.T.C. 648 (1984)); *see also FTC* v. *Crescent Pub. Grp., Inc.,* 129 F. Supp. 2d 311, 321 (S.D.N.Y. 2001).

[91] *See, e.g.,* Matthew Jones, Bruce Kobayashi & Jason O'Connor, *Economics at the FTC: Non-Price Merger Effects and Deceptive Automobile Ads* 12–26 (2018), *also published at* 53 Rev. Indust. Org. 593 (2018), *https://www.ftc.gov/system/files/documents/reports/economics-ftc-non-price-merger-effects-deceptive-automobile-ads/1812-berio.pdf* (developing and discussing a model for quantifying the consumer injury from deceptive motor vehicle ads, in which injury occurs because such ads persuade consumers ''to spend time and effort to visit the dealership, when they might otherwise have pursued a legitimate offer elsewhere'').

[92] *See, e.g., Liberty Chevrolet,* No. 1:20–cv–03945 at ¶¶ 10–11 (S.D.N.Y. May 21, 2020) (alleging false ads stating a certain price but charging consumers higher prices); *Tate's Auto Ctr.,* No. 3:18–cv–08176–DJH at ¶¶ 38–46 (D. Ariz. July 31, 2018) (alleging false ads touting attractive terms but concealing (i) ads were for lease offers only and required substantial initial payment, (ii) discounts were subject to material limitations, or (iii) other legally required disclosures); Complaint, *In re Cowboy AG, LLC,* No. C–4639 at ¶¶ 7–16 (F.T.C. Jan. 4, 2018) (alleging false ads touting attractive terms, but concealing substantial down payments, offers were for leases and not purchases, material eligibility restrictions, and other legally required disclosures); *Universal City Nissan,* No. 2:16–cv–07329 (C.D. Cal. Sept. 29, 2016) (alleging misrepresentation of lease, credit, or purchase terms; lease terms were for purchases; add-ons were authorized, free, or required; and the finality of financing transactions or consequences when financing falls through. Failing to disclose TILA/CLA trigger terms); Complaint, *In re Jim Burke Automotive, Inc.,* No. C–4523 at ¶¶ 6–14 (F.T.C. May 4, 2015) (alleging misrepresentations regarding vehicle purchase price and promising prices and discounts not generally available to consumers); Complaint, *In re City Nissan, Inc.,* No. C–4524 at ¶¶ 8–10, 12 (F.T.C. May 4, 2015) (alleging misrepresentations regarding lease and finance terms); *TT of Longwood,* No. C–4531 at ¶¶ 6–12 (F.T.C. July 2, 2015) (alleging misrepresentations regarding vehicle purchase price and prices for added features, promising prices and discounts not generally available to consumers, and misrepresentations regarding finance and lease terms); Complaint, *In re Courtesy Auto Grp., Inc.,* No. 9359 at ¶¶ 5–7 (F.T.C. Jan. 7, 2014) (alleging misrepresentation regarding lease terms); Complaint, *In re New World Auto Imports, Inc.,* No. C–4437 at ¶¶ 8–11 (F.T.C. Feb. 20, 2014) (alleging misrepresentations regarding monthly finance payments and lease terms); Complaint, *In re Ramey Motors, Inc.,* No. C–4354 at ¶¶ 4–5 (F.T.C. Apr. 19, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt and failing to disclose legally required financing terms); Complaint, *In re Billion Auto, Inc.,* No. C–4356 at ¶¶ 4–6 (F.T.C. May 1, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt and failing to disclose legally required financing and leasing terms.); *see also Buckle Up, supra* note 15, at 5 (noting ''[a]dvertisements with misleading financing terms (as well as those with deceptive price and discount offers) remain a concern, and stating ''[d]ealers should make only accurate and non-misleading advertising claims to consumers, advertise terms that are actually available, and clearly and conspicuously disclose material qualifications or limitations on any advertised deal''); *Auto Buyer Study, supra* note 11, at 14 (noting, in a 2016 study by the Consumer Financial Protection Bureau, ''consumers reported that lenders insisted that the purchase of add-ons were necessary for the financing to be approved'').

apply in financing offers, but the offer is actually for a lease only, that conduct misleads consumers.[93] These representations are likely to affect consumers' conduct, including by causing consumers to enter into a monetary transaction for a product they do not want (borrowing instead of owning), or, if the true circumstances are revealed prior to consummation of the transaction, to waste time traveling to the dealership and potentially spending hours on the sales floor and financing office.

Section 463.3(d) of the proposed rule would prohibit misrepresentations concerning ''[t]he availability of any rebates or discounts that are factored into the advertised price but not available to all consumers.'' When dealers advertise rebates and discounts, or offer prices that factor in such rebates and discounts, but in fact those rebates and discounts are not available to the typical consumer, but only a select set of customers, such conduct induces the consumer to select and transact with the dealer under false pretenses.[94] In other instances, the advertised rebates and discounts might apply only to the most expensive versions of the make and model.[95] Consumers may learn they do not qualify for these advertised rebates or discounts, if at all, only after they spend time traveling to the dealership or at the end of the financing stage.[96]

Section 463.3(e) and (f) of the proposed rule would prohibit misrepresentations surrounding ''[t]he availability of vehicles at an advertised price'' and representations that a consumer has been or will be ''preapproved or guaranteed for any product, service, or term.'' This provision would prohibit dealers from first touting low prices or other attractive terms for specific vehicles and inducing consumers to spend time traveling to the dealership and pursuing the offer, but then claiming, among other things, that the advertised vehicle is no longer available, no longer available at the advertised price, or that the financing offer is only available to those with high credit scores.[97] To the extent that dealers are advertising prices, preapprovals, guaranteed rates, or other terms for military consumers, but then charging the same prices to other consumers or otherwise failing to honor the deal, the proposed rule would cover such conduct as well. This information is material because it is likely to affect consumers' conduct, including whether to spend time traveling to a particular dealership and pursuing a specific offer on a specific car.

Section 463.3(g) of the proposed rule would prohibit dealers from misrepresenting ''[a]ny Material information on or about a consumer's application for financing.'' Material misrepresentations on or about a consumer's financing application include instances in which dealers submit income information that is different from what consumers have stated that they earn, or alter the down payment amount from what the consumer has actually provided.[98]

Section 463.3(h) and (i) of the proposed rule would prohibit dealers from misrepresenting ''[w]hen the transaction is final or binding on all parties'' and making misrepresentations about ''[k]eeping cash down payments or trade-in vehicles, charging fees, or initiating legal process or any action if a transaction is not finalized or if the consumer does not wish to engage in a transaction.'' These provisions are intended to curb yo-yo financing, which occurs when a dealer obtains a consumer's agreement to a deal that has not been finalized, allows the consumer to drive the vehicle off the lot, and then directs the consumer to return and engages in unlawful tactics, such as failing to give back a consumer's trade-in vehicle, while refusing to honor the deal or pressuring the consumer into entering a new deal.[99] Yo-yo financing

[93] *See Tate's Auto Ctr.,* No. 3:18–cv–08176–DJH at ¶¶ 38–39 (D. Ariz. July 31, 2018) (alleging false ads touting attractive terms but concealing ads were for lease offers only); Complaint, *In re TC Dealership, L.P.,* No. C–4536 at ¶¶ 10, 13 (F.T.C. Aug. 13, 2015) (same); *Cowboy AG, LLC,* No. C–4639 at ¶¶ 9–12 (F.T.C. Jan. 4, 2018) (same); *New World Auto Imports,* No. 3:16–cv–02401–K at ¶¶ 36–38 (N.D. Tex. Aug. 18, 2016) (alleging misrepresentation that terms were for financing instead of leasing); *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 28–37, 44 (C.D. Cal. Sept. 29, 2016) (alleging advertisements with key terms that were not generally available).

[94] *See Tate's Auto Ctr.,* No. 3:18–cv–08176–DJH, ¶¶ 41–43 (D. Ariz. July 31, 2018) (alleging false ads touting attractive terms and discounts but concealing material limitations); Complaint, *In re JS Autoworld, Inc.,* No. C–4535 at ¶¶ 8–9 (F.T.C. Aug. 13, 2015) (alleging false ads touting prices but concealing discounts with material eligibility limitations); *TC Dealership, L.P.,* No. C–4536 at ¶¶ 7–9 (F.T.C. Aug. 13, 2015) (alleging false ads touting attractive prices but concealing discounts were subject to material eligibility limitations and trade-in requirement); *TXVT Ltd. P'ship,* No. C–4508 at ¶ 14 (F.T.C. Feb. 12, 2015) (alleging false ads failed to disclose that it would match consumers' income tax refunds only up to $1,000); *Timonium Chrysler,* No. C–4429 at ¶¶ 4–5 (F.T.C. Jan. 28, 2014) (alleging false ads touting pricing and discounts but concealing material qualifications and restrictions); *TT of Longwood,* No. C–4531 at ¶¶ 6, 9 (F.T.C. July 2, 2015) (alleging promises of prices and discounts not generally available to consumers); *Jim Burke Automotive,* No. C–4523 at ¶¶ 6–13 (F.T.C. May 4, 2015) (alleging promises of prices and discounts not generally available to consumers); *see also Auto Buyer Study, supra* note 11, at 8 (''A number of [study] participants were attracted by promotional offers in ads that they did not qualify for, but did not realize that they did not qualify until they got to the dealer. Some did not learn that they did not qualify until they got to the financing stage of the transaction.'').

[95] *Ganley Ford West,* No. C–4428 at ¶ 5 (F.T.C. Jan. 28, 2014) (alleging false ads touting price discount but concealing offer was limited to certain high-end models).

[96] For example, one consumer had reached a three-year financing agreement with the dealership salesman over the phone, which would include a $4,300 rebate to reduce their purchase price, only to walk into the dealership and be told at the financing office the rebates were only offered with seven-year financing agreements. *Auto Buyer Study, supra* note 11, at Supp. Appx 90–91.

[97] *Liberty Chevrolet,* No. 1:20–cv–03945 at ¶¶ 10–11 (S.D.N.Y. May 21, 2020) (alleging false ads stating a certain price but then charging consumers higher prices than advertised); *Tate's Auto Ctr.,* No. 3:18–cv–08176–DJH at ¶¶ 41–43 (D. Ariz. July 31, 2018) (alleging false ads touting attractive terms but concealing discounts were subject to material limitations); Complaint, *Cowboy AG,* No. C–4639 at ¶¶ 7–14 (F.T.C. Jan. 4, 2018) (alleging false ads touting attractive terms but concealing material eligibility restrictions and certain advertised vehicles not available for sale); Complaint, *FTC* v. *Norm Reeves, Inc.,* No. 8:17–cv–01942 at ¶¶ 28–30 (C.D. Cal. Nov. 3, 2017) (alleging deceptive representations regarding monthly payments being available to consumers while concealing credit restrictions); *New World Auto Imports,* No. 3:16–cv–02401–K at ¶¶ 36–38 (N.D. Tex. Aug. 18, 2016) (alleging deceptive representations regarding monthly and down payments being available to consumers with repossessions or foreclosures and concealing restrictions making the offer available only to consumers with good credit); *Progressive Chevrolet Co.,* No. C–4578 at ¶¶ 5–7 (F.T.C. June 13, 2016) (alleging ads touting attractive terms but failure to disclose high credit score requirement); *JS Autoworld,* No. C–4535 at ¶¶ 8–9 (F.T.C. Aug. 13, 2015) (alleging false ads touting attractive prices but concealing discounts with material eligibility limitations); Complaint, *TC Dealership,* No. C–4536 at ¶¶ 7–9 (F.T.C. Aug. 13, 2015) (alleging false ads touting attractive price but concealing discounts were subject to material eligibility limitations and trade-in requirement); Complaint, *FTC* v. *Ramey Motors, Inc.,* No. 1:14–cv–29603, ¶¶ 21–23 (S.D.W. Va. Dec. 11, 2014) (alleging false ads touting attractive terms but concealing substantial down payments or trade-in requirements); *Timonium Chrysler.,* No. C–4429 at ¶¶ 4–5 (F.T.C. Jan. 28, 2014) (alleging false ads touting pricing and discounts but concealing material qualifications and restrictions); *Ganley Ford West,* No. C–4428 at ¶ 5 (F.T.C. Jan. 28, 2014) (alleging false ads touting price discount but concealing offer was limited to certain high-end models); Complaint, *United States* v. *Billion Auto, Inc.,* No. 5:14–cv–04118–MWB, ¶¶ 38–40 (N.D. Iowa 2014) (alleging false ads touting attractive terms but concealing material eligibility limitations and significant extra costs); *see also* Adam J. Levitin, *The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses,* 108 Geo. L.J. 1257, 1282 (2020), *https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2020/05/Levitin_The-Fast-and-the-Usurious-Putting-the-Brakes-on-Auto-Lending-Abuses.pdf* (discussing dealership tactic of advertising one vehicle and then claiming it has been sold to upsell consumer to a different vehicle).

[98] *Tate's Auto Ctr.,* No. 3:18–cv–08176–DJH, ¶¶ 18–21, 25 (D. Ariz. July 31, 2018) (alleging dealership falsified consumers' monthly income and down payments on financing applications and financing contracts); *People of the State of California* v. *Paul Blanco's Good Car Co. Auto Grp.,* Case No. RG19036081 (Sept. 2019).

[99] *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 67–72 (C.D. Cal. Sept. 29, 2016); *State ex rel.*

is often made possible because a dealer misleads consumers, directly or by omission, about whether their financing is final, and subsequently applies pressure when revealing that the financing is not final, including by threatening to retain the consumer's cash down payment or trade-in vehicle unless the consumer agrees to a new financing contract.[100] These tactics affect consumer conduct, including whether to enter into a new deal with less beneficial terms for the consumer. Several states have enacted statutes to protect consumers against this practice.[101]

Section 463.3(j) of the proposed rule would prohibit misrepresentations regarding ''[w]hether or when a Motor Vehicle Dealer will pay off some or all of the financing or lease on a consumer's trade-in vehicle.'' This provision would prohibit dealers from misrepresenting to consumers trading in a vehicle when the consumer owes more than the vehicle is worth, that the dealer will pay off that negative balance or negative equity when the consumer purchases a new vehicle. If the dealer does not pay off the negative balance but rather includes it in the new amount to be financed for the vehicle to be purchased, this sleight of hand (often buried in the financing paperwork) requires the consumer, not the dealer, to pay off the previous financing as promised.[102] This provision would also prohibit dealers that are going out of business from representing that they will pay off liens if they do not, in fact, pay off the liens, and prohibit them from failing to pay off liens in a timely manner. This information is material because information about the amount the consumer is actually paying or will end up owing is likely to affect the consumer's decision to visit a particular dealership and purchase a particular vehicle.

Section 463.3(k) of the proposed rule would prohibit misrepresentations that consumer reviews or ratings are unbiased, independent, or from ordinary consumers, and § 463.3(*l*) of the proposed rule would similarly prohibit misrepresentations that ''the Dealer or any of its personnel or products or services is or was affiliated with, endorsed or approved by, or otherwise associated with the United States government or any Federal, State, or local government agency, unit, or department, including the United States Department of Defense or its Military Departments.'' The FTC has combatted such misrepresentations in enforcement actions.[103] Claims that products and services are endorsed by other impartial consumers or the government are material to consumers' decision-making because a consumer is more likely to visit a dealership and select a vehicle that has been approved by an impartial consumer or a government entity.

Section 463.3(m) of the proposed rule would prohibit misrepresentations that ''consumers have won a prize or sweepstakes.'' [104] Like the other provisions in § 463.3, these claims are material and harm consumers by inducing a consumer to choose and transact with a particular dealership under false pretenses.

Section 463.3(n) of the proposed rule would prohibit misrepresentations regarding ''[w]hether, or under what circumstances, a vehicle may be moved, including across state lines or out of the country.'' This provision would prevent dealers from making misrepresentations about any liens or other restrictions that prevent or hinder consumers' ability to move the vehicle beyond certain boundaries. The manner in which a consumer can move a vehicle is likely to affect the consumer's decision to purchase a vehicle, including decisions of military consumers who may frequently need to move.

Section 463.3(o) of the proposed rule would prohibit misrepresentations regarding ''[w]hether, or under what circumstances, a vehicle may be repossessed.'' This provision would prevent dealers from making

Dewine v. *Dads Car Lot Inc.,* No. 13CV4036, 2014 Ohio Misc. LEXIS 10987, at *4 (Ct. Com. Pl. June 6, 2014) (finding defendant violated state consumer sales protection act by including ''spot delivery'' document that allowed defendant to keep ''all funds on deposit''); Att'ys General of 31 States & DC, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00112 at 4 (Apr. 13, 2012), *available at https://www.regulations.gov/docket/FTC-2022-0036* (recommending, among other rules aimed at deterring yo-yo sales, FTC adopt rules that would require dealers to disclose the consumer's ''right to walk away'' if financing is rejected and, in the context of spot delivery, to disclose financing has not been finalized as well as the responsibilities and potential consequences for consumers); Legal Aid Justice Ctr., Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00066 (Jan. 30, 2012) available at *https://www.regulations.gov/docket/FTC-2022-0036* (explaining that in a yo-yo sale the dealer misrepresents to the consumer credit has been finalized, when in fact the dealer treats the sale as contingent, retaining the ability call off or seize the vehicle later; a ''yo-yo case can result in substantial distress to the person who has been tricked''; and ''the harm to the marketplace occurs when the consumer believes a credit sale has been completed and stops shopping for a car on credit''); Nat'l Consumer Law Ctr., *In Harm's Way—At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans* 41 (May 2003), *https://www.nclc.org/images/pdf/special_projects/military/report-scams-facing-military.pdf* (listing ''spot delivery'' or ''yo-yo sales'' among scams commonly aimed at military members).

[100] *See, e.g.,* Delvin Davis, Ctr. for Responsible Lending, *Deal or No Deal: How Yo-Yo Scams Rig the Game against Car Buyers,* submitted as an attachment to Comment #558507–00104 on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811 at 1, 5–6 (Apr. 2, 2012), *https://www.ftc.gov/sites/default/files/documents/public_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00104/00104-82860.pdf.*

[101] *See* Alaska Stat. secs. 45.25.500, 45.25.610(c) (prohibiting dealers from transferring title to a trade-in vehicle or performing any repairs/reconditioning before completing sales transaction, and requiring specific disclosures to consumers regarding spot delivery); Ariz. Rev. Stat. sec. 44–1371 (prohibiting sale of trade-in before financing is finalized); Ark. Code. Ann. sec. 23–112–316 (prohibiting dealers from depositing money from consumer or selling a trade-in before financing is finalized and permitting consumer to cancel purchase if dealer changes any terms or consumer does not obtaining the financing agreed upon); Colo. Rev. Stat. sec. 6–1–708 (prohibiting spot delivery tactics and requiring dealers to return any collateral or down payment if financing is not approved and the consumer is required to return the vehicle); Nev. Rev. Stat. sec. 482.554(2)(a) (protecting against misrepresentations surrounding spot delivery); N.H. Rev. Stat. Ann. sec. 361–A:10–b (requiring dealers to return trade-in, deposit, and fees, if financing is not approved); Or. Rev. Stat. sec. 646A.090 (requiring dealers to return trade-in vehicle if financing is not approved).

[102] *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 28–34, 54–55 (C.D. Cal. Sept. 29, 2016) (alleging failure to disclose remaining amount due on trade-in would be added to the consumer's new financing or lease balance); *Ramey Motors,* No. C–4354 at ¶ 4 (F.T.C. Apr. 19, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt); *Billion Auto,* No. C–4356 at ¶ 4 (F.T.C. May 1, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt); *TXVT Ltd. P'ship,* No. C–4508 at ¶¶ 7–11 (F.T.C. Feb. 12, 2015) (alleging false ads that consumers could exit existing debt or leases for $1); Complaint, *In re Frank Myers Automaxx, LLC,* No. C–4353 at ¶ 4 (F.T.C. Apr. 19, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt and leases); *Key Hyundai of Manchester,* No. C–4358 at ¶ 6 (F.T.C. May 4, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt and leases); *see also Auto Buyer Study, supra* note 11, at 13 (noting a participant was ''surprised'' to learn during the study interview the dealer had rolled negative equity into her new financing).

[103] *See Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 73–78 (C.D. Cal. Sept. 29, 2016) (alleging posting by dealership of positive, five-star reviews on third-party websites that falsely purport to be objective or independent); Complaint, *FTC* v. *Passport Imports, Inc.,* No. 8:18–cv–03118 at ¶ 20 (D. Md. Oct. 10, 2018) (alleging Defendants misled consumers by mailing notices that were similar to and had the same color scheme as notices manufacturers are required by the US Department of Transportation's NHTSA to use when sending information about recalls); Complaint, *United States* v. *Sunkey Publ'g, Inc.,* No. 3:18–cv–01444 at ¶¶ 14–112 (N.D. Ala. Sept. 6, 2018) (alleging deceptive educational marketing and lead generation that targeted potential military recruits and used a series of false representations of military affiliation and endorsement to induce recruits to submit their information and agree to future contacts).

[104] *See Fowlerville Ford,* No. C–4433 at ¶ 4 (F.T.C. Feb. 20, 2014) (alleging misrepresentation that consumers have won a prize that can be collected at a dealership).

misrepresentations that they may repossess a vehicle, when they cannot. For example, the Servicemembers Civil Relief Act prohibits repossession of vehicles during a servicemember's period of military service without a court order as long as the servicemember either placed a deposit for the vehicle, or made at least one installment payment on the contract before entering military service.[105] Thus, this provision would prevent dealers from representing that they could repossess military consumers' vehicles under these circumstances. Information about when a vehicle may be repossessed is likely to affect a consumer's conduct, including the consumer's conduct regarding which payments to prioritize while serving our country.

Section 463.3(p) of the proposed rule would prohibit misrepresentations of ''[a]ny of the required disclosures identified in this part,'' including but not limited to representations that limit or contradict the required disclosures. This prohibition against misrepresentations complements the disclosure requirements in the proposed rule.

D. § 463.4: Disclosure Requirements

Section 463.4 of the proposed rule would require key disclosures by dealers. The proposed rule would require that such disclosures be made in a clear and conspicuous manner, but would not prescribe the form that such disclosures must take.

Proposed § 463.4(a) through (e) would require disclosures regarding pricing and certain financing information. Providing consumers with accurate and timely pricing and financing information is critical, especially in the context of motor vehicle sales and leasing, where such information has proved singularly confusing to consumers.[106] Such confusion is heightened when, as discussed above, advertisements list vehicle prices that are lower than that at which the dealer will sell or lease the vehicle, including because of incremental charges and fees added to an hours-long transaction as it develops.

Misleading and false price and financing information hinder consumers' ability to comparison shop, an essential element to a competitive market. If buyers can see and compare the actual prices and costs for the same or similar goods offered by different sellers, buyers can choose to visit the seller that offers the terms most important to them, instead of wasting time and expense exploring offers based on deceptive information. When price or cost information in the market are distorted, consumers are unable to effectively differentiate between sellers, and sellers trying to deal honestly with consumers are put at competitive disadvantage.

Proposed § 463.4(a) would require a motor vehicle dealer to disclose the true ''Offering Price'' of a vehicle in advertisements that reference specific vehicles or price or financing terms. Under the proposed rule, the ''Offering Price'' of a vehicle means ''the full cash price for which a dealer will sell or finance the motor vehicle to any consumer,'' excluding only required government charges.'' [107]

This provision would prohibit deceptive and unfair practices with respect to price and add-ons. Price is one of the most material pieces of information for a consumer in making an informed purchasing decision.[108] Yet it is difficult for consumers to uncover the actual price for which a dealer will sell an advertised vehicle until visiting the dealership and spending hours on the lot. Sometimes dealers will tout prices based on dealer discounts, rebates, or other price reductions when such benefits are in fact subject to hidden or undisclosed restrictions that render them unavailable to typical customers.[109] Other times, dealers hide or omit additional dealer charges, such as for document preparation fees, amounting to several hundred dollars.[110] It is deceptive for dealers to advertise a price without disclosing material limitations or additional charges required by the dealer that are fixed and thus can be readily included in the price at the outset.[111]

[105] 50 U.S.C. 3952.

[106] *See, e.g., Buckle Up, supra* note 15, at 5 (noting consumer confusion about how the vehicle price they were offered was determined and consumers did not understand they could negotiate price); *id.* at 9 (observing add-on products and services, which typically increase a vehicle's purchase price, were ''the single greatest area of confusion'' in the study); Att'ys General of 31 States & DC, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00112 at 5 (Apr. 13, 2012), *available at https://www.regulations.gov/docket/FTC-2022-0036.*

[107] In a similar vein, a number of states have enacted laws that require any advertised or quoted vehicle price to include any non-governmental fees charged by the dealer. *See, e.g.,* Or. Admin R. 137–020–0020(3)(c) (requiring any price stated in an ad or in a price quotation to be the offering price, excluding only taxes, license, and other specified fees); Cal. Veh. Code sec. 11713.1(b)–(c) (making it a violation of the regulation to advertise the total price of a vehicle without including all costs to purchaser at the time of the sale, except taxes, registration, and other specified charges); Wis. Admin. Code Trans. 139.03(3) (requiring an advertised price include ''all charges that shall be paid by the purchaser to acquire ownership of the vehicle with the exception of sales tax, title and registration fees''); Oh. Admin. Code 109:4–3–16(B)(21) (prohibiting advertising ''any price for a motor vehicle unless such price includes all costs to the consumer except tax, title and registration fees, and a documentary service charge''); *see also* Ga. Dept. of Law Consumer Prot. Div., Auto Advertising & Sales Practices Enforcement Policies, 11 (''Advertised prices must state the actual total purchase price of the vehicle, excluding only government fees . . . . Any advertisement which lists a price 'plus' some additional amount will be considered to be deceptive.''), *https://consumer.georgia.gov/business-services/auto-advertising-and-sales-practices-enforcement-policies; accord* N.Y.C. Admin Code sec. 20–271(b)(1) (used vehicles must display the total selling price, inclusive of all dealer fees but exclusive of government charges); *cf.* Att'ys General of 31 States & DC, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00112 at 5 (Apr. 13, 2012), *available at https://www.regulations.gov/docket/FTC-2022-0036* (recommending the FTC adopt a rule requiring all advertised prices and price quotes for motor vehicles include all required non-governmental fees).

[108] *See, e.g., Sanctuary Belize Litig.,* 482 F. Supp. 3d at 397 (''Representations with respect to . . . [a product's] cost are also presumptively material.'') (citing *Thompson Med. Co.,* 104 F.T.C. 648); *see also Crescent Pub. Grp.,* 129 F. Supp. 2d at 321.

[109] *See, e.g., Tate's Auto Ctr.,* No. 3:18–cv–08176–DJH at ¶¶ 41–43 (D. Ariz. July 31, 2018) (alleging defendants failed to adequately disclose advertised discount incentives were available to select consumers only); *Progressive Chevrolet Co.,* No. C–4578 at ¶¶ 5–7 (F.T.C. June 13, 2016) (alleging respondents failed to disclose or disclose adequately that typical consumers cannot qualify for advertised terms); *TT of Longwood,* No. C–4531 at ¶¶ 16–17 (F.T.C. July 2, 2015) (alleging respondent advertised discounts and prices but failed to adequately disclose various qualifications and restrictions that made incentives or prices unavailable to consumers generally); *JS Autoworld,* No. C–4535 at ¶¶ 8–9 (F.T.C. Aug. 13, 2015) (alleging prominently advertised price is not generally available to consumers); *TC Dealership, L.P.,* No. C–4536 at ¶¶ 7–9 (F.T.C. Aug. 13, 2015) (same); *Timonium Chrysler,* No. C–4429 at ¶¶ 4–5 (F.T.C. Jan. 28, 2014) (alleging advertised prices and discounts but failed to disclose consumer would have to qualify for multiple rebates not generally available to them); *Ganley Ford West,* No. C–4428 at ¶¶ 4–5 (F.T.C. Jan. 28, 2014) (alleging advertised price discounts applied only to more expensive versions of vehicles featured in the ad).

[110] *See, e.g., Liberty Chevrolet,* No. 1:20–cv–3945 (S.D.N.Y. May 21, 2020) (alleging defendants advertised vehicles for sale at a specific price that failed to include additional fees dealer later tacked onto the price, resulting in higher sales prices than advertised); *see also* Press Release, State of Alaska, *Dep't of Law State Settles Consumer Protection Case with Lithia Auto Dealers* (Dec. 1, 2006), *http://www.law.alaska.gov/press/releases/2006/120106-Lithia.html* (announcing settlement with dealerships for charging ''doc prep fees '' not included in the advertised price of the vehicle, and noting such fees are ''nothing more than dealer profit'' and ''consumers often confuse'' them with governmental fees).

[111] Indeed, an entity that induces the first contact through false or misleading representation is liable under the FTC Act, regardless if the buyer later becomes fully informed. *See, e.g., Resort Car Rental Sys., Inc.* v. *FTC,* 518 F.2d 962, 964 (9th Cir. 1975); *FTC* v. *Gill,* 71 F. Supp. 2d 1030, 1046 (C.D. Cal. 1999) (same), *aff'd,* 265 F.3d 944 (9th Cir. 2001).

These practices are also unfair because they are likely to cause substantial injury: Consumers lose time when they pursue offers that are not actually available, and they may end up paying more for a vehicle than they expected, either because unexpected charges are not adequately disclosed until late in the transaction, or are never disclosed at all.[112] By requiring disclosure of the true Offering Price upfront, § 463.4(a) aims to curb this deceptive and unfair conduct, while producing the corollary benefit of increasing price competition among dealers, who would be able to compete on truthful, standard terms.[113]

Specifically, § 463.4(a) would require disclosure of the Offering Price when dealers advertise a specific vehicle for sale as well as when any monetary amount or financing term is advertised.

This provision would further require that, upon receipt of a consumer inquiry about a specific vehicle or price or financing term for any vehicle, the dealer must disclose the Offering Price of that vehicle, and that if any part of such an inquiry or response is made in writing, the Offering Price must be disclosed in writing as well. This provision would require dealers to provide accurate information to consumers, including those beginning their vehicle-shopping process online[114] and those selecting a dealership based on price. Inaccurate price information is likely to cause substantial injury for consumers who waste time traveling to the dealership in pursuit of an offer that does not exist, and for consumers who never learn that unexpected charges have been added to their dense paperwork during the hours-long vehicle buying and financing process.

Section 463.4(b) would require dealers to provide consumers with information about optional add-on charges to help curb deceptive and unfair practices. As discussed in Part III.B above, misrepresenting that add-ons are required or charging for add-ons without consumers' Express, Informed Consent are significant consumer protection concerns. Section 463.4(b) would require disclosure on any website, online service, or mobile application on which vehicles are offered for sale, of a list of all optional add-ons and the price of each add-on (''Add-on List'').[115] The Add-on List would have to include all optional add-on products for which the dealer charges consumers (and their respective prices). If the price of the add-on varies based on the specifics of the transaction, the Add-on List would have to include the range the typical consumer will pay.[116] Due to space constraints, dealer advertisements presented not online but in another format—such as in print, radio, or television—would not be required to include the Add-on List. Instead, pursuant to § 463.4(b)(2), those advertisements would be required to disclose the website, online service, or mobile application where consumers can access a copy of the Add-on List.[117] This proposed provision is consistent with industry guidance[118] and would help ensure that dealers that follow such guidance will not be competitively disadvantaged relative to those that do not.

For optional add-on products and services, proposed § 463.4(c) would require dealers to disclose that the optional add-on product or service is not required and that a consumer can purchase or lease the vehicle without the add-on. This disclosure would curb the deceptive practice of misleading consumers into thinking an add-on is required when it is not.[119] As with proposed § 463.4(b), this proposed provision is consistent with industry

[112] *See, e.g., Liberty Chevrolet,* No. 1:20–cv–03945 at ¶¶ 12–19 (S.D.N.Y. May 21, 2020) (alleging defendants falsely told consumers they were required to pay excess fees and taxes, and in other instances added such costs to the total price without consumers' knowledge or consent); *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 59–64 (C.D. Cal. Sept. 29, 2016) (alleging defendants engaged in deceptive and unfair practices relating to add-on products, including charging consumers for add-ons the consumer rejected or did not consent to purchase); *see also Buckle Up, supra* note 15, at 6 (summarizing the frustrating and time-consuming experience of some consumers who negotiated what they thought was an agreed-upon price with a dealership's sales staff, only to face further rounds of negotiating with the dealer's financing office and the introduction of adds-on that caused the price to balloon), *https://www.ftc.gov/reports/buckle-navigating-auto-sales-financing;* Matthew Jones, Bruce Kobayashi & Jason O'Connor, *Economics at the FTC: Non-Price Merger Effects and Deceptive Automobile Ads* 12 (2018), *also published at* 53 Rev. Indust. Org. 593 (2018), *https://www.ftc.gov/system/files/documents/reports/economics-ftc-non-price-merger-effects-deceptive-automobile-ads/1812-be-rio.pdf* (discussing the injurious effects of deceptive ads about motor vehicle sales and financing, including the time and effort spent by consumers visiting the dealership, when they might have otherwise pursued a legitimate offer elsewhere).

[113] The FTC has long considered the deceptive or unfair effects of ''drip pricing''—the colloquial term for the pricing practice that proposed § 463.4(a) aims to curb—whereby firms advertise only part of a product's price and reveal other mandatory charges later in the buying process. In 2012, the FTC convened a workshop on drip pricing at which then-Chairman Leibowitz discussed the practice's potential to harm consumers by ''causing them to pay too much and to waste time searching'' goods and services with deceptively low prices. That same year, the FTC sent letters to numerous hotels warning against the practice of excluding mandatory ''resort fees'' from quoted room rates and urging them to make total quoted prices inclusive of all unavoidable costs. *See* Mary W. Sullivan, *Economic Analysis of Hotel Resort Fees,* Fed. Trade. Comm'n (Jan. 2017) (concluding hotels could eliminate the potential harm and cost to consumers caused by price dripping by disclosing any mandatory fees upfront in the quoted price). Almost a decade later, complaints about mandatory fee disclosures persist. During a recent workshop to examine digital ''dark patterns,'' participants identified drip pricing as a leading issue in online pricing, with some suggesting the FTC implement a rule banning hidden fees and drip pricing. *https://www.ftc.gov/news-events/events-calendar/bringing-dark-patterns-light-ftc-workshop. See* Fed. Trade Comm'n, *Staff Perspective:* ''*That's the Ticket*'' *Workshop* (May 2020) (noting a preference for regulating drip pricing in the context of online advertising and sale of event tickets), *https://www.ftc.gov/system/files/documents/reports/thats-ticket-workshop-staff-perspective/staffperspective_tickets_final-508.pdf.* One model for all-in, upfront pricing are DOT's rules requiring airlines to include all mandatory fees in ticket display prices. Under these rules, whenever a carrier advertises a price for air transportation, that price must be the full price customers will have to pay. *See* 14 CFR part 399 (implementing 49 U.S.C. 41712). Regardless of the market, whether air travel, hotels, or motor vehicles, the empirical evidence suggests price transparency leads to more informed consumers, lower and more uniform prices, and more competition among sellers. *See, e.g.,* D. Andrew Austin & Jane G. Gravelle, Cong. Rsch. Serv., *CRS Report for Congress: Does Price Transparency Improve Market Efficiency? Implications of Empirical Evidence in Other Markets for the Health Sector* (July 24, 2007), *https://fas.org/sgp/crs/secrecy/RL34101.pdf.*

[114] *See generally* Fed. Trade Comm'n, *The Road Ahead: Selling, Financing & Leasing Motor Vehicles* (Aug. 2011) (Public Roundtables) (Session 2 transcript) (discussing that each month tens of millions of consumers seek out vehicle information on edmunds.com, but also discussing the reliability (or lack thereof) of such information available online), *https://www.ftc.gov/system/files/documents/public_events/52654/080211_ftc_sess2.pdf.*

[115] To the extent any add-on charges are required by a dealership, and thus not optional, such charges would have to be disclosed in the Offering Price, pursuant to proposed § 463.4(a) et al.

[116] *See FTC* v. *Five Star Auto Club,* 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (''at the very least, it would have been reasonable for consumers to have assumed that the promised rewards were achieved by the typical Five Star participant''); *Universal City Nissan,* No. 2:16–cv–07239 (C.D. Cal. Sept. 29, 2016) (alleging unlawful deception where a dealer's ads list prominent terms not generally available to consumers, including where those terms are subject to various qualifications or restrictions); *Progressive Chevrolet Co.,* No. C–4578 (F.T.C. June 13, 2016) (alleging advertised offer was deceptive because the typical consumer would not qualify for the offer).

[117] Working in tandem, proposed § 463.4(b)(1) and (b)(2) would mean that dealers who engage in advertising and charge for optional add-ons must have a website, online service, or other mobile application by which to disclose an Add-on List.

[118] *See* Nat'l Auto. Dealers Ass'n et al., *Voluntary Protection Products: A Model Dealership Policy* 11 (2019), *https://www.nada.org/regulatory-compliance/voluntary-protection-products-model-dealership-policy* (stating add-on products and services should be presented ''in a standard, simple menu format that, at a minimum, prominently discloses: . . . 7. the price of—and monthly payment for—each Product . . . .'')

[119] *See, e.g.,* Stipulated Order, *FTC* v. *Universal City Nissan, et al.,* No. 2:16–cv–07239 at Art. III (C.D. Cal. Mar. 22, 2017); Stipulated Order, *FTC & Illinois* v. *N. Am. Auto. Servs., Inc.,* No. 1:22–cv–0169 at Art. II (N.D. Ill. Mar. 31, 2022).

guidance [120] and would avoid competitive disadvantage to those dealerships that follow such guidance.

Section 463.4(d) would require dealers to disclose the total of payments when quoting monthly payment amounts to a prospective buyer or lessee. Specifically, § 463.4(d) would prohibit motor vehicle dealers from making any representation about a monthly payment for any vehicle without disclosing the total amount the consumer will pay to purchase or lease the vehicle at that monthly payment amount after making all monthly payments; if that total amount assumes consideration provided by the consumer (*e.g.,* a cash down payment or a trade-in), those amounts must also be disclosed.

Section 463.4(e) would complement the preceding provision by requiring dealers, when they compare different monthly payment options with consumers, to inform consumers that a lower monthly payment will increase the total amount the consumer will pay, if true. These provisions are intended to prohibit dealers from using claims regarding monthly payment amounts to falsely imply savings or parity between different offers where reduced monthly payments increase the total vehicle cost due to an increased payment term, and potentially an increased annual percentage rate (''APR'') as well. Additionally, when a consumer pays for his or her vehicle over a longer period of time, there is an increased likelihood that the consumer will continue to owe money even after he is no longer driving the vehicle. This results in negative equity when the consumer needs or wants to purchase another vehicle, because a vehicle's value tends to decline faster than the amount owed.[121] Longer motor vehicle financing terms also have higher rates of default, potentially posing greater risks to both borrowers and financing companies.[122]

Take, for example, a borrower who finances the purchase of a $25,000 vehicle with a $5,000 down payment and a 10% APR. With a five-year (60-month) term, her monthly payment will be $425. If the consumer balks at that monthly payment, the dealer could quote her a lower monthly payment of $332. If, however, the down payment and APR stay the same, that would result in a seven-year (84-month) term. Although the second offer might appear to be less costly, it will result in the consumer paying $2,394 more in interest over the course of the longer financing term. The second offer would also obligate the buyer to make payments for two additional years; if she needed to shop for a new vehicle after 60 months, she would still owe an outstanding balance of $7,195 on the first vehicle.[123]

As discussed further below, singular focus on monthly payments can also make consumers susceptible to unwanted, undisclosed, or even fictitious add-on charges and fees, because consumers may not notice relatively small add-on charges secreted within a monthly payment (*e.g.,* $15). Such hidden charges can cost a consumer more than a thousand dollars over the course of an auto financing or lease term.[124]

Further, when dealers advertise deceptively low monthly payments that amount to a fraction of the total cost of the vehicle, consumers may end up owing a large balloon payment in addition to the advertised monthly payment amount, either at signing [125] or after finishing their monthly payments,[126] or may be required to pay a much higher monthly payment once the artificially low ''teaser rate'' expires.[127]

The Commission anticipates that the proposed rule's requirement that dealers must disclose the total cost of a vehicle when quoting monthly payment amounts to a prospective buyer will help prospective buyers make more informed purchasing decisions and curb these deceptive and unfair practices.

Similarly, by requiring that dealers disclose that a lower monthly payment amount will increase the vehicle's total cost, when true, consumers will be able to gauge how much a given financing or lease offer will ultimately cost in order to compare different offers. This will help to decrease the likelihood that a consumer will be deceived about the comparative cost of a financing or lease offer, and help prevent dealers from

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[120] *See* Nat'l Auto. Dealers Ass'n et al., *Voluntary Protection Products: A Model Dealership Policy* 4 (2019), *https://www.nada.org/regulatory-compliance/voluntary-protection-products-model-dealership-policy* (stating dealerships should ''prominently display to customers a poster stating that [add-on products and services] offered by the dealership are optional and are not required to purchase or lease a vehicle or obtain warranty coverage, financing, financing on particular terms, or any other product or service offered by the dealership.'')

[121] *Buckle Up, supra* note 15, at 7.

[122] Consumer Fin. Prot. Bureau, *Quarterly Consumer Credit Trends: Growth In Longer-Term Auto Loans* 7–8 (Nov. 2017), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-trends_longer-term-auto-loans_2017Q2.pdf; see also* Zhengfeng Guo et al., Off. of the Comptroller of the Currency, *A Puzzle in the Relation Between Risk and Pricing of Long-Term Auto Loans* 2, 4–5, 20 (June 2020), *https://www.occ.gov/publications-and-resources/publications/economics/working-papers-banking-perf-reg/pub-econ-working-paper-puzzle-long-term-auto-loans.pdf* (finding motor vehicle financing with six-plus-year terms have higher default rates than shorter-term financing during each year of their lifetimes, after controlling for borrower and loan-level risk factors).

[123] The cost disparities resulting from monthly payment fixation can be even greater because financing entities tend to charge higher interest rates for longer terms. *See* Nat'l Credit Union Admin., *Credit Union and Bank Rates 2021 Q1* (Mar. 26, 2021), *https://www.ncua.gov/analysis/cuso-economic-data/credit-union-bank-rates/credit-union-and-bank-rates-2021-q1* (listing national average rates for new motor vehicle and used motor vehicle financing by term). In the example above, the alternate deal presented to the consumer may be for the same $25,000 purchase price and same $5,000 down payment, but with a longer repayment term of 84 months and a higher 12% APR. With this alternative, the new monthly payment of $353 is still considerably lower than the $425 monthly payment first offered, but it will in fact result in the consumer paying in $4,161 additional interest over the course of the extended period, and owing a balance of $7,500 to trade in the vehicle on the same 60-month timeline as the first offer.

[124] *See Auto Buyer Study, supra* note 11, at 14 (''the dealer can extend the maturity of the financing to reduce the effect of the add-on on the monthly payment, obscuring the total cost of the add-on''); *Auto Buyer Study: Appendix, supra* note 66 (Study participant 457481 at 229, 233 (dealership pitching add-ons at the end of the negotiation, and in terms of consumer's monthly price); Study participant 437175 at 701 (dealership pitching add-ons in terms of monthly price)); *see also Liberty Chevrolet,* No. 1:20–cv–03945 at ¶¶ 12–19 (S.D.N.Y. May 21, 2020) (alleging dealership included deceptive and unauthorized add-on charges in consumers' transactions); *Ramey Motors,* No. 1:14–cv–29603 at ¶¶ 21–28 (S.D. W. Va. Dec. 11, 2014) (alleging dealer emphasized attractive terms such as low monthly payments but concealed substantial cash down payments or trade-in requirements); *Billion Auto,* No. 5:14–cv–04118–MWB at ¶¶ 38–46 (N.D. Iowa Dec. 11, 2014) (alleging dealer touted attractive terms such as low monthly payments but concealed significant extra costs).

[125] *See, e.g., Norm Reeves,* No. 8:17–cv–01942 at ¶¶ 28–30 (C.D. Cal. Nov. 3, 2017) (alleging deceptive representations regarding monthly payments); *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 30–33 (C.D. Cal. Sept. 29, 2016) (alleging misrepresentations regarding monthly payments).

[126] *See, e.g., New World Auto Imports,* No. C–4437 at ¶¶ 8–11 (F.T.C. Feb. 20, 2014) (alleging misrepresentation regarding monthly finance payments); *New World Auto Imports,* No. 3:16–cv–02401–K at ¶¶ 36–38 (N.D. Tex. Aug. 18, 2016) (alleging deceptive representations regarding monthly payments); *see also* Melissa Harper, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00007 (Apr. 2, 2011), *available at https://www.regulations.gov/docket/FTC-2022-0036* (stating consumer paid monthly payments for 4 years, told she still owed money on the car when originally told it would be paid off in this time period).

[127] *See, e.g.,* Complaint, *In re Paramount Kia of Hickory, LLC,* No. C–4450 at ¶¶ 5–6 (F.T.C. Apr. 11, 2014) (alleging misrepresentation regarding monthly payment amount); Complaint, *In re Nissan of South Atlanta,* LLC, No. C–4435 at ¶ 5 (F.T.C. Feb. 28, 2014) (alleging misrepresentation of monthly payment amount); *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 30–34 (C.D. Cal. Sept. 29, 2016) (alleging advertised $38 monthly payment only applied for the first 6 months; offer in fact required $179.62 per month for the remaining 30 months).

including optional add-on products or services without the consumer's Express, Informed Consent. These proposed provisions do not conflict with ''triggering term'' requirements under other federal rules, including Regulation Z (of the Truth in Lending Act) and Regulation M (of the Consumer Leasing Act).[128]

Taken together, provisions 463.4(a) through (e) are intended to curb deceptive and unfair conduct related to pricing and add-ons. As discussed above, consumers are presented with a high volume of dense information during the long and complex motor vehicle buying or leasing experience. In some cases, prospective buyers receive conflicting information or are not provided key information, or fully informed about applicable charges. These practices harm consumers who may incur time and expense during the vehicle-shopping process or incur unexpected costs when dealers tout artificially low costs and other incentives in advertising and during negotiations, only revealing that those deals are not available late in the buying process, if at all. For example, participants in the FTC's qualitative *Auto Buyer Study* encountered situations where dealers settled on a price with them on the sales floor, but later a financing representative revoked the agreed upon price, claiming that it could not be honored.[129]

Dealer control over the flow and timing of information enables them to add charges or change contract terms late in the purchase or lease process.[130] In some instances, after consumers have spent hours traveling to the dealership and then on the lot (perhaps after already having spent hours comparing prices and features online), dealers present a large pile of paperwork and give consumers little time to review it. As a result, consumers are unaware that charges have been added or promised discounts or benefits have been removed.[131] In other instances, consumers learn about additional charges or changes to their terms after they have invested substantial time and energy in the buying or leasing process.[132] Requiring that consumers receive clear pricing disclosures early in the process will curb situations where consumers face unexpected charges at the end of the vehicle-buying process.[133]

E. § 463.5: Dealer Charges for Add-Ons and Other Items

Section 463.5 of the proposed rule would prohibit charging for add-on products that provide no benefit to the consumer and would prohibit charging consumers without Express, Informed Consent. Add-on products and services are commonly offered by dealers in conjunction with vehicle financing or leasing, and these products and services make up a significant share of dealers' profits.[134] In some cases, dealers appear to charge for add-on products or services under circumstances in which the consumer could never benefit from that product or service.[135] However, charging for non-beneficial products is inconsistent with industry guidance,[136]

[128] *See* 12 CFR 1026.24(d) (Regulation Z triggering terms provision); 12 CFR 213.7 (Regulation M triggering terms provision). These rules require that when an advertisement for a financed purchase or a lease mention a specific triggering term—for example, a monthly payment amount—that those advertisements also disclose other specified terms, including the number, amount, and timing of payments.

[129] *See Auto Buyer Study, supra* note 11, at 11.

[130] Att'ys General of 31 States & DC, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00112 at 5 (Apr. 13, 2012), *available at https://www.regulations.gov/docket/FTC-2022-0036* (describing the addition of documentary fees that ''often come as complete surprises to consumers, and are not disclosed until well after the dealer and consumer agree on a sales price for the vehicle.''); *Auto Buyer Study, supra* note 11, at 13–14, (offering add-ons after a vehicle price is negotiated is a form of drip pricing, which can result in higher prices to consumers by reducing the likelihood consumers will search for alternative suppliers).

[131] *See Liberty Chevrolet,* No. 1:20–cv–03945 at ¶¶ 17–18 (S.D.N.Y. May 21, 2020) (alleging dealer inflated vehicle prices and charged consumers double for sales tax or other fees, and often consumers did not notice the bait and switch from an earlier price document to the final sales price contained in ''a stack of complex, highly technical documents presented at the close of a long financing process after an already lengthy process of selecting car and negotiating over its price.''); *Universal City Nissan,* No. 2:16-cv-07329 at ¶¶ 60, 91–93 (C.D. Cal. Sept. 29, 2016) (alleging dealer rushed consumers through signing process, and often consumers were unaware of add-on products included in the paperwork); *see also Buckle Up, supra* note 15, at 10–11. As part of the FTC's study of dozens of motor vehicle buyers who recently purchased a vehicle, many consumers reported they were unable to review the paperwork consummating the purchase transaction. The consumers reported several reasons, including that the long transaction left them exhausted, the dealer rushed them through the signing process, and they were overwhelmed or thought it would take them a few hours or days to read all of the fine print in the paperwork. These factors likely contributed to many consumers lacking awareness of critical financing terms.

[132] *See Auto Buyer Study, supra* note 11, at 13.

[133] *See Buckle Up, supra* note 15, at 6. Some study participants found ''after negotiating what they thought was an agreed-upon price for a vehicle with sales personnel, they faced negotiating again during the dealer's financing process, which they found frustrating and time-consuming.'' In addition, ''introduction of add-ons during financing discussions caused several participants' total sale price to balloon from the cash price.'' Accordingly, the staff report recommends ''discussing the 'out-the-door' price of the vehicle (the total price, before financing, including taxes and fees) *before* discussing financing could help avoid confusion.''

[134] *See* Adrienne Roberts, *Add-On Services Emerge as Car Dealers' Profit Generator,* Wall Street Journal, Apr. 7, 2019, *https://www.wsj.com/articles/add-on-services-emerge-as-car-dealers-profit-generator-11554634800;* Edmunds, *Where Does the Car Dealer Make Money,* June 13, 2019, *https://www.edmunds.com/car-buying/where-does-the-car-dealer-make-money.html.* As of August 2021, approximately 94% of new vehicles and 86% of used vehicle sales involved dealerships' finance and insurance office, which offers products and services such as GAP insurance, alarm systems and extended warranties. Nat'l Auto. Dealers Ass'n, *Average Dealership Profile* at 1 (Aug. 2021), *https://www.nada.org/media/4129/download?inline.*

[135] *See, e.g.,* Individual consumer complaint, filed Mar. 27, 2021 (''I bought this warranty February 2nd with insistence from the dealer. They advertise false coverage, most of the things they supposedly covered come with limitations and exclusions in which you are ultimately not covered at all. The[re a]re is so many exclusions it's ridiculous, there is a total of A–Z of letters with each one stating various parts that are not covered, I will only mention one since there is an absurd amount. Letter B states, 'repair or replacement of any covered component when it has been determined that the condition existed prior to purchase of this agreement.' Lovely, so if you bought your vehicle used, you are not covered. Their contract is misleading, you're promised coverage but then they find loopholes and you are left with no coverage.''); Individual consumer complaint, filed Aug. 29, 2019 (''Federal Trade Commission, I believe I have been treated unfairly as a consumer in the state of Iowa . . . . I was aggressively sold GAP insurance while purchasing a vehicle . . . . The [ ] dealership made a lot of promises when selling the GAP insurance which I have documentation for, but then failed to honor those promises once I needed the GAP insurance after a no fault deer collision . . . The [ ] dealership aggressively sold me GAP insurance as 'an add-on car insurance coverage that would cover the 'gap' between the amount owed on the car and the car's actual cash value in the event of an accident or collision. I was told my primary insurance company . . . would only cover the cash value, I would pay my $500 deductible, and [the dealership]'s GAP would cover the remaining amount owed to pay the lien holder down to a zero balance . . . . Instead of getting the peace of mind they sold by adding GAP insurance, [the dealership] left me to cover the remaining balance of $998.62 after I pay the $500 insurance deductible.''); Individual consumer complaint, filed June 23, 2021 (''The dealership also sold an aftermarket warranty. 24 hours after taking delivery, I had the vehicle inspected and was informed of $6,000 in repairs . . . . Once the warranty company checked the vehicle, they informed me that the warranty was void due to intake and tubing modifications. Therefor[e], the dealership sold a warranty for a vehicle that could not be warrantied by the company''); Individual consumer complaint, filed May 12, 2021 (''I purchased a 2011 Chevy Malibu from a dealer and with the purchase, also purchased a 5 year, 100,000 mile power train warranty. I have had the car for 39 months and have driven about 35,000 miles since purchase. The car has had a couple issues and the warranty has never covered ANY repair costs at any time. 2 weeks ago, an item in the engine broke and now is not functioning at all. The mechanic reached out to [the extended warranty provider] and was told nothing will be covered. I called and asked and got told that covered items would be covered along with labor. We continue to get the run around with me being told one thing and the mechanic another. This warranty has been nothing more than a waste of time, money, and is now in my mind a scam to get money from unsuspecting customers.'').

[136] *See* Nat'l Auto. Dealers Ass'n et al., *Voluntary Protection Products: A Model Dealership Policy* 5

Continued

and dealerships that profit from such sales put honest dealerships at a competitive disadvantage.

Proposed § 463.5(a) would prohibit this practice. A dealer would be in violation of this provision if, for example, the dealer offered and charged for products such as ''rustproofing'' that did not actually prevent rust, offered purported theft-prevention or theft-recovery services without proof that the services actually prevented theft or recovered stolen items, or charged for ''nitrogen-filled tires'' that in fact contained no more nitrogen than naturally exists in the air. A dealer would also violate this provision if the dealer sold GAP insurance to buyers whose financing balance was so low that ordinary insurance would be adequate to cover any loss.[137] Further, the proposed restriction would prohibit the sale of GAP insurance when hidden restrictions would exclude a vehicle buyer from coverage (*e.g.,* where the consumer's vehicle is among a list of vehicles excluded from coverage, or the consumer's neighborhood is excluded from coverage). Similarly, the proposed rule would prohibit other optional add-on products or services that offer consumers no benefit, including extended warranties that merely duplicate coverage already provided on the vehicle.[138]

Consumers do not agree to purchase additional products from which they could not benefit unless they are led to believe, directly or by omission, that these products would be beneficial. Rather than requiring an additional, confusing disclosure—*e.g.,* that the dealer is charging extra for an item that will not provide the consumer any benefit—this provision would prevent dealers from being able to extract additional charges from consumers based on deception. Accordingly, and similar to provisions enacted by a number of states,[139] § 463.5(a) of the proposed rule would prohibit motor vehicle dealers from marketing or selling an add-on product or service if the consumer would not benefit from such an add-on product or service.

Section 463.5(b) of the proposed rule would curb the practice of charging for optional add-ons without the consumer's consent or misrepresenting that an optional add-on is instead a required purchase. It would also prohibit dealers from changing pricing information in the financing office. Specifically, proposed § 463.5(b)(1) states that dealers may not charge for optional add-ons unless they disclose up front the cash price at which a consumer may purchase the vehicle without additional add-ons. The proposed rule would require that dealers disclose, and offer to close the transaction for, the Cash Price without Optional Add-ons, separately itemizing the Offering Price, any discounts, rebates, or trade-in valuation, and required government charges. If the prospective buyer declines to purchase the vehicle at that price, the dealer must obtain confirmation in writing, with the date and time recorded, signed by the consumer and a manager of the dealership. The dealer must retain this signed form to document that the dealer has provided the required Offering Price disclosure to consumers before including optional add-ons in a sales transaction. The Cash Price without Optional Add-ons disclosure and declination must be limited to the information required by this § , and cannot be presented together with any other written materials.

Proposed § 463.5(b)(2) would require similar disclosures in the context of financed transactions: dealers would not be permitted to charge for optional add-ons without disclosing, and offering to consummate the transaction for, the Cash Price without Optional Add-ons plus the finance charge, factoring in any cash down payment or trade-in valuation (and separately itemizing the components of the offer).[140] If the consumer declines to finance the transaction for that amount, the dealer, as above, must obtain confirmation of that declination in writing. The disclosure and declination must be limited to the information required by this section, and cannot be presented with any other written materials

Proposed § 463.5(b)(3) would require a dealer, before charging for any optional add-on, to disclose the cost of the transaction without any optional add-ons (whether the transaction is financed or not), and also disclose the charges for the optional add-ons selected by the consumer, separately itemized.

Section 463.5(c) of the proposed rule would prohibit motor vehicle dealers, in connection with the sale, financing, and leasing of vehicles, from charging consumers for any item without their Express, Informed Consent. ''Express, Informed Consent'' is defined as an affirmative act communicating unambiguous assent to be charged, made after receiving and in close proximity to a Clear and Conspicuous disclosure, in writing, and also orally

(2019), *https://www.nada.org/regulatory-compliance/voluntary-protection-products-model-dealership-policy* (explaining that when determining which voluntary protection products to offer to customers, ''the dealership should have confidence in the value that the product offers to customers'', including that it should ''understand whether its coverage is already provided by another product being purchased by the customer,'' and stating ''[i]t is essential customers have a clearly defined path to receiving such benefits.'').

[137] GAP products cover the difference, or ''gap,'' between the amount the consumer owes on the motor vehicle financing and the amount received from the vehicle insurer in the event of a total loss. A gap is more likely when the loan-to-value (LTV) ratio is high, since the outstanding balance owed by the consumer at the time of a total loss is more likely to exceed the insurance proceeds; conversely, with a low LTV, the insurance payout for a totaled vehicle will likely cover the consumers' outstanding debt, rendering GAP unnecessary. *See* Consumer Fin. Prot. Bureau, *Supervisory Highlights, Issue 19—Summer 2019* at 4, *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf (describing as unlawful the sale of* ''a GAP product to consumers whose low LTV meant that they would not benefit from the product'').

[138] The Road Ahead: Selling, Financing & Leasing Motor Vehicles, a Roundtable, Panel 2: Misrepresentations and Other Consumer Protection Issues in Motor Vehicle Leasing, comment of panelist Tom Domonoske, transcript at 19–21 (Nov. 17, 2011), *https://www.ftc.gov/sites/default/files/documents/public_events/road-ahead-3rd-roundtable-november-17th/dc_sess2.pdf;* Dale Irwin, Slough Connealy Irwin & Madden LLC, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00060 (Dec. 29, 2011), *available at https://www.regulations.gov/document/FTC-2011-0027-0001* (''fraudulent sale of duplicative extended warranty coverage on new cars''); FSP and Assocs., LLC, Comment Letter on Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811, Submission No. 558507–00094 (Mar. 19, 2012), *available at https://www.regulations.gov/docket/FTC-2022-0036* (one of ''the most insidious elements of car dealer financing is . . . insurance [add-ons] they load into every contract,'' which in ''most cases the purchaser has no idea it is there'' and ''adds to the overall interest and vehicle cost and usually provides no benefit to the purchaser''); Consent Order, *Consumer Fin. Prot. Bureau* v. *Wells Fargo Bank, N.A.,* No. 2018–BCFP–0001 at ¶¶ 27–39 (Apr. 20, 2018) (finding force-placing duplicative or unnecessary collateral-protection insurance on hundreds of thousands of borrowers' vehicles); *StewartFin. Co. Holdings,* No. 103CV–2648 at ¶¶ 28, 45–48 (N.D. Ga. Sept. 4, 2003) (''On numerous occasions, Stewart Finance has sold Car Club to borrowers who do not own cars or do not have driver's licenses and thus, would not benefit from the product''); *cf. Nat'l Payment Network,* No. C–4521 at ¶¶ 4–14 (F.T.C. May 4, 2015) (alleging provider of third-party vehicle repayment service failed to disclose fees associated with financing program often exceed consumers' savings from using the program); *Matt Blatt,* No. C–4532 at ¶¶ 4–13 (F.T.C. May 4, 2015) (alleging dealership failed to disclose fees associated with third-party vehicle repayment service often exceeded consumers' savings from using the program).

[139] *See, e.g.,* Ind. Code sec. 24–4.5–3–202(e)(ix) (prohibiting sale of GAP when LTV is less than 80); 4 Colo. Code Regs. sec. 902–1:8(g) (prohibiting sale of GAP when the consumer, the credit terms, or the purchased vehicle do not qualify for, or conflict with, coverage); S.C. Code sec. 37–30–120(I)(1) (prohibiting sale of GAP unless seller reasonably believes the borrower will be eligible for a benefit).

[140] Consistent with TILA, charges included entirely in the finance charge are not ''optional Add-ons.''

for in-person transactions, of the following: (1) what the charge is for; and (2) the amount of the charge, including, if the charge is for a product or service, all fees and costs to be charged to the consumer over the period of repayment with and without the product or service.[141] The definition also provides nonexclusive examples of what is not considered Express, Informed Consent. First, documents with a mere signature or initials, or a form presented to a consumer with preprinted checkboxes, would not constitute Express, Informed Consent. Similarly, agreement obtained through any practice, such as a user interface or document, designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice, would not constitute Express, Informed Consent.

As discussed above, the length and complexity of motor vehicle transactions has created an environment ripe for deceptive or unfair conduct. Consumer complaints suggest some dealers have added thousands of dollars in unauthorized charges, including for add-ons consumers had already rejected.[142] These issues are exacerbated when pre-printed consumer contracts automatically include charges for optional add-ons, when consumers are rushed through stacks of paperwork, or when they are asked to sign blank documents.[143]

This provision would help protect consumers from unfair or deceptive charges buried within lengthy contracts or stacks of paperwork.[144]

In sum, the complexities and duration of a typical motor vehicle transaction, and the myriad problems observed in the industry, call for a means to obtain and record Express, Informed Consent to charges instead of simply collecting signatures or initials within dense paperwork. Other statutes and rules enforced by the FTC likewise include Express, Informed Consent requirements for consumer purchases,[145] and similar provisions appear in Commission orders resolving charges that motor vehicle dealers or other sellers have levied unauthorized charges on consumers.[146]

F. § 463.6: Recordkeeping

The proposed rule also includes various recordkeeping requirements to help ensure compliance with the Rule's disclosure requirements. Section 463.6 of the proposed rule describes the types of records motor vehicle dealers must keep, and the time period for retention. Specifically, this provision requires motor vehicle dealers subject to the Rule to keep for a period of 24 months: all materially different advertisements, sales scripts, training materials, and marketing materials regarding vehicle price, financing, or leasing terms; all materially different copies of lists of add-on products and services; consumer transaction documents such as purchase orders, financing and leasing agreements (and related correspondence, including declination documents as required by the preceding section); records to show compliance with monthly payment disclosure and add-on sales requirements; written consumer complaints and consumer inquiries regarding add-ons or individual vehicles; and other records needed to demonstrate compliance with this Rule. These recordkeeping provisions are necessary to ensure dealers make required disclosures under the Rule. They will also assist the Commission in assessing dealers' compliance with the Rule and help to ensure its effectiveness.[147] These recordkeeping obligations are consistent with and similar to requirements included in similar Commission disclosure rules, as tailored to individual industries and markets.[148]

G. § 463.7: Waiver Not Permitted

Section 463.7 of the proposed rule provides that ''[a]ny attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this part constitutes a violation of this part.'' This provision would prevent attempts to circumvent provisions of the proposed rule, for example during the paperwork review process with consumers. This provision is modeled on a similar provision in the Mortgage Assistance Relief Services Rule.[149]

V. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 12, 2022. Write ''Motor Vehicle Dealers Trade Regulation Rule—Rulemaking, No. P204800'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

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[141] *See, e.g.,* Stipulated Order, *FTC* v. *Liberty Chevrolet, Inc.,* No. 1:20–cv–03945 (S.D.N.Y. May 22, 2020) (defining Express, Informed Consent in the same manner).

[142] *See generally Buckle Up, supra* note 15. As part of the FTC's qualitative study of dozens of consumers who had recently purchased a vehicle, nearly all complained about the time spent at the dealership and the hefty paperwork needed to complete the transaction. Several consumers learned during their post-purchase interviews that they had bought add-ons that they did not know about (or that they had declined), others thought they got add-ons for free but in fact paid for them, and some purchased GAP insurance only because the dealer said or implied that it was mandatory.

[143] *Universal City Nissan,* No. 2:16–cv–07329 at ¶¶ 58, 60 (C.D. Cal. Sept. 29, 2016) (alleging preprinted contracts and rushing consumers to sign); *Liberty Chevrolet,* No. 1:20–cv–03945 at ¶¶ 17–19 (S.D.N.Y. May 21, 2020) (alleging charging consumers for taxes twice by rushing consumers to sign); *see also* Individual consumer complaint, filed May 18, 2021 (''They signed me up for a service plan even though I never requested one and charged an extra $1000 to my auto loan without my consent. They stated I signed the paperwork so theres nothing I could do that its my fault for not being more careful and they refused to reimburse me even though I never knew of or used the service.'').

[144] The Commission has observed that some businesses use ''dark patterns'' to steer consumers to take particular action, whether it is making claims in a particular way to induce them to click on a link on a website or to agree to a transaction, even if it includes charges for unwanted items. *See, e.g.,* Bringing Dark Patterns to Light: an FTC Workshop, Fed. Trade Comm'n (Apr. 29, 2021) (Public Event), *https://www.ftc.gov/news-events/events-calendar/bringing-dark-patterns-light-ftc-workshop; see also supra* note 113. And the Commission has seen via extrinsic evidence (including consumer complaints and surveys) that large numbers of consumers experience unexpected and unauthorized charges, notwithstanding disclosures, contract disclaimers, and signature lines. Summary Judgment Order, *FTC* v. *Amazon.com,* No. 2:14–cv–01038–JCC, at 17–20 (W.D. Wash. 2016); *N. Am. Auto. Servs.,* No. 1:22–cv–0169 at ¶ 27 (N.D. Ill. Mar. 31, 2022) (alleging that, according to a survey of dealership customers, at least 83% of them were charged for add-on products without authorization or as a result of deception).

[145] 15 U.S.C. 8402(a)(2), 8403(2) (Restore Online Shoppers' Confidence Act); 16 CFR 310.4(a)(7) (Telemarketing Sales Rule).

[146] *Liberty Chevrolet,* No. 1:20–cv–03945 at Art. II (S.D.N.Y. May 27, 2020); Stipulated Order, *FTC* v. *Consumer Portfolio Servs.,* No. 14–cv–00819 at Art. III (C.D. Cal. June 11, 2014). Based on years of experience in a variety of contexts (including for dealings not nearly as complex as motor vehicle transactions), the Commission has often required such Express, Informed Consent provisions. *See, e.g.,* Stipulated Order, *FTC* v. *Yellowstone Capital LLC,* No. 1:20–cv–06023–LAK at Art. III (S.D.N.Y. May 4, 2021); Stipulated Order, *FTC* v. *Prog. Leasing,* No. 1:20–cv–1688–JPB at Art. IV (N.D. Ga. Apr. 22, 2020); Decision and Order, *FTC* v. *Bionatrol Health, LLC,* No. C–4733 at Art. VI (F.T.C. Mar. 5, 2021); Stipulated Order, *FTC* v. *Bunzai Media Grp., Inc.,* No. CV 15–4527–GW(PLAx) at Art. I.E (C.D. Cal. June 27, 2018); Stipulated Order, *FTC* v. *T-Mobile USA, Inc.,* No. 2:14–cv–00967–JLR at Art. I (W.D. Wash. Dec. 19, 2014); Stipulated Order, *FTC* v. *AT&T Mobility, LLC,* No. 1:14–cv–03227–HLM at Art. I (N.D. Ga. Oct. 8, 2014); Decision and Order, *In re Google, Inc.,* No. C–4499 at Art. I (F.T.C. Dec. 2, 2014).

[147] *Norm Reeves,* No. 8:17–cv–01942 at ¶¶ 42–45 (C.D. Cal. Nov. 3, 2017) (alleging dealer failed to keep records of previous advertisements needed to demonstrate compliance with prior order); *New World Auto Imports,* No. 3:16–cv–22401 at ¶¶ 32–35 (N.D. Tex. Aug. 18, 2016) (alleging dealer failed to keep records of previous advertisements needed to demonstrate compliance with prior order).

[148] 16 CFR 310.5 (Telemarketing Sales Rule); 16 CFR 437.7 (Business Opportunity Rule); 16 CFR 453.6 (Funeral Industry Practices Rule); 16 CFR 301.41 (Fur Products Labeling).

[149] *See* 12 CFR 1015.8.

Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Motor Vehicle Dealers Trade Regulation Rule—Rulemaking, Matter No. P204800'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580.

Because your comment will be placed on the public record, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b) —we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before September 12, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VII. Questions for Comment

The Commission seeks comments on various aspects of the proposed rule. Without limiting the scope of issues it seeks comment on, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should be itemized according to the numbered questions in this document. In responding to these questions, include detailed, factual supporting information whenever possible.

General Questions for Comment

When responding to any of the following general questions, please specify the portion(s) of the proposal to which your comment relates.

1. Does the proposed rule further the Commission's goal of protecting consumers from unfair or deceptive acts or practices in the motor vehicle marketplace? Why or why not?

2. Are there any unfair or deceptive acts or practices not addressed by the proposed rule that should be? For example, should there be additional provisions pertaining to leasing or provisions pertaining to interest rates or other financing terms?

3. Are there any additional practices that occur largely or exclusively at certain types of dealerships that any final Rule should address? For example, should there be additional provisions pertaining to collection or repossession practices employed by ''buy here, pay here'' dealerships, including the use of electronic disabling devices (sometimes called ''starter interrupt'' or ''kill switches'')?

4. Portions of the proposed rule contemplate additional disclosures in an already lengthy, confusing and disclosure-heavy but low-comprehension transaction. Would any of the additional proposed disclosures do more harm than good? If so, is there another measure that should be used to address the consumer protection concerns described herein?

5. Should the Commission provide more detailed requirements regarding the content or form of any of the proposed disclosures?

6. What economic burdens would be imposed on dealers if the Rule proposals were adopted? Are there changes that could be made to lessen any such burdens without significantly reducing the benefits to consumers?

7. Does the proposed rule adequately address sales and leasing practices that take place partially or completely online? If not, should there be different or fewer or additional requirements for online sales and leasing?

8. Should any final Rule include additional provisions to address electronic disclosures or recordkeeping? Why or why not? If yes, in what manner(s)?

9. Should any final Rule address disclosures in other languages? Why or why not? If yes, in what manner(s)?

§ 463.2: Definitions

10. Are the proposed definitions clear? Should any changes be made to any definitions? Should the scope of any of the proposed definitions be expanded or narrowed, and if so, why?

11. Are additional definitions needed?

§ 463.3: Prohibited Misrepresentations

Proposed § 463.3 would prohibit dealers from making specified misrepresentations.

12. Are the proposed prohibitions on misrepresentations in this section clear, meaningful, and appropriate? Should the scope of any of the proposed prohibitions be expanded or narrowed, and if so, how and why?

13. Would any of the proposed prohibitions inadvertently discourage truthful advertising to the detriment of consumers? For example, would prohibitions against misrepresenting the cost of a purchase make it less likely dealers would include truthful pricing

claims in their ads? If so, please provide suggestions on how to address these issues.

14. Are there any other practices by dealers relating to vehicle sales, financing, or leasing that are particularly harmful to military servicemembers? For example, are there particular unfair or deceptive acts or practices engaged in by dealerships in the proximity of, or within, military installations?

15. Proposed § 463.3(e) would prohibit dealers from misrepresenting the availability of vehicles at an advertised price. Are there situations in which dealers misrepresent the availability of vehicles without reference to price (*e.g.,* the total number of vehicles of a certain make, model, and year the dealer has available)? If so, should the Commission amend the proposal in § 463.3(e) to directly address such misrepresentations? Why or why not?

16. Proposed § s 463.3(h) and (i) would prohibit dealers from misrepresenting when the transaction is final or binding on all parties and from making misrepresentations about keeping cash down payments or trade-in vehicles, charging fees, or initiating legal process or any action if a transaction is not finalized or if the consumer does not wish to engage in a transaction. As indicated in this document, these proposed provisions are intended to curb problems with the spot delivery of vehicles while the financing for the vehicle remains contingent—problems sometimes referred to as ''yo-yo financing.'' Should the Commission consider alternative approaches to address such problems, such as requiring retail installment sales contracts to include a clause prohibiting financing-contingent sales, prohibiting the dealer from transferring title to a trade-in vehicle or performing any repairs or reconditioning before a sale is final or requiring dealers to return trade-in, deposit, and fees, if financing is not approved? What would be the effect of such a requirement, and what costs and benefits would it entail? Are there data regarding the feasibility of finalizing vehicle financing at or before the time the retail installment sales contract is signed?

17. Proposed § 463.3(j) would prohibit misrepresentations regarding whether or when a dealer will pay off some or all of the financing or lease on a consumer's trade-in vehicle. Should there be additional protections here—for example, should there be a requirement that dealers pay off outstanding financing or liens on a trade-in vehicle within a specified amount of time, or before selling the trade-in vehicle?

18. Are there any other common misrepresentations in the motor vehicle marketplace that are not adequately addressed by the proposed rule? If so, please identify them and how they should be addressed in any final Rule. Please also identify the potential costs and benefits associated with the approach you propose.

§ 463.4: Disclosure Requirements

Proposed § 463.4 would require dealers to make specified disclosures.

19. Are the disclosures that would be required by this section clear, meaningful, and appropriate? Should the scope of any of the proposed disclosures be expanded or narrowed, and if so, how and why?

20. What would be the economic impact, and the costs and benefits, of these disclosure requirements?

21. Should this section include additional disclosure requirements? Given the length and complexity of the transaction, would additional disclosures make the consumer experience better or worse? Why or why not? If so, what are the costs and benefits associated with these additional disclosures?

22. Is the timing of disclosures contemplated by this section appropriate and sufficient to provide consumers with useful information regarding the purchase or lease of a motor vehicle?

23. Would any of the required disclosures inadvertently discourage truthful advertising to the detriment of consumers? For example, to the extent the proposed rule would require that certain disclosures (*e.g.,* Offering Price) must accompany other specific information, will dealers cease providing that other information altogether? If so, please provide suggestions on how to address these issues.

24. Are there circumstances in which dealers should be required to make disclosures and contracts available in languages other than English? For instance, should dealers be required to provide disclosures and contracts in any language they use for advertising, or in any language they use to conduct sales, financing, or lease transactions? What would be the effect of such a requirement, and what costs and benefits would it entail? Are there other steps the Commission should consider taking to protect consumers from misrepresentations in dealer advertisements when the sale, lease, or financing transaction is conducted in a different language from the one used in advertising?

25. Are the proposed disclosures sufficient to provide consumers with clear, meaningful and appropriate information about the financing terms of the transaction? Are there other steps the Commission should consider taking to protect consumers from being misled regarding their financing terms and to ensure that consumers understand their financing options?

26. Proposed § 463.4(a) would require dealers to disclose the Offering Price in certain advertisements.

a. Do dealers already calculate a figure equivalent to the Offering Price for every vehicle in their inventory? If so, how is this calculated?

b. In particular, the Commission is contemplating whether it is necessary to prohibit advertising any price aside from the Offering Price to address concerns with unfairness and deception, including those described in this Document. Or, alternatively, should dealers be permitted to state in advertisements the Offering Price along with other offers that may be of limited applicability (provided the nature of the limited applicability is clearly disclosed)? c. Would the mandatory disclosure of Offering Price where required ''crowd out'' other information in advertising formats where dealers pay for time or space?

27. Proposed § 463.4(a) would also require a dealer to disclose the Offering Price in the first response to any query about any specific vehicle.

a. Is it appropriate to limit this requirement to only the dealer's first response about the specific vehicle? Or, should the Commission require dealers to include the Offering Price in additional communications to potential buyers?

b. What other measures could be taken so consumers know the true Offering Price of a vehicle earlier in their decision-making process, including before expending resources to visit the dealership?

28. Proposed § 463.4(b) would require dealers to disclose an Add-on List in certain circumstances.

a. How many add-ons do dealers typically offer, and how many of those are sold regularly? Would this disclosure require such a lengthy list of add-on products and services that the list would be too long to be meaningful to consumers? If so, are there changes that could be made to this proposed requirement to reduce the amount of information disclosed while preserving the benefits to consumers? For example, would limiting this requirement to add-ons that are proposed by the dealer to

a prospective buyer, as opposed to raised by the consumer, adequately address the harms that occur to consumers in the context of these transactions? Or, should the Add-on List be limited to a certain number (*e.g.,* 15) of add-on products and services most frequently sold by the dealer in the previous quarter?

b. How common is it for the price of a given add-on product or service to vary for different vehicles and different transactions, and on what basis would the price vary? Would it be necessary for dealers to provide disclosures specific to an individual consumer, or could this proposed requirement be satisfied with a pre-formatted disclosure that could be provided to all potential buyers or lessees? If prices vary greatly, would disclosing the price range provide meaningful information to consumers?

c. The proposed rule would allow certain advertisements (*i.e.,* those not presented on a website, online service, or mobile application) to disclose the website, online service, or mobile application where the consumer can view the Add-on List, rather than disclosing the Add-on List itself within the advertisement. Should the Commission take the same or similar approach with advertisements presented via other forms of media? Why or why not?

d. The proposed rule would require dealers that run certain types of advertisements and charge for optional add-ons to maintain a website, online service, or mobile application at which an Add-on List may be found. Do all or most such dealers already operate a website, online service, or mobile application that could display the Add-on List?

29. Proposed § 463.4(d) would require a dealer to disclose the total amount a consumer must pay to purchase or lease a vehicle when the dealer makes representations about monthly payments for a vehicle purchase. Can dealers calculate accurate monthly payment information for a consumer without calculating the total amount? If not, is there any value in a consumer learning monthly payment information before the total amount is calculated? If so, how can the proposal be adjusted to allow for such information without obscuring necessary information about the total amount required to purchase a vehicle?

30. Proposed § 463.4(e) would require dealers to disclose that a lower monthly payment will increase the total amount, if lowering monthly payments will do so. This provision could require this disclosure multiple times in the same transaction, for example, when a dealer's financing office is discussing a range of different monthly payments with the consumer. Would requiring multiple disclosures result in the disclosure losing effectiveness? Would limiting the disclosure, for example, to the first time the disclosure is triggered have benefits, or would this reduce the effectiveness of the disclosure by requiring it at a time that is not as meaningful to consumers?

§ 463.5: Dealer Charges for Add-Ons and Other Items

Proposed § 463.5(a) would prohibit dealers from marketing or selling an add-on product or service to a consumer who would not benefit from the add-on product or service in connection with the sale or financing of a vehicle.

31. Are the proposed prohibitions in this section clear, meaningful, and appropriate? Should the scope of any of the proposed prohibitions be expanded or narrowed, and if so, how and why?

32. Is the proposal adequate and appropriate to address consumer harms that occur with the sale of add-on products or services from which the consumer cannot benefit? Why or why not? How could the proposal be modified to better address such harms?

33. This provision is intended to prevent conflicting and otherwise deceptive representations, and to protect consumers without requiring additional disclosures in an already lengthy, disclosure-heavy process. Given these concerns, should additional restrictions be placed on all add-ons? In particular, the Commission is contemplating whether any final Rule should restrict dealers from selling add-ons (other than those already installed on the vehicle) in the same transaction, or on the same day, the vehicle is sold or leased. Would such a provision better protect consumers without unduly burdening competition?

34. The proposed rule would prohibit dealers from charging for non-beneficial add-ons, such as nitrogen-filled tires that contain no more nitrogen than naturally exists in the air, and GAP insurance that cannot be used by the consumer. Are there other add-ons for which dealers commonly charge that are similarly non-beneficial and should be specifically referenced in any final Rule?

35. The proposed rule would also prohibit dealers from charging for GAP Agreements if the consumer's vehicle or neighborhood is excluded from coverage or the loan-to-value ratio would result in the consumer not benefitting financially from the agreement. Should any final Rule set forth how to calculate the loan-to-value ratio? If so, what should such a provision require?

36. Proposed § 463.5(b) would prohibit a dealer from charging for optional add-ons unless the dealer first discloses the vehicle's Cash Price without Optional Add-ons and records that a consumer has declined to purchase the vehicle at that price. Should the Commission consider means to require more affirmative engagement by consumers to consciously select add-on products and services? In particular, the Commission is contemplating whether any final Rule should require separating the purchase of add-ons from the vehicle sale or lease transaction, or permit consumers to cancel add-ons (that do not involve physical alteration to the vehicle) within a short time after the sale or lease transaction is concluded. What practical limitations might such additional requirements impose?

37. Would the proposal prompt dealers to make offers regarding add-ons at a time and in a manner that is meaningful to consumers, or would it result in yet another disclosure being presented to consumers during an already disclosure-heavy transaction? If it would result in too many disclosures, what other measures could be taken to protect consumers from unauthorized add-ons, or from being induced to purchase add-ons under false pretenses?

38. Proposed § 463.5(c) would prohibit dealers from charging consumers without their Express, Informed Consent, and would provide requirements for what constitutes Express, Informed Consent. Does the proposal provide a meaningful way to obtain consent in an already disclosure-heavy transaction? If it would result in too many disclosures, what other measures could be taken to protect consumers from unauthorized charges? Are there any additional requirements that should be mandated to gain Express, Informed Consent? How do dealers currently obtain consent for charges?

39. The proposed rule would define Express, Informed Consent to exclude signed or initialed documents by themselves (*e.g.,* those without a closely proximate disclosure of the basis and amount for the charge), preprinted checkboxes, and practices designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision making, or choice. Should the Commission identify other practices that do not, in themselves, constitute Express, Informed Consent? Why or why not? Are there other ''dark patterns'' that the Commission should address? Is there language, such as in

other statutes, that the Commission should use to further protect consumers from being charged without Express, Informed Consent?

§ 463.6: Recordkeeping

Proposed § 463.6 would require dealers to keep, for a period of 24 months, records necessary to demonstrate compliance with the proposed rule including all materially different advertisements, sales scripts, training materials, and marketing materials regarding vehicle price, financing, or leasing terms; all materially different copies of lists of add-on products and services; consumer transaction documents such as purchase orders, financing and leasing agreements (and related correspondence, including declination documents as required by proposed § 463.5(b)); records to show compliance with monthly payment disclosure and GAP sales requirements; and certain written consumer complaints and consumer inquiries.

40. Are the proposed recordkeeping requirements clear, meaningful, and appropriate? Should the scope of any of the proposed recordkeeping requirements be expanded or narrowed, and if so, how and why?

41. Would the specified records be appropriate to verify compliance with the proposed rule? Are any of the specified records unnecessary to verify compliance with the proposed rule? If the records listed are not required to be retained, how would such compliance be verified?

42. Should any additional records be specifically listed?

43. Is the 24-month record retention period appropriate? Why or why not? If not, what period is appropriate?

44. What are the current record retention policies and practices of dealers with respect to the records specified in proposed § 463.6?

45. What benefits would these recordkeeping requirements provide to consumers and businesses? What costs would these recordkeeping requirements impose on businesses, including small businesses? What would be the overall economic impact of these requirements? Please quantify these benefits and costs wherever possible.

46. What volume of records would have to be maintained to comply with this section?

47. What has been the experience of State and local law enforcement agencies with respect to record retention requirements? Have such requirements been useful? If yes, how? If no, why not? To what extent have recordkeeping requirements impacted businesses?

§ 463.9: Relation to State Laws

48. Does any portion of the proposed rule duplicate, overlap, or conflict with any federal, state, or local laws or regulations?

49. What has been the experience in states that have regulated unfair or deceptive conduct involving motor vehicles sales, leasing, and financing, including with respect to add-ons? How have any such regulations assisted with combatting unfair or deceptive conduct?

IX. Rulemaking Procedures

Pursuant to the Dodd-Frank Act, the FTC is authorized to prescribe rules under Section 553 of the Administrative Procedure Act (''APA'') [150] with respect to unfair or deceptive acts or practices by motor vehicle dealers as defined in Section 1029 of the Dodd-Frank Act.[151] Under the Dodd-Frank Act, the FTC's APA rulemaking authority became effective as of July 21, 2011, the designated ''transfer date'' established by the Treasury Department.[152] Accordingly, the Commission is publishing this Notice of proposed rulemaking pursuant to Section 553 of the APA.[153]

X. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* requires federal agencies to seek and obtain Office of Management and Budget (''OMB'') approval before undertaking a collection of information directed to ten or more persons. The proposed rule contains disclosure and recordkeeping requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.3(c) under the OMB regulations that implement the PRA.

The Commission estimates that there are approximately 46,525 franchise, new motor vehicle and independent/used motor vehicle dealers in the U.S.[154]

Estimated Annual Hours Burden: 7,816,819 hours.

Estimated Annual Labor Cost: $221,870,782.

Disclosure Requirements

The proposed rule includes disclosure requirements designed to curb pricing, leasing, and financing-related deception and unfairness, particularly regarding the truthfulness of key terms, the costs of add-on products and services, and obtaining consumers' consent to charges, and to promote competition by ensuring that transparent, law-abiding dealers are not competitively disadvantaged.

Add-on List Disclosures: Under § 463.4(b), the proposed rule would require covered motor vehicle dealers that charge for optional add-on products and services to disclose clearly and conspicuously in advertisements and on any website, online service, or mobile application through which they market motor vehicles, and at any dealership, an itemized Add-on List of such products and services and their prices. This information is necessary to prevent misrepresentations regarding add-ons and unfair charges to consumers without their awareness.[155] As set out in detail in the Preliminary Regulatory Analysis,[156] of the 46,525 motor vehicle dealers that would be subject to this Rule, the Commission anticipates those that charge for such add-ons and do not already maintain a list will require approximately 14 hours to create an initial disclosure system, including the time necessary to create and review the required Add-on List, and to design a system that provides for display of the Add-on List on websites or other online services. In addition, the Commission anticipates that periodic revision of these lists will be required, at an estimated 1 hour of clerical staff time per year. Finally, for dealers with an online presence, the Commission estimates 8 additional hours of programmer time to integrate this system across the dealership's online and mobile applications. Assuming all covered dealers charge for such add-ons and do not already maintain this information for consumers, this yields an initial burden estimate of 651,350 hours for the industry (46,525 covered motor vehicle dealers × 14 hours). The Commission further estimates an

[150] 5 U.S.C. 553.

[151] 12 U.S.C. 5519.

[152] *See* 75 FR 57252 (Sept. 20, 2010).

[153] Pursuant to Section 22(d)(4) of the FTC Act, 15 U.S.C. 22(d)(4), this Notice of Proposed rulemaking was not included in the Commission's Spring 2022 Regulatory Agenda because the Commission first considered this notice after the publication deadline for the Regulatory Agenda.

[154] *See* U.S. Census Bureau, *All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=44111%3A44112&tid=CBP2019.CB1900CBP&hidePreview=true&nkd=EMPSZES~001,LFO~001* (listing 21,427 establishments for ''new car dealers,'' NAICS code 44111, and 25,098 establishments for ''used car dealers,'' NAICS code 44112). The discussion in this section of the NPRM concerns facts and statistics for automobiles; we invite submissions of comparable information for other types of motor vehicles.

[155] *See supra* Part V.D.

[156] *See infra* Part XII.C.3.

ongoing, annual periodic revision burden at 46,525 hours (46,525 covered motor vehicle dealers × 1 hour). Combined, this yields an overall estimated annual burden of 697,875 hours for the initial design and periodic revision of Add-on Lists.

The Commission estimates the associated labor costs for these disclosures by applying appropriate hourly labor cost-rates to the hours calculated above.[157] The Commission anticipates that managerial, administrative, and programming staff are likely to perform the tasks associated with preparation of Add-on Lists, including entering data, posting the Add-on Lists in dealerships or submitting them for inclusion on a dealer's website or mobile application, and revising them as needed. In particular, the Commission estimates as follows: 5 hours of time for a finance manager to compile and review a master Add-on List, at a cost-rate of $65.54 per hour; 1 hour of review by a compliance officer, at a cost-rate of $26.83 per hour; 8 hours of time for an programmer to design a system for posting prices on location, at a cost-rate of $28.90 per hour; and 1 hour of time for administrative support staff to make periodic revisions, at a cost-rate of $18.37 per hour. This yields an associated annual labor cost burden of $28,105,752 for the industry.

The Commission also anticipates that the estimated 81% of dealers with an online presence will require 8 hours of programmer work for integration work across online and mobile applications. This yields an estimated annual hours burden of 301,480 hours (46,525 motor vehicle dealers × 81% × 8 hours). Applying associated costs to this estimate yields an annual labor cost burden of $8,712,722 ($28.90 per hour × 81% × 8 hours).

Disclosures Relating to Cash Price without Optional Add-ons: Under § 463.5(b), the proposed rule would require covered motor vehicle dealers that charge consumers for optional add-on products or services to disclose pricing and cost information without such add-ons. First, before discussing any aspect of financing for a specific vehicle, aside from its Offering Price, the dealer must provide the consumer with an itemized disclosure of the vehicle's Cash Price without Optional Add-ons, along with the option to purchase or finance the vehicle for this price, which excludes optional add-on products or services. Second, before charging a consumer for an add-on product or service in a financed transaction, the dealer must provide the consumer with an itemized disclosure of the vehicle's Cash Price without Optional Add-ons, the finance charge, and any consumer-provided consideration. These disclosures must be dated and signed by the consumer and a manager for the dealer prior to consummation of the transaction. As with the proposed Add-on List provision, this information is necessary to prevent misrepresentations regarding the costs of add-ons and to make clear that these products and services are optional to the consumer. This requirement is also intended to prevent unfair practices where dealers include add-ons in contracts without consumer awareness.[158]

As set out in detail in the Preliminary Regulatory Analysis,[159] the Commission anticipates that dealers that charge for optional add-ons will incur certain initial and ongoing costs to provide the disclosures relating to Cash Price without Optional Add-ons. Dealers likely will incur some costs to create and implement templates for these disclosures, either in paper or electronic form. The Commission estimates that these tasks will require approximately 8 hours of work by a compliance officer, at a cost-rate of $26.83 per hour; 4 hours by a sales manager, at a cost-rate of $63.93 per hour; and 8 hours of programmer time, at a cost-rate of $28.90 per hour, for a total of $701.56 and 20 hours per average dealer (($26.83 per hour × 8 hours) + ($63.93 per hour × 4 hours) + ($28.90 per hour × 8 hours)). This yields an estimated hours burden for all dealers, in the first year, of 930,500 hours and an associated labor cost burden of $32,640,079.

Dealers are also likely to incur some annual labor costs to populate data into these disclosures. The Commission anticipates that the added time to input this data for the disclosures relating to Cash Price without Optional Add-ons will be minimal, as they consist of information that dealers already obtain from the consumer in the ordinary course of business in order to complete these vehicle sales transactions. The Commission estimates that inputting the data needed for the disclosures in § 463.5(b)(1), (b)(2), and (b)(3) will take two minutes for a salesperson to complete at a rate of $21.84 per hour. This yields an average cost per disclosure of $0.73 (rounded to the nearest cent) for completing the required disclosures. Dealers would need to provide the § 463.5(b)(1) disclosure for every vehicle they offer for sale with any optional add-on products or services; the 463.5(b)(2) disclosure for every vehicle sale that is financed and includes an optional add-on; and the 463.5(b)(3) disclosure for every vehicle sale that includes an optional add-on.

The Commission estimates that approximately 57,866,000 vehicles are sold annually, including an estimated 17,059,000 new vehicles and 40,807,000 used vehicles.[160] The Commission assumes that each vehicle sale involves an offer of optional add-ons, and further estimates that approximately 81% of new vehicle sales and 35% of used vehicle sales are financed,[161] and that approximately 94% of new vehicle sales and 86% of used vehicle sales includes an optional add-on.[162]

Given these estimates and assumptions, the Commission anticipates that dealers will be required to provide the disclosures in § 463.5(b)(1) in an average of 1,244 transactions per dealer (57,866,000 transactions ÷ 46,525 motor vehicle dealers).[163] This yields an annual hours burden of 1,929,237 hours or approximately 41 hours per average dealer (1,244 × 2/60 hours). The associated annual estimated labor cost is $42,250,283 for all dealers (1,244 transactions × 46,525 dealers × $0.73 per transaction) or approximately $908.12 per average auto dealer.

The Commission anticipates that the average dealer will be required to provide the disclosures in § 463.5(b)(2) in an average of 543 transactions per year. This results in an estimated annual burden of 842,103 hours across the industry or an average of approximately 18 hours per average auto dealer (543 ×

[157] Applicable wage rates are based on data from the Bureau of Labor Statistics' May 2020 National Industry-Specific Occupational Employment and Wage Estimates for NAICS industry category 441100—Automobile Dealers, which is available at *https://www.bls.gov/oes/2020/may/oes_nat.htm.*

[158] *See supra* Part V.E; *see also supra* Part V.D.

[159] *See infra* Part XII.C.5.

[160] U.S. Dept. of Trans., Bureau of Trans. Stat., *New and Used Passenger Car and Light Truck Sales and Leases, https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles* (last visited Apr. 25, 2022) (listing 17,059,000 new vehicle sales and 40,807,000 used vehicle sales in 2019).

[161] Melinda Zabritski, Experian Info. Sol's, Inc., *State of the Automotive Finance Market Q4* 2020 at 5, *https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2020-quarterly-trends/v2-2020-q4-state-automotive-market.pdf* (listing 81.12% of new vehicles and 34.59% of used vehicles with financing in 2020).

[162] Nat'l Auto. Dealers Ass'n, *Average Dealership Profile* at 1 (Aug. 2021), *https://www.nada.org/media/4129/download?inline* (reporting ''F&I penetration'' figures of approximately 93.6% for new vehicles and 86.2% for used vehicles).

[163] The Commission calculates the estimated number of covered transactions as follows: 57,866,000 total vehicle sales ÷ 46,525 dealers.

2/60 hours).[164] The associated annual labor cost is estimated at approximately $18,442,045 for the entire industry or approximately $396 per average auto dealer (543 transactions × $0.73 per transaction).

The Commission estimates that the average dealer will be required to provide the disclosures in § 463.5(b)(3) in an estimated 1,099 transactions.[165] This yields an annual hours burden for providing required itemizations of optional add-ons that are estimated at 1,704,366 across the industry or approximately 37 hours per average auto dealer (46,525 auto dealers × 1,099 × 2/60 hours). The associated labor cost is an estimated $37,325,612 for the industry or approximately $802 per average auto dealer (46,525 motor vehicle dealers × 1,099 transactions × $0.73).

Other Required Disclosures. The proposed rule would prohibit dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles. The proposed prohibitions are consistent with the existing prohibition on misrepresentations under Section 5 of the FTC Act, and do not themselves require additional information collection or disclosures. Thus, while dealers may elect to undertake monitoring or review to ensure compliance, the Commission estimates for present purposes that any additional costs associated with the proposed misrepresentation prohibitions to be *de minimis.*

The proposed rule also would require covered motor vehicle dealers to clearly disclose the Offering Price of a motor vehicle in advertisements and in response to consumer inquiries. This requirement is necessary to address deceptive and unfair practices with respect to vehicle pricing representations, whether add-on products and services are optional and their costs, and consumer consent to purchase such optional products and services.[166] Vehicle pricing activities are usually and customarily performed by dealers in the course of their regular business activities. While the proposed provision may increase the importance of these activities, or alter when in the course of business they are undertaken, the Commission estimates, for present purposes, that any additional costs associated with the proposed offering price requirement to be *de minimis.*

In addition, the proposed rule would require dealers, when making any representation about the monthly payment for a vehicle, to disclose the total amount the consumer will pay to purchase the vehicle at that monthly payment after making all payments as scheduled, as well as the amount of consideration to be provided by the consumer if the total amount disclosed assumes the consumer will provide consideration. The Commission anticipates that such disclosures would contain information already produced in the ordinary course of business and known to dealership staff at the time such disclosures would be required. As such, the Commission anticipates that this proposed provision would merely require a covered motor vehicle dealer to provide readily available information, and that the disclosure burdens associated with these requirements is likely *de minimis.*

Finally, the proposed rule would require covered dealers that sell optional add-on products and services to disclose to consumers that these products are not required. This requirement is necessary to address deceptive and unfair practices regarding these products and services, including misrepresentations that these products are required when they are not, and charging consumers for such products without the consumers' Express, Informed Consent.[167] The proposed rule would also require covered dealers to disclose the total cost of a vehicle when making representations about the monthly payment for the vehicle, as well as that a lower monthly payment will increase the total cost where applicable. These requirements are necessary to address deceptive practices with respect to vehicle pricing representations, including the use of monthly payment amounts to incorrectly imply savings or parity between offers.[168]

The Commission anticipates that the disclosure burdens associated with these requirements is likely *de minimis.* These proposed rule provisions would merely require a covered motor vehicle dealer to provide readily available information to consumers in advertisements or direct communications with customers, as applicable.

Recordkeeping

The proposed rule would require covered motor vehicle dealers to retain, for a period of twenty-four months from the date the record is created, records sufficient to demonstrate their compliance with the Rule and its disclosure requirements. Such records would include advertising materials regarding the price, financing or lease of a motor vehicle; copies of Add-on Lists offered to consumers; copies of the disclosures relating to Cash Price without Optional Add-ons required by the Rule; copies of purchase orders and financing and lease documents signed by the consumer; and records demonstrating compliance with the proposed rule's requirements for add-ons in consumer contracts.

As set out in detail in the Preliminary Regulatory Analysis,[169] the Commission anticipates some incremental recordkeeping burden for covered motor vehicle dealers who would be required to retain copies of Add-on Lists, disclosures relating to Cash Price without Optional Add-ons, and other transaction records necessary to demonstrate compliance with the proposed rule's requirements.

The Commission anticipates that it will take covered motor vehicle dealers approximately 15 hours to modify their existing recordkeeping systems to retain the required records for the 24-month period specified in the proposed rule. This yield a general recordkeeping burden of 697,875 hours annually (46,525 motor vehicle dealers × 15 hours per year).

The Commission anticipates that programming, administrative, compliance, and clerical staff are likely to perform the tasks necessary to comply with these recordkeeping requirements. In particular, the Commission estimates as follows: 8 hours of time for a programmer to design, implement, or update systems for record storage, at a cost-rate of $28.90 per hour; 5 hours of additional clerical staff work, at a cost-rate of $18.37 per hour; 1 hour of sales manager review, at a cost-rate of $63.93 per hour; and 1 hour of review by a compliance officer, at a cost-rate of $26.83 per hour. Applying these cost-rates to the estimated hours burden described above, the total estimated initial labor cost burden is $413.81 per average dealership (($28.90 per hour × 8 hours) + ($18.37 per hour × 5 hours) + ($63.93 per hour × 1 hour) + ($26.83 per hour × 1 hour)), totaling $19,252,510 (rounded to the nearest dollar) across

[164] The Commission estimates the estimated number of covered transactions as follows: ((17,059,000 new vehicle sales × 81% financed × 94% with optional add-ons (*i.e.,* 12,988,722)) + (40,807,000 used vehicle sales × 35% financed × 86% with optional add-ons (*i.e.,* 12,282,907)) ÷ 46,525 dealers).

[165] The Commission calculates the estimated number of covered transactions as follows: ((17,059,000 new vehicle sales × 94% with optional add-ons) + (40,807,000 used vehicle sales × 86% with optional add-ons)) ÷ 46,525 dealers.

[166] *See supra* Part V.D.

[167] *See id.*

[168] *See id.*

[169] *See infra* Part XII.C.7.

the industry ($413.81 per average dealership × 46,525 dealerships).

Beyond those records already created and retained in the ordinary course of business, proposed § 463.6(a)(4) would require covered motor vehicle dealers to create and retain calculations of loan-to-value ratios in contracts including GAP agreements. This requirement is necessary to prevent deception and unfairness relating to the sale of GAP agreements under circumstances in which the consumer would not benefit from such products. As described above, the Commission estimates that covered motor vehicle dealers sell approximately 57,866,000 vehicles each year. The Commission further estimates that approximately 25.7% of such sales include GAP agreements, for an estimated total of 14,871,562 covered vehicle sales.[170]

The Commission estimates that covered motor vehicle dealers will require approximately 1 hour for a sales manager to create and implement a loan-to-value calculation template, at a cost-rate of $63.93 and 1 hour for a compliance officer to review the template, at a cost-rate of $26.83. This yields an estimated initial hours burden for the creation of loan-to-value calculation templates for all dealers of 93,050 hours (46,525 covered motor vehicle dealers × 2 hours). Applying the above-described cost-rates, the associated labor cost burden is estimated at $4,222,609 for all dealers (($63.93 per hour × 1 hour × 46,525 dealerships) + ($26.83 per hour × 1 hour × 46,525 dealerships)). The Commission also anticipates that, with the template in place, covered motor vehicle dealers will expend one minute per sales transaction for a salesperson to perform the calculation contemplated by this requirement, at a cost rate of $21.84 per hour. As described previously, the Commission estimates that covered motor vehicle dealers sell approximately 57,866,000 vehicles each year and approximately 25.7% of such sales include GAP agreements, for an estimated total of 14,871,562 covered vehicle sales. While the number of motor vehicles sold will vary by dealership, this yields an average sales volume of 320 sales transactions per average dealership per year that include a GAP agreement. This yields an estimated annual hours burden for all dealers of 248,133 hours (46,525 covered dealers × 320 covered transactions × 1/60 hours). Applying the associated labor rates yields an estimated annual labor cost for all dealers of $5,419,232 (248,133 hours × $21.84 per hour).

Capital and Other Non-Labor Costs: $14,769,361.

The Commission anticipates that the proposed rule would impose limited capital and non-labor costs. Covered motor vehicle dealers already have in place existing systems for providing sales and contract-related disclosures to motor vehicle buyers and lessees as well as persons seeking information during the vehicle-shopping process. While the proposed rule's disclosure requirements might make limited additions to the types of forms and disclosures that must be provided during the process of selling or leasing a motor vehicle, the Commission anticipates that these changes will not require substantial investments in new systems. Moreover, many dealers may elect to furnish some disclosures electronically, further reducing total costs.

Section 463.4(b) would require dealers who engage in advertising and who also charge for optional add-ons to have a website, online service, or other mobile application by which to disclose an Add-on List. In the Commission's estimation, dealers who engage in covered advertising generally already operate a website or other application by which they could make such disclosures. As such, the Commission estimates the capital costs associated with such additional disclosures are likely *de minimis.*

Covered motor vehicle dealers already have in place existing recordkeeping systems for the storage of documentation they would retain in the ordinary course of business irrespective of the Rule's requirements, including records associating vehicle financing and customer contracts and leases. As set out in detail in the Preliminary Regulatory Analysis,[171] the Commission anticipates the proposed rule's additional recordkeeping requirements may result in incremental non-labor costs to add capacity to these systems in order to store the records. The proposed rule provides that covered motor vehicle dealers may keep the required records in any legible form, and in the same manner, format, or place as they may already keep such records in the ordinary course of business. Accordingly, the proposed rule would not require covered persons to invest in new recordkeeping systems and may retain records in whatever form they prefer, whether hard copy or electronic.

The Commission estimates the non-labor costs incurred by dealers for providing disclosures in written or electronic form will differ based on the method of disclosure employed by the dealer. As explained in detail in the Preliminary Regulatory Analysis,[172] the Commission estimates an average physical cost of disclosure of $0.11 across paper and electronic disclosure methods—a figure which includes (1) an estimated cost of $0.15 per printed disclosure at one single-sided page per disclosure, which is based on industry input regarding the printing costs associated with the FTC's Used Car Rule Buyers Guides; [173] and (2) a cost of $0.02 per disclosure made electronically.[174] As noted above, dealers would need to provide the § 463.5(b)(1) disclosure for every vehicle they offer with any optional add-on products or services; the 463.5(b)(2) disclosure for every vehicle sale that is financed and includes an optional add-on; and the 463.5(b)(3) disclosure for every vehicle sale that includes an optional add-on. The estimated cost of providing these three disclosures annually is approximately $317.45 per average covered dealer,[175] totaling approximately $14,769,361.

The Commission further estimates that covered motor vehicle dealers that store records in hard copy are unlikely to require extensive additional storage for physical document retention. Further, due to the low cost of electronic storage, the Commission anticipates that motor vehicle dealers who store their records electronically

[170] *See* Nat'l Consumer Law Ctr., *Auto Add-ons Add Up: How Dealer Discretion Drives Excessive, Inconsistent, and Discriminatory Pricing* 9 (Oct. 11, 2017), *https://www.nclc.org/images/pdf/car_sales/report-auto-add-on.pdf* (nationwide dataset of 1.8 million car sale transactions, of which 462,170 included GAP agreements).

[171] *See infra* Part XII.C.7.

[172] *Id.*

[173] Fed. Trade Comm'n, Agency Information Collection Activities; Proposed Collection; Comment Request; Extension, 84 FR 38979, 38981 (Aug. 8, 2019) (estimating that average printing cost for the one-page, double-sided Buyers Guide is thirty cents). In making this estimate for printed disclosures, the Commission assumes that all dealers will purchase pre-printed template forms instead of producing them internally, although dealers may produce them at lower expense using their own office automation technology.

[174] The Commission arrived at this figure based on the approximate estimated cost differential between hard copy and electronic disclosures under the Commission's Franchise Rule. Fed. Trade Comm'n, Agency Information Collection Activities; Proposed Collection; Comment Request, 85 FR 19479, 19480 (estimating $35 for paper disclosures and $5 for comparative electronic disclosures).

[175] The Commission obtains this cost estimate as follows: (a) (($0.11 × 57,866,000 total vehicle sales) ÷ 46,525 dealers) + (b) (($0.11 × (17,059,000 new vehicle sales × 81% financed × 94% with optional add-ons) + (40,807,000 used vehicle sales × 35% financed × 86% with optional add-ons) ÷ 46,525 dealers)) + (c) (($0.11 × (17,059,000 new vehicle sales × 94% with optional add-ons) + (40,807,000 used vehicle sales × 86% with optional add-ons) ÷ 46,525 dealers)).

would incur minimal incremental cost to expand their storage capacity in order to comply with the proposed rule's recordkeeping requirements due to the low cost of cloud and other electronic storage options. Any other capital costs associated with the proposed rule are likely to be minimal.

The FTC invites comments on: (1) Whether the proposed information collection requirements should be altered to reduce burdens without reducing protections to consumers, and if so, what alteration should be made; (2) the accuracy of the agency's burden estimates, 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 maintaining records and providing the required information to consumers.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [176] requires that the Commission conduct an initial and a final analysis of the anticipated economic impact of the amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure the agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. The RFA provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.[177]

The Commission believes that the amendments will not have a significant economic impact on small entities, although they will likely affect a substantial number of small entities. The proposed rule would apply to motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, as defined in Section 1029 of the Dodd-Frank Act. Most covered dealers would be classified as small businesses, as explained below.

The Commission invites comment on the burden on any small entities that would be covered and has prepared the following analysis:

1. Description of the Reasons That Agency Action Is Being Considered

The FTC proposes the Rule to curb misleading practices and unauthorized charges to consumers during the vehicle buying or leasing process, and to provide an additional enforcement tool to deter dealer misconduct and remedy consumer harm. The FTC's law enforcement, outreach and other engagement in this area, and the tens of thousands of consumer complaints received by the FTC each year indicate that dealership misconduct and deceptive tactics persist despite substantial federal and state law enforcement efforts. The FTC proposes this Rule pursuant to the Dodd Frank Act, which authorized the FTC to prescribe rules with respect to unfair or deceptive acts or practices by dealers.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to prevent unfair or deceptive acts or practices in the sale, financing, and leasing of motor vehicles. The legal basis for the Rule is the FTC Act, 15 U.S.C. secs. 41 *et seq.,* and the Dodd-Frank Act, Public Law 111–203. Section 1029 of the Dodd-Frank Act, 15 U.S.C. 5519, authorizes the Commission to prescribe rules with respect to motor vehicle dealers pursuant to the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

The proposed rule applies to motor vehicle dealers as defined in Section 1029 of the Dodd-Frank Act.[178] The Commission estimates that there are approximately 46,525 franchise, new motor vehicle, and independent/used motor vehicle dealers in the U.S. The Commission believes that many of these dealers are small businesses according to the applicable Small Business Administration (''SBA'') size standards. Under those standards, new vehicle dealers having fewer than 200 employees each, and used vehicle dealers having annual receipts of less than $27 million, are classified as small businesses.[179]

The Commission seeks comment and information regarding the estimated number and the nature of small business entities for which the proposed rule would have a significant economic impact.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule prohibits unfair or deceptive acts or practices, including misleading practices and unauthorized charges, in motor vehicle sales, financing, and leasing. To prevent such practices, the proposed rule imposes recordkeeping and disclosure requirements. The proposed rule contains no reporting requirements.

The proposed rule would require motor vehicle dealers to clearly disclose the Offering Price of a vehicle in advertisements and in response to consumer inquires. It would also require dealers to make certain disclosures during the sales or leasing process, such as by providing consumers with written disclosures relating to Cash Price without Optional Add-ons stating price information. To enforce the Rule and its disclosure requirements, the proposed rule would require dealers to retain records necessary to demonstrate compliance. Among others, records that would need to be retained include advertising materials regarding the price, financing or lease of a motor vehicle; copies of Add-on Lists offered to consumers; copies of disclosures relating to Cash Price without Optional Add-ons; copies of purchase orders and financing and lease documents signed by the consumer; and, records demonstrating compliance with the proposed rule's requirements for add-ons in consumer contracts. Such records would need to be retained for a period of 24 months from the date they are created, and could be kept in the same manner and form (so long as its legible) they are already kept in the ordinary course of business.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Although there are other federal statutes, rules, or policies that address motor vehicle sales and financing, the Commission has not identified any duplication, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

6. Description of Any Significant Alternatives to the Proposed Rule

The Commission envisioned and drafted this Rule mindful that most

[176] 5 U.S.C. 601–612.

[177] 5 U.S.C. 605.

[178] The Commission is authorized to prescribe rules with respect to a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, as defined in 12 U.S.C. 5519(a).

[179] U.S. Small Business Admin. Table of Small Bus. Size Standards Matched to North American Indus. Classification System [''NAICS''] Codes (effective Aug. 19, 2019), *https://www.sba.gov/document/support-table-size-standards.19,* 2019), *https://www.sba.gov/sites/default/files/2022-05/Table%20of%20Size%20Standards_Effective%20May%202%202022_Final.pdf.* New motor vehicle dealers are classified as NAICS code 441110. Used motor vehicle dealers are classified as NAICS code 441120.

motor vehicle dealers are small entities. Accordingly, the Commission has not proposed any specific alternative compliance mechanisms for small businesses. The Commission seeks comment and information on the need, if any, for alternative compliance methods that would, consistent with the statutory requirements, reduce the economic impact of the proposed rule on small entities.

XII. Preliminary Regulatory Analysis

A. Introduction

The Federal Trade Commission is proposing a rule to provide additional protections to consumers when shopping for motor vehicles. The proposed rule contains several provisions targeted at increasing price transparency for consumers with respect to purchasing, leasing, and financing new and used cars and other motor vehicles. The proposed rule prohibits misrepresentations in the marketing of motor vehicles and motor vehicle financing as well as mandates certain disclosures about prices (of both vehicles and add-on options), fees, and interest rates. In addition, charging for add-on products from which an individual consumer would not benefit is prohibited by the proposed rule.

Section 22 of the FTC Act, 15 U.S.C. 57b–3, requires the Commission to issue a preliminary regulatory analysis when publishing a Notice of proposed rulemaking. The preliminary regulatory analysis must contain (1) a concise description of the need for, and objectives of, the proposed rule; (2) a description of reasonable alternatives that would accomplish the Rule's stated objectives consistent with applicable law; and (3) a preliminary analysis of the benefits and adverse effects of the proposed rule and any alternatives, and of the effectiveness of the proposed rule and any alternatives in meeting the objectives of the proposed rule.

The NPRM discusses regulatory requirements in the following broad areas:

1. Prohibited Misrepresentations
2. Required Disclosure of Offering Price in Advertisements and in Response to Inquiry
3. Required Disclosure of Add-on List and Associated Prices
4. Required Disclosure of Total Cost for Financing/Leasing Transactions
5. Prohibition on Charging for Add-ons in Certain Circumstances
6. Requirement to Obtain Express Informed Consent Before any Charges
7. Recordkeeping

In the analysis below, we describe the anticipated impacts of the Rule as currently proposed. Where possible, we quantify the benefits and costs and present them separately by provision. If a benefit or cost is quantified, we indicate the sources of the data relied upon. If an assumption is needed, the text makes clear which quantities are being assumed. The Commission solicits comments from the public to improve these estimates before promulgation of any final Rule.

Because of the relative size of the automobile market compared to other types of motor vehicle dealers, and the greater availability of relevant information for this market, this preliminary analysis exclusively considers automobile dealers. The Commission expects the analysis and results to be representative of the majority of covered entities and transactions, and that expanding the scope of the analysis is unlikely to lead to different conclusions. The Commission invites submissions of market information for other types of motor vehicles such as boats, RVs, and motorcycles that would allow expansion of the scope of this analysis.

A time period of 10 years is used in the baseline scenario because FTC rules are subject to review every 10 years. Quantifiable aggregate benefits and costs are summarized as the net present value over this 10-year time frame in Table 1.1. Quantifiable benefits derive from time savings due to greater price transparency, leading to a more efficient shopping and sales process. Quantifiable costs primarily reflect the resources expended by automobile dealers in developing the systems necessary to comply with the provisions of the Rule. The discount rate reflects society's preference for receiving benefits earlier rather than later; a higher discount rate is associated with a greater preference for benefits in the present. The present value is obtained by multiplying each year's net benefit by the discount rate a number of times equal to the number of years in the future the net benefit accrues.

TABLE 1.1—PRESENT VALUE OF NET BENEFITS, 2022–2032

	Present value
Total Benefits:	
3% discount rate	$36,337,956,234
7% discount rate	31,081,811,411
Total Costs:	
3% discount rate	1,568,408,501
7% discount rate	1,360,694,552
Net Benefits:	
3% discount rate	34,769,547,733
7% discount rate	29,721,116,859

Note: Total costs reflect highest cost scenarios, for a conservative estimate of Net Benefits.

B. Estimated Benefits of Proposed rule

In this section, we describe the beneficial impacts of the proposed rule, provide preliminary quantitative estimates where possible, and describe benefits that we can only assess qualitatively. Most of the benefits cut across multiple areas addressed by the Rule and these benefits may be impossible to identify separately by area. As a result, we enumerate the benefits of the Rule not by provision, but by category.

1. Consumer Time Savings When Shopping for Motor Vehicle Dealers

Several provisions of the Rule are associated with time savings as a benefit. Required disclosures of relevant prices and prohibitions on misrepresentations save consumers time when shopping for a vehicle by requiring the provision of salient, material information early in the process and eliminating time spent pursuing misleading offers. The Commission's enforcement record shows that consumer search and shopping is sometimes influenced by deceptive advertising that draws consumers to a dealership in pursuit of an advertised deal, only to find out at some point later in the process (if at all)

that the advertised deal is not actually available to them. Motor vehicle consumers frequently begin the process of a motor vehicle transaction (*e.g.,* by visiting a dealership in response to an ad or initiating negotiations in response to a quoted price that is incomplete) and then later abandon the transaction when additional information is revealed. This bait-and-switch or deceptive door-opener advertising has the effect of wasting consumers' time traveling to and negotiating with the dishonest dealership, time which would otherwise be spent pursuing truthful offers in the absence of deception. Unfortunately, the Commission lacks adequate information to determine the quantity of such abandoned transactions and the amount of time spent pursuing them. As a result, this benefit is unquantified in the current analysis. The Commission solicits comment on the frequency of and reasons for abandoned transactions in the motor vehicle market in order to help quantify this important benefit.

However, many consumers end up completing transactions under the status quo—either because full revelation of prices and terms still results in a mutually beneficial transaction or because of constraints on the time consumers can dedicate to their search. These consumers also spend additional, unnecessary time discovering information that dealers would be required to disclose earlier under the proposed rule. The Commission expects these disclosures to improve information flows and consumer search efficiency, including but not limited to, curbing the influence of deception on consumer search and shopping behavior.

The Commission assumes that, as a result of the proposed rule provisions prohibiting misrepresentations and requiring price transparency, each consumer who ends up purchasing a vehicle will spend 3 fewer hours shopping online, corresponding with dealerships, visiting dealer locations, and negotiating with dealer employees per motor vehicle transaction.[180] Assuming that motor vehicle purchase, financing, and lease transactions will be stable at the 2019 level of 62.1 million transactions per year, that amounts to a total time savings of more than 186.3 million hours per year. According to the Bureau of Labor Statistics Occupational Employment Statistics,[181] the average hourly wage of U.S. workers in 2020 was $27.07, and recent research suggests that individuals living in the U.S. value their non-work time at 82% of average hourly earnings.[182] Thus, the value of non-work time for the average U.S. worker would be $22.20 per hour. The resulting total benefit from time savings for completed transactions is roughly $4.1 billion per year, which translates to a present value of between $31.1 billion and $36.3 billion as described in Table 2.1.

TABLE 2.1—ESTIMATED BENEFITS OF TIME SAVINGS FOR COMPLETED TRANSACTIONS

	2022–2032
Completed Transactions:	
Number of vehicle transactions per year [a]	62,107,000
Hours saved per transaction	3
Value of time for vehicle shoppers	$22.20
Abandoned Transactions	*Unquantified*
Total Quantified Benefit:	
3% discount rate	$36,337,956,234
7% discount rate	$31,081,811,411

Note: Benefits have been discounted to the present at both 3% and 7% rates.
[a] National Transportation Statistics, Table 1–17.

2. Consumer Welfare Benefits From Curbing Non-Mutually Beneficial Transactions or Price Effects of Deception

Due to the obfuscation and deception that has been identified in prior FTC law enforcement actions, some consumers end up consummating transactions where the price paid is more than the value they obtain from the product or service (*i.e.,* the highest price the consumer would be willing to pay were the product marketed transparently and non-deceptively). In cases where the value the consumer obtains still exceeds the cost of providing the product or service, there is still a net gain in social welfare from that transaction despite the deception, as resources are allocated to a higher value use. However, those consumers may receive less benefit (*i.e.,* lower consumer surplus), and the dealers may receive higher profits in some transactions relative to a full information benchmark because of the higher prices that can be sustained through deception. Therefore, the presence of deceptive marketing results in a transfer of welfare from these consumers to the dishonest dealers. While it is possible that the Rule may prevent such transfers of wealth that occur through prices supported by deception, the overall effects of the Rule on pricing and competition are difficult to predict.

Typically, transfers of welfare from one set of people in the economy to another are documented in a regulatory analysis, but do not weigh on the outcome. However, as the redistribution of welfare from deceptive firms to victimized consumers is part of the agency's mission, transfers of this kind might weigh in favor of proceeding with the Rule.

In cases where the value a consumer obtains is less than the cost of providing the product, there is a net *loss* in social welfare from that transaction, as resources are allocated to a lower value use. Even under the lower prices that may result from prohibiting the deceptive or unfair practices considered in the proposed rule, no such transaction would transpire. These cases are emblematic of the reduction in social welfare caused by the information asymmetry under the status quo. Under the proposed rule, this information asymmetry between dealers and

[180] According to the 2020 COX Car Buyer Journey study, consumers spent roughly 15 hours researching, shopping, and visiting dealerships for each motor vehicle transaction. 3 hours corresponds to 20% of an average consumer's time spent on such activities. Cox Automotive, *2020 Cox Automotive Car Buyer Journey* 5–6 (2020), *available at https://b2b.autotrader.com/app/uploads/2020-Car-Buyer-Journey-Study.pdf.*

[181] Bureau of Lab. Stats., *May 2020 National Occupational Employment and Wage Estimates, United States, https://www.bls.gov/oes/2020/may/oes_nat.htm* (listing mean hourly wage of $27.07 for all occupations).

[182] Daniel S. Hamermesh, *What's to Know About Time Use?,* 30 J. Econ. Survs. 198, 203 (2016).

consumers is mitigated and some fraction of these transactions (and the associated welfare losses) are prevented. This avoidance of transactions that reduce social welfare is a benefit of the Rule.

i. Advertising Misrepresentations

As discussed above, some advertising misrepresentations regarding prices, the availability of rebates/discounts, monthly payment amounts, and amount due at signing are discovered prior to the consumer consummating the transaction. In these cases, consumers learn that these deceptive door-opener claims were false or misleading, update their beliefs about the deal being presented, and either walk away from the transaction or proceed with the transaction anyway because they do not believe that they will find a better offer (especially considering the time and cost to start the process anew, which can be prohibitive for some consumers). For these individuals, the time spent negotiating under false pretenses and visiting dishonest dealerships is a main source of injury.

In other cases, however, the inaccurate beliefs engendered by such misrepresentations can remain through the consummation of the transaction. For example, if actual terms differing from those that attracted the consumer are buried in the paperwork, the consumer can only discover them at signing. The consumer may persist in the belief that they are getting the deal that the misleading advertising or salesperson's verbal misrepresentations suggested. Only after completing a transaction, if ever, does the consumer realize that they have been misled into a deal that they would not have agreed to with full knowledge of the terms. For these transactions, the cost may exceed the consumer's lost time, provided that the true value the consumer would receive from the transaction is less than the dealer's cost. In these cases, the transaction reduces social welfare. As discussed above, these misrepresentations may also have price effects that result in transfers from the consumer to a dishonest dealer, which the proposed rule would reverse to some extent.

By prohibiting misrepresentations in advertising and enhancing the flow of truthful information to consumers, the proposed rule will reduce the number of inefficient transactions. Fewer consumers will end up consummating transactions that do not benefit them but occur under the status quo due to false beliefs propped up by misleading advertisements or other misrepresentations by dealers. This does not necessarily imply an overall reduction in vehicle sales, as such consumers may instead find transactions with true terms that are mutually agreeable. Ensuring that vehicles are sold, leased, or financed with terms that are mutually agreeable to consumers and dealers will result in an allocation of resources that yields greater social welfare overall.

ii. Add-On Products and Services

Dealers typically offer a host of optional add-on products and services that are sold in a bundle with the vehicle (*e.g.,* extended warranties, service and maintenance plans, payment programs, guaranteed asset protection insurance, emergency road service, VIN etching, undercoating, etc.). However, these add-on products are often not discussed until near the end of the transaction, sometimes after financing terms have already been settled. Some unscrupulous dealers then suggest that some set of add-ons may be required (even if they are truly optional), inflating the price of the bundle beyond what the consumer thought they had negotiated. Alternatively, add-ons that were declined by the consumer or not discussed at all, may simply be ''packed'' into the contract paperwork near the end of the process without the consumer's knowledge. The presence or true price of these packed add-ons often can be obscured by the dealer only reporting the monthly payment amount to the consumer in these late stages of the transaction.

In cases where such misrepresentations are discovered before the transaction is completed, the consumer will learn of the add-on price and the add-on features, decide whether the product is worth the price being charged, and either proceed or not. Again, the consumer's time is wasted, but the transaction itself still yields an increase in social welfare. Price effects of this type of deception may also result in transfers from the consumer to a dishonest dealer, the reversal of which may or may not weigh on the net benefits of the proposed rule depending on whether redistribution of welfare from dishonest dealers to consumers is a goal of the regulation.

In cases where the consumer never learns of the misrepresented or packed add-ons, the consumer may end up paying for add-ons that he or she would not have purchased if the dealer had been transparent about the terms of the contract. Additionally, when the dealer's cost of providing the add-on exceeds the true value the consumer receives, the transaction reduces social welfare, as resources are allocated to a lower value use. The timely flow of truthful information facilitated by the proposed rule can empower consumers to avoid such transactions, generating benefits under the Rule.

Finally, some dealers will charge consumers for add-ons from which the consumer cannot reasonably expect to receive any benefit. For example, guaranteed asset protection (GAP) is an insurance product that covers the difference between what a car is worth and the principal on one's loan in the event that the vehicle is totaled and one's auto insurance payout would not cover the debt. In some circumstances, a consumer's financing contract will outright foreclose this possibility (*i.e.,* if the consumer's down payment is sufficiently high and they will never owe more than the car is worth). Some dealers, however, will still market GAP coverage to such consumers, extracting payments for a product that will never provide any benefit to the consumer. In these cases, it is obvious that the transaction should never occur when a consumer has full information. The proposed rule would prohibit such charges, thus eliminating these transactions and generating benefits.

Without additional information, it is difficult to quantify the number of transactions or potential price effects that would be avoided by the proposed rule. The Commission invites comments on these issues, including information that may be used to quantify this important benefit of the proposed rule.

3. Benefits Related to More Transparent Negotiation

An additional, albeit difficult to quantify, benefit is the reduction in discomfort and unpleasantness that consumers associate with negotiating motor vehicle transactions under the status quo. According to the 2020 Cox Automotive Car Buyer Journey study, filling out paperwork, negotiating vehicle price, and dealing with salespeople are three of the top four frustrations for consumers at car dealerships.[183] Under the proposed rule, all three of these issues will be mitigated somewhat by the transparency facilitated by the Rule's required disclosures. As a result, the time that consumers spend shopping and negotiating motor vehicle transactions will be less stressful. The Commission invites comment on the best approach to quantifying the overall benefits of the

[183] Cox Automotive, *2020 Cox Automotive Car Buyer Journey* 37 (2020), *available at* https://b2b.autotrader.com/app/uploads/2020-Car-Buyer-Journey-Study.pdf.

Rule's provisions that reduce information asymmetries in search and negotiation.

C. Estimated Costs of Proposed Rule

In this section, we describe the costs of the proposed rule provisions as enumerated in Part XII.A, provide preliminary quantitative estimates where possible, and describe costs that we can only assess qualitatively.

1. Prohibited Misrepresentations

The misrepresentations prohibited by the proposed rule are all material and would therefore be considered deceptive under Section 5 of the FTC Act. As a result, motor vehicle dealers who are compliant with Section 5 will continue to be compliant under this provision of the proposed rule. Accordingly, we present one scenario in Table 3.1 where dealers conduct no additional review.

However, because of the enhanced penalty associated with violating the Rule (relative to a *de novo* violation of Section 5 of the FTC Act), dealers may choose to incur additional administrative burdens and costs in order ensure compliance. We present another scenario in Table 3.1 where dealers employ professionals to engage in additional compliance review for all new advertisements, websites, listings, etc. For this scenario, the Commission assumes a professional will spend 5 additional minutes reviewing each public-facing representation and that each dealer produces an average of 150 unique marketing representations per year.[184] At a labor rate of $26.83 per hour for compliance officers employed at auto dealers, this cost is estimated at $15.6 million per year.[185] The total present value of costs is tabulated in Table 3.1. The Commission seeks comments on the foregoing assumptions required to reach these estimates.

TABLE 3.1—ESTIMATED COMPLIANCE COSTS FOR PROHIBITED MISREPRESENTATIONS

	2022–2032
Scenario 1—No Review:	
No cost	$0
Total Cost	0
Scenario 2—Heightened Compliance Review:	
Number of dealers [a]	46,525
Number of documents per dealer per year	150
Minutes of review per document	5
Cost per hour of review	$26.83
Total Cost:	
3% discount rate	137,092,486
7% discount rate	117,262,588

Note: In scenarios with ongoing expenses, costs have been discounted to the present at both 3% and 7% rates.
[a] County Business Patterns 2019, NAICS Code 4411 (Automobile Dealers, used and new)

2. Required Disclosure of Offering Price in Advertisements and in Response to Inquiry

The proposed rule requires all dealers to disclose an Offering Price in any advertisement that references an individual vehicle or in response to any consumer inquiry about an individual vehicle, as well as on the disclosures required at various points in the negotiation. Since dealers already choose prices for all vehicles under the status quo, we present one scenario in Table 3.2 where there is no cost to dealers of complying with this requirement.

However, another scenario accounts for the increased cost to the dealers resulting from the increased importance of the pricing decision under the proposed rule. The discussion below considers the marginal costs to the dealer associated with calculating prices that conform to a certain definition and are associated with penalties should they fail to conform to that definition. We assume that all dealers will incur some upfront cost to create/update a pricing model that incorporates the requirements of the Rule. The Commission assumes that each dealer employs 8 hours of sales and marketing manager time and 8 hours of programmer time—at hourly rates of $63.93 and $28.90, respectively—in order to reformulate their pricing system to comply with the required disclosures. This total cost is estimated to be $34.6 million. Both scenarios are summarized in Table 3.2.

The Commission further assumes that, once calculated, the cost of including this information in response to consumer inquiries about specific vehicles will be negligible to the extent that the dealer would respond to such inquiries under the status quo baseline. If, however, this provision leads to a behavioral adjustment by some dealerships to not respond at all to consumer inquiries about specific vehicles, there may be associated costs to consumers and dealers relative to the baseline. The Commission lacks enough information to determine whether and the extent to which such behavioral responses would occur or what the welfare costs of those adjustments would be. As a result, these costs are left unquantified in the preliminary analysis.

In addition to the expenditure associated with pricing the vehicles, there is an opportunity cost to dealers and consumers associated with mandating disclosures of Offering Prices on advertisements. If dealers choose to convey the same amount of information about offered vehicles as before disclosure was required, they must reformat their advertisements accordingly, spending the required resources to do so. If not, dealers must choose which information will be replaced by the mandated Offering Price disclosure. Finally, it is also possible that some dealers will choose to comply by refraining from advertising

[184] While many dealers disseminate more than 150 marketing representations per year, most are variants on the same underlying ''model'' marketing representation. It is these materially distinct ''models'' that we consider in this scenario.

[185] Wage data for dealer employees comes from the U.S. Bureau of Labor Statistics, Industry-Specific Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2020/may/naics4_441100.htm,* unless otherwise noted.

individual vehicles or responding to consumer inquiries about specific vehicles, which would require consumers to seek this information through some means other than an advertisement, thus increasing their costs of search. These opportunity costs are difficult to estimate and our preliminary analysis does not include quantification of these impacts. The Commission seeks comments on these costs, particularly regarding how dealers anticipate complying with these requirements, in order to reach more accurate estimates of costs.

TABLE 3.2—ESTIMATED COMPLIANCE COSTS FOR OFFERING PRICE DISCLOSURES

	2022 only
Scenario 1—No Review:	
No cost	$0
Total Cost	0
Scenario 2—Calculation of Offering Price:	
Number of dealers	46,525
Pricing hours per dealer	8
Cost per hour of pricing	$63.93
Programming hours per dealer	8
Cost per hour of programming	28.90
Total Cost	34,551,326

3. Required Disclosure of Add-on List and Associated Prices

The proposed rule requires all dealers to disclose an itemized menu of all optional add-on products and services along with prices on all dealer-operated websites, online services, and mobile applications as well as at all dealership locations. As add-on product pricing is not uniformly posted publicly in dealerships or on dealer websites at baseline, compliance with the Rule will require every dealer who charges for optional add-ons to create a public-facing master Add-on List and a system for posting prices at their dealerships. In addition, every dealer with an online presence must create a system for posting add-on prices online and via any applications they may publish. Without additional information on how many dealers charge for optional add-ons, the Commission assumes that every dealer incurs an upfront cost, employing a finance manager for 5 hours at an hourly rate of $65.54 to create the master Add-on List and a compliance manager for 1 hour at an hourly rate of $26.83 to review the master list to ensure it satisfies the requirements under the Rule. In addition, each dealer will employ 8 hours of programmer time at an hourly rate of $28.90 in order to design such a system for posting prices on location. Additionally, each dealer with an online presence (assumed 81%) employs 8 additional hours of programmer time to implement such a system across their online and mobile applications. The Commission further assumes that periodic revision of these lists will be required and budgets 1 hour of clerical staff time per year (at a cost of $18.37 per hour) for this task. These costs are summarized in Table 3.3.

TABLE 3.3—ESTIMATED COMPLIANCE COSTS FOR ADD-ON LISTS

	2022 only	2022–2032
Creation of Add-On Lists and display systems		
Number of dealers	46,525	
Finance manager hours per dealer	5	
Cost per hour of list development	$65.54	
Compliance manager hours per dealer	1	
Cost per hour of compliance review	$26.83	
Programmer hours per dealer	8	
Number of dealers with online presence	37,685.25	
Add'l programmer hours per online dealer	8	
Cost per hour of programming	$28.90	
Subtotal	$35,963,918	
Periodic revision of lists		
Number of dealers		46,525
Clerical hours spent revising Add-on List		1
Cost per hour of revision		$18.37
Subtotal		
3% discount rate		$7,509,173
7% discount rate		$6,423,000
Total Cost		
3% discount rate		$43,473,091
7% discount rate		$42,386,918

Note: In scenarios with ongoing expenses, costs have been discounted to the present at both 3% and 7% rates.

4. Required Disclosure of Total Financing/Contract Costs

The proposed rule requires all dealers to disclose, in any transaction that features a monthly payment, the total cost of the financing/leasing contract. In addition, in any comparison of two contracts with different monthly payments, the dealer is required to disclose that the contract with the lower monthly payment features a higher total cost (if true) and disclose the total cost corresponding to each monthly payment offer. We consider two scenarios that bear on the mechanical costs of implementing the requirements under these provisions. In the first scenario, dealers incur a one-time, upfront cost when designing these disclosures and informing associates of their obligations to provide the disclosures, but incur negligible ongoing costs on a per transaction basis. This reflects a compliance regime where dealers already generate the required information during the normal course of business and must only convey it to consumers verbally at an appropriate point in the transaction. In the second scenario, dealers incur an additional ongoing cost per financed transaction in order to communicate the required disclosures to consumers in writing. This reflects a compliance regime where dealers may or may not generate the required information during the normal course of business and/or find it necessary to maintain a documentary record of compliance with the Rule.

The upfront costs of complying with this provision are relatively limited; every dealer must create a template disclosure script that contains this information and communicate it to associates so that they understand their obligations. The Commission assumes an employee will spend 8 hours creating this disclosure and informing sales staff. At a labor rate of $26.83 for compliance managers, this cost is estimated at $10 million.

For the second scenario involving ongoing costs, we estimate there are roughly 32 million vehicle transactions each year subject to this requirement (financed sales of new and used vehicles plus leased vehicles). The Commission assumes an employee will spend 2 minutes per vehicle populating these disclosures and dealers will incur a printing cost of $0.15 per transaction. At a labor rate of $21.84 for sales staff, the total additional cost under this scenario is estimated at $213.4–$249.5 million; see Table 3.4.

TABLE 3.4—ESTIMATED COMPLIANCE COSTS FOR FINANCING COST DISCLOSURES

	2022 only	2022–2032
Scenario 1—Creation of disclosure only		
Number of dealers	46,525	
Compliance manager hours per dealer	8	
Cost per hour of disclosure creation	$26.83	
Scenario 1—Total Cost	$9,986,126	
Scenario 2—Disclosures per transaction		
New vehicle sales per year [a]		17,059,000
% New vehicle sales involving financing [b]		81%
Used vehicle sales per year		40,807,000
% Used vehicle sales involving financing		35%
New vehicle leases per year		4,242,000
Total transactions involving monthly payment/financing		32,342,240
Disclosure minutes per transaction		2
Cost per hour of disclosure		$21.84
Printing costs per disclosure		$0.15
Subtotal		
3% discount rate		$249,494,625
7% discount rate		$213,406,193
Scenario 2—Total Cost		
3% discount rate		$259,480,751
7% discount rate		$223,392,319

Note: In scenarios with ongoing expenses, costs have been discounted to the present at both 3% and 7% rates.
[a] National Transportation Statistics 2021, Table 1–17.
[b] Experian Information Solutions, Inc., State of the Automotive Finance Market Q4 2020.

5. Prohibition on Charging for Add-ons in Certain Circumstances

The proposed rule prohibits dealers from marketing or selling add-on products or services from which the targeted consumer would not benefit. Compliance with this provision will require dealers to have a transaction-level system for identifying consumers who will not benefit or, in some cases, predicting the potential consumer benefit from particular add-on products and services. In addition, this system will have to be supplemented with policies and transaction-level rules about when add-on products and services can be offered. Finally, because dealers will not always have all of the relevant information at their disposal at the point of sale, such a system is likely to falsely identify some transactions as non-beneficial for the consumer. In cases where consumers would benefit in excess of the price of the add-on product or service, this provision will result in welfare costs associated with the foreclosure of such transactions.[186] At this stage, all of these costs are difficult to quantify. The Commission invites comment from dealers and consumers in order to assess the difficulty of implementing this requirement and the possibility for foreclosure of mutually beneficial transactions.

The proposed rule also prohibits dealers from charging for any optional add-on products or services unless dealership employees make certain disclosures at various points in the buying process. Before referencing any financing terms (other than Offering Price) for a specific vehicle or consummating a cash transaction, the dealer must disclose the total cost of purchasing the vehicle in cash—without any charges for optional add-ons or financing—in a format that itemizes the Offering Price; any discounts, rebates, or

[186] The benefits from transactions correctly identified as non-beneficial to the consumer are discussed at *supra* Part XII.B.2.

trade-in values; and required government charges. The dealer must further indicate clearly that the consumer has the option to purchase the vehicle for this amount in cash and obtain the consumer's signed declination of that option.

Furthermore, before charging for any optional add-ons in a transaction involving financing, the dealer must disclose the total cost of financing the vehicle—without any charges for optional add-ons—in a format that itemizes the Offering Price; any discounts, rebates, or trade-in values; any cash down payment made; and required government charges. The dealer must also indicate clearly at this point that the consumer has the option to finance the vehicle for this amount and obtain the consumer's signed declination of that option. Finally, before charging for any optional add-ons, the dealer must disclose the total cost of purchasing or financing the vehicle plus the add-ons selected by the consumer—either as a separately itemized total cash price for a non-financed transaction or a separately itemized total price for a financed transaction.

In order to comply with these disclosure provisions, each dealer will have to design form disclosures that contain the required information, create a system for populating these forms, and then provide the disclosures in writing, with the appropriate information filled in, to each consumer prior to completing the transaction. We assume that each consumer will receive each disclosure required by the provisions exactly once during each transaction (if relevant).[187]

The Commission assumes that each dealer will employ 8 hours of compliance manager time (at a rate of $26.83) and 4 hours of sales manager time (at a rate of $63.93) creating these disclosures, and 8 hours of programmer time (at a rate of $28.90) creating a system to populate these forms when provided inputs by sales staff. We further assume that sales staff will spend 2 minutes per disclosure (at a rate of $21.84 per hour) updating, printing, and delivering these forms to consumers and that the physical costs of delivering the disclosure are roughly $0.11 per disclosure.[188] One disclosure is required for all new and used vehicle sales, an additional disclosure is required for transactions with optional add-ons (94% new and 86% used), and a third disclosure would be required for financed transactions with optional add-ons (76% new and 30% used).[189] All of these costs are summarized in Table 3.5. The Commission seeks comments on these costs, particularly regarding how dealers anticipate complying with these requirements, in order to reach more accurate estimates of costs.

TABLE 3.5—ESTIMATED COMPLIANCE COSTS FOR ITEMIZED DISCLOSURES

	2022 only	2022–2032
Creation of disclosures		
Number of dealers	46,525	
Compliance manager hours per dealer	8	
Cost per hour of compliance manager	$26.83	
Sales manager hours per dealer	4	
Cost per hour of sales manager	$63.93	
Programmer hours per dealer	8	
Cost per hour of programming	$28.90	
Subtotal	$32,640,079	
Disclosure delivery (per transaction)		
New vehicle sales per year		17,059,000
% New vehicle sales involving optional add-ons [a]		94%
% New vehicle sales involving financing		81%
Used vehicle sales per year		40,807,000
% Used vehicle sales involving optional add-ons [b]		86%
% Used vehicle sales involving financing		35%
Minutes per disclosure		2
Cost per hour of disclosure		$21.84
Physical costs per disclosure		$0.11
Subtotal.		
3% discount rate		$994,356,865
7% discount rate		$850,526,991
Total Cost.		
3% discount rate		$1,026,996,944
7% discount rate		$883,167,070

Note: In scenarios with ongoing expenses, costs have been discounted to the present at both 3% and 7% rates.
[a] National Automobile Dealers Association, Average Dealership Profile (Aug. 2020)
[b] National Automobile Dealers Association, Average Dealership Profile (Aug. 2020)

[187] One consequence of this provision is that consumers, with the benefit of clear disclosure of the various prices, will renegotiate some aspect of the sale in order to obtain a more favorable deal. Any such renegotiation would require the completion of another disclosure prior to consummating the transaction, which is assumed away here.

[188] The physical costs are $0.15 per paper disclosure and $0.02 per electronic disclosure, assuming that 27% are made electronically. This assumption is informed by a consumer survey that indicates 73% of consumers with motor vehicles prefer to receive registration renewal notices by mail as opposed to electronically. *See* Consumer Action, Your opinion wanted: Paper vs. electronic bills, statements and other communications (Winter 2018–2019), *https://www.consumer-action.org/downloads/Consumer_Action_Paper_v_electronic_survey.pdf.*

[189] We implicitly assume there is no correlation between the presence of optional add-ons and the use of financing in a transaction, such that we can multiply the percentages. We also assume the percentage of sales featuring optional add-ons will not decrease in response to the Rule, although decreasing the frequency of deceptive or unauthorized sales is a significant channel through which consumer and social benefits may accrue.

6. Requirement To Obtain Express Informed Consent Before Any Charges

The proposed rule requires dealers to obtain Express Informed Consent before charging any consumer for any product or service in association with the sale, financing, or lease of a vehicle. It is the understanding of the Commission that all dealers that are complying with the law currently have policies in place to prevent charges without consent; it is unclear what additional practices for those dealers will be required to comply with this provision.

7. Recordkeeping

The proposed rule requires dealers to retain records of all documents pertaining to Rule compliance. These recordkeeping requirements include:

- Copies of all materially different marketing materials, sales scripts, and training materials that discuss sales prices and financing/lease terms.
- Copies of all materially different Add-on Lists.
- Records demonstrating that all add-ons charged for meet the requirements under the Rule, including calculations of loan-to-value ratios in contracts including GAP Agreements.
- Copies of all purchase orders, financing and lease contracts signed by the consumer (whether or not final approval is received), and all written communications with any consumer who signs a purchase order or financing or lease contract.
- Copies of all written consumer complaints, inquiries related to add-ons, and inquiries and responses about individual vehicles.

Most of these documents are already being produced in the normal course of business prior to the Rule, or the costs of creating them have already been accounted for in previous sections. The Commission assumes that each dealer incurs an upfront cost, employing 8 hours of programmer time, 5 hours of clerical time, 1 hour of sales manager time, and 1 hour of compliance officer time, at hourly rates of $28.90, $18.37, $63.93, and $26.83, respectively, in order to upgrade their systems and create the templates necessary to accommodate retention of all relevant materials. In addition, loan-to-value calculations are now required for all transactions with GAP Agreements, the creation of which has not been accounted for in previous sections. The Commission assumes that each dealer employs 1 additional minute of sales staff time per transaction with a GAP agreement in order to populate and store all relevant materials. These costs are summarized in Table 3.6.

We expect that some small dealerships may not have the ability to automate these processes in a way that reduces the ongoing costs of recordkeeping to the level stated here. We invite comment on the proportion of dealerships that would rely more heavily on manual record retention and the associated impact on costs so that we may update our cost estimates for this provision accordingly.

In addition, the expansion of the volume of records that dealers are required to retain and manage will likely require investment in additional IT systems and hardware. In the absence of information regarding the volume of new data (*e.g.,* numbers of inquiries per dealer, numbers of consumer complaints, communications per consummated transaction, etc.), the Commission leaves these capital costs unquantified in the preliminary analysis and seeks comment from stakeholders in order to obtain the information necessary to estimate costs.

TABLE 3.6—ESTIMATED COMPLIANCE COSTS FOR RECORDKEEPING

	2022 only	2022–2032
Updating systems		
Number of dealers	46,525	
Programming hours per dealer	8	
Cost per hour of programming	$28.90	
Clerical hours per dealer	5	
Cost per hour of clerical work	$18.37	
Sales manager hours per dealer	1	
Cost per hour of sales manager review	$63.93	
Compliance officer hours per dealer	1	
Cost per hour of compliance review	$26.83	
Subtotal	$19,252,510	
Recordkeeping (per transaction)		
Number of motor vehicle sales [a]		57,866,000
% of sales with GAP agreement [b]		26%
Sales staff minutes per transaction		1
Cost per hour of recordkeeping		$21.84
Subtotal		
3% discount rate		$47,561,392
7% discount rate		$40,681,820
Total Cost		
3% discount rate		$66,813,902
7% discount rate		$59,934,330

Note: In scenarios with ongoing expenses, costs have been discounted to the present at both 3% and 7% rates.
[a] National Transportation Statistics, Table 1–17
[b] National Consumer Law Center, *Auto Add-ons Add Up: How Dealer Discretion Drives Excessive, Inconsistent, and Discriminatory Pricing*

D. Other Impacts of Proposed Rule

As the status quo in this industry features consumer search frictions, shrouded prices, deception, and obfuscation, dealers likely charge higher prices than could be supported under the Rule for a number of products and services. The Commission expects that prices are likely to adjust in response to the transparency facilitated by the new Rule. Part XII.B discussed the benefits

that occur when quantities adjust in a more transparent and less deceptive equilibrium. Price adjustments typically serve to transfer welfare from one side of the market to the other. For example, in a typical market if quantity sold remains constant in response to the implementation of a rule but prices decrease, consumer welfare would increase, but producer profits would decrease by roughly the same amount, leaving total social welfare roughly constant. However, if the Rule curbs price effects caused by *deception,* the transfers caused by these price effects would redistribute welfare away from dishonest dealers and toward consumers, which may be an explicit goal of the rule.

In addition, deceptive practices by dishonest dealers lead consumers to engage with those dealers instead of honest dealerships. Under the proposed rule, some business that would otherwise have gone to dealers using bait-and-switch tactics or deceptive door opening advertisements will now go to honest dealerships. Again, assuming that the costs of the firms are similar, any one-for-one diversion of sales from one set of businesses to another is generally characterized as a transfer under the OMB guidelines for regulatory impact analysis. However, in this case, it would represent a transfer from the set of dishonest dealers to honest dealers, which may weigh differently if profits from law violations are not counted towards social welfare in the regulatory analysis.

While each provision above will affect consumer prices for vehicles, add-ons, financing etc. and the distribution of sales across dealerships, estimating the magnitudes of these effects is difficult and requires information that is currently not available. As a result, we have not attempted to quantify these impacts. However, these transfers should be documented because, at minimum, they inform the distributional effects of the proposed rule. The Commission invites comment on how prices might be expected to respond to the proposed rule, in order to quantify its price effects and resulting distributional impact or impact on net benefits and costs.

E. Conclusion

In the preceding Preliminary Regulatory Analysis, we have attempted to catalog and quantify the incremental benefits and costs of the provisions included in the proposed rule. Extrapolating these benefits out over the 10-year assessment period and discounting to the present provides an estimate of the present value for total benefits and costs of the proposed rule, with the difference—net benefits—providing one measure of the value of regulation.

The present value of benefits for consumers from the proposed rule's requirements over a 10-year period using a 7% discount rate is estimated at $31.1 billion. The present value of costs for covered motor vehicle dealers of complying with the proposed rule's requirements over a 10-year period using a 7% discount rate is estimated at $1.4 billion. This generates an estimate of the present value of net benefits equal to $29.7 billion using a discount rate of 7%.

Consequently, this Preliminary Regulatory Analysis indicates that adoption of the proposed rule would result in benefits to the public that outweigh the costs.

PRESENT VALUE OF NET BENEFITS, 2022–2032

	Present value
Total Benefits:	
3% discount rate	$36,337,956,234
7% discount rate	$31,081,811,411
Total Costs:	
3% discount rate	$1,568,408,501
7% discount rate	$1,360,694,552
Net Benefits:	
3% discount rate	$34,769,547,733
7% discount rate	$29,721,116,859

Note: Total costs reflect highest cost scenarios, for a conservative estimate of Net Benefits.

List of Subjects in 16 CFR Part 463

Consumer protection, Motor vehicles, Reporting and recordkeeping requirements, Trade practices.

For the reasons stated in the preamble, the Federal Trade Commission proposes to add part 463 to subchapter D of Title 16 of the Code of Federal Regulations as follows:

PART 463—MOTOR VEHICLE TRADE REGULATION RULE

Sec.

463.1 Authority.
463.2 Definitions.
463.3 Prohibited misrepresentations.
463.4 Disclosure requirements.
463.5 Dealer Charges for add-ons and other items.
463.6 Recordkeeping.
463.7 Waiver not permitted.
463.8 Severability.
463.9 Relation to State laws.

Authority: 15 U.S.C. 41 *et seq.;* 12 U.S.C. 5519.

§ 463.1 Authority.

This part is promulgated pursuant to Section 1029 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. 5519(d). It is an unfair or deceptive act or practice within the meaning of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) to violate any applicable provision of this part, directly or indirectly, including the recordkeeping requirements which are necessary to prevent such deceptive acts or practices and to enforce this part.

§ 463.2 Definitions.

(a) *Add-on* or *Add-on Product(s) or Service(s)* means any product(s) or service(s) not provided to the consumer or installed on the vehicle by the motor vehicle manufacturer and for which the Motor Vehicle Dealer, directly or indirectly, charges a consumer in connection with a vehicle sale, lease, or financing transaction.

(b) *Add-on List* means an itemized list of all optional Add-on Products or Services for which the Motor Vehicle Dealer, directly or indirectly, charges consumers. The Add-on List must Clearly and Conspicuously disclose each such optional Add-on and the price of each such Add-on. If the Add-on price varies, the disclosure must include the price range the typical consumer will pay instead of the price.

(c) *Cash Price without Optional Add-ons* means Offering Price, plus required Government Charges, minus any discounts, rebates, or trade-in valuation amounts, and excludes optional Add-ons.

(d) *Clearly and Conspicuously* means in a manner that is difficult to miss (*i.e.,* easily noticeable) and easily understandable, including in all of the following ways:

(1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

(2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

(3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and

cadence sufficient for ordinary consumers to easily hear and understand it.

(4) In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

(5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

(6) The disclosure must comply with these requirements in each medium through which it is received.

(7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

(e) *Dealer* or *Motor Vehicle Dealer* means any person or resident in the United States, or any territory of the United States, that:

(1) Is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles;

(2) Takes title to, holds an ownership interest in, or takes physical custody of motor vehicles; and

(3) Is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(f) *Express, Informed Consent* means an affirmative act communicating unambiguous assent to be charged, made after receiving and in close proximity to a Clear and Conspicuous disclosure, in writing, and also orally for in-person transactions, of the following:

(1) What the charge is for; and

(2) The amount of the charge, including, if the charge is for a product or service, all fees and costs to be charged to the consumer over the period of repayment with and without the product or service. The following are examples of what does not constitute Express, Informed Consent:

(i) A signed or initialed document, by itself;

(ii) Prechecked boxes; or

(iii) An agreement obtained through any practice designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice.

(g) *GAP Agreement* means an agreement to indemnify a vehicle purchaser or lessee for any of the difference between the actual cash value of the insured's vehicle in the event of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle, or to waive the unpaid difference between money received from the purchaser's or lessee's motor vehicle insurer and some or all of the amount owed on the vehicle at the time of the unrecovered theft or total loss, including products or services otherwise titled ''Guaranteed Automobile Protection Agreement,'' ''Guaranteed Asset Protection Agreement,'' ''GAP insurance,'' or ''GAP Waiver''.

(h) *Government Charges* means all fees or charges imposed by a Federal, State or local government agency, unit, or department, including taxes, license and registration costs, inspection or certification costs, and any other such fees or charges.

(i) *Material* or *Materially* means likely to affect a person's choice of, or conduct regarding, goods or services.

(j) *Motor Vehicle* means:

(1) Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(2) Recreational boats and marine equipment;

(3) Motorcycles;

(4) Motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in §§ 571.3(b) and 575.103(d) of title 49, Code of Federal Regulations, or any successor thereto; and

(5) Other vehicles that are titled and sold through Dealers.

(k) *Offering Price* means the full cash price for which a Dealer will sell or finance the motor vehicle to any consumer, excluding only required Government Charges.

§ 463.3 Prohibited misrepresentations.

It is a violation of this part and an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act (''FTC Act'') for any Motor Vehicle Dealer to make any misrepresentation, expressly or by implication regarding:

(a) The costs or terms of purchasing, financing, or leasing a vehicle.

(b) Any costs, limitation, benefit, or any other Material aspect of an Add-on Product or Service.

(c) Whether the terms are, or transaction is, for financing or a lease.

(d) The availability of any rebates or discounts that are factored into the advertised price but not available to all consumers.

(e) The availability of vehicles at an advertised price.

(f) Whether any consumer has been or will be preapproved or guaranteed for any product, service, or term.

(g) Any Material information on or about a consumer's application for financing.

(h) When the transaction is final or binding on all parties.

(i) Keeping cash down payments or trade-in vehicles, charging fees, or initiating legal process or any action if a transaction is not finalized or if the consumer does not wish to engage in a transaction.

(j) Whether or when a Motor Vehicle Dealer will pay off some or all of the financing or lease on a consumer's trade-in vehicle.

(k) Whether consumer reviews or ratings are unbiased, independent, or ordinary consumer reviews or ratings of the Dealer or its products or services.

(l) Whether the Dealer or any of its personnel or products or services is or was affiliated with, endorsed or approved by, or otherwise associated with the United States government or any Federal, State, or local government agency, unit, or department, including the United States Department of Defense or its Military Departments.

(m) Whether consumers have won a prize or sweepstakes.

(n) Whether, or under what circumstances, a vehicle may be moved, including across state lines or out of the country.

(o) Whether, or under what circumstances, a vehicle may be repossessed.

(p) Any of the required disclosures identified in this part.

§ 463.4 Disclosure requirements.

It is a violation of this part and an unfair or deceptive act or practice in violation of section 5 of the FTC Act for any Motor Vehicle Dealer to fail to make any disclosure required by this section, Clearly and Conspicuously.

(a) *Offering Price.* In connection with the sale or financing of vehicles, a vehicle's Offering Price must be disclosed:

(1) In any advertisement that references, expressly or by implication, a specific vehicle;

(2) In any advertisement that represents, expressly or by implication, any monetary amount or financing term for any vehicle; and

(3) In any communication with a consumer that includes a reference, expressly or by implication, regarding a specific vehicle, or any monetary amount or financing term for any vehicle. With respect to such communications:

(i) The Offering Price for the vehicle must be disclosed in the Dealer's first response regarding that specific vehicle to the consumer; and

(ii) If the communication or response is in writing, the Offering Price must be disclosed in writing.

(b) *Add-on List.* If a Dealer charges, directly or indirectly, for any optional Add-on Products or Services, an Add-on List must be disclosed:

(1) On each website, online service, or mobile application operated by or on behalf of the Dealer, and at each dealership; and

(2) If an advertisement is not presented on a website, online service, or mobile application, the Dealer must disclose the website, online service, or mobile application where the consumer can view the Add-on List.

(c) *Add-ons not required.* When making any representation, expressly or by implication, directly or indirectly, about an Add-on Product or Service, the Dealer must disclose that the Add-on is not required and the consumer can purchase or lease the vehicle without the Add-on, if true. If the representation is in writing, the disclosure must be in writing.

(d) *Total of payments and consideration for a financed or lease transaction.* (1) When making any representation, expressly or by implication, directly or indirectly, about a monthly payment for any vehicle, the Dealer must disclose the total amount the consumer will pay to purchase or lease the vehicle at that monthly payment after making all payments as scheduled. If the representation is in writing, the disclosure must be in writing; and

(2) If the total amount disclosed assumes the consumer will provide consideration (for example, in the form of a cash down payment or trade-in valuation), the Dealer must disclose the amount of consideration to be provided by the consumer. If the representation is in writing, the disclosure must be in writing.

(e) *Monthly payments comparison.* When making any comparison between payment options, expressly or by implication, directly or indirectly, that includes discussion of a lower monthly payment, the Dealer must disclose that the lower monthly payment will increase the total amount the consumer will pay to purchase or lease the vehicle, if true. If the representation is in writing, the disclosure must be in writing.

§ 463.5 Dealer Charges for Add-ons and Other Items

It is a violation of this part and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for any Motor Vehicle Dealer, in connection with the sale or financing of vehicles, to charge for any of the following.

(a) *Add-ons that provide no benefit.* A Dealer may not charge for an Add-on Product or Service if the consumer would not benefit from such an Add-on Product or Service, including:

(1) Nitrogen-filled tire related-products or services that contain no more nitrogen than naturally exists in the air; or

(2) Products or services that do not provide coverage for the vehicle, the consumer, or the transaction, or are duplicative of warranty coverage for the vehicle, including a GAP Agreement if the consumer's vehicle or neighborhood is excluded from coverage or the loan-to-value ratio would result in the consumer not benefiting financially from the product or service.

(b) *Undisclosed or unselected Add-ons.* A Dealer may not charge for any optional Add-on Product or Service unless the following requirements are met:

(1) *Cash Price without Optional Add-ons.*—(i) *Disclosure.* Before referencing any aspect of financing for a specific vehicle (aside from the Offering Price) or before consummating a non-financed sale, whichever is earlier, the Motor Vehicle Dealer must Clearly and Conspicuously disclose:

(A) The Cash Price without Optional Add-ons, separately itemizing the Offering Price, any discounts, any rebates, any trade-in valuation, and required Government Charges; and

(B) That the consumer can purchase the vehicle for the Cash Price without Optional Add-ons; and

(ii) *Declination.* The consumer must decline to purchase the vehicle for the Cash Price without Optional Add-ons.

(iii) *Form and signature.* The Cash Price without Optional Add-ons disclosure and declination set forth in paragraphs (b)(1)(i) and (ii) of this section must be in writing, date and time recorded, and signed by the consumer and a manager of the Motor Vehicle Dealer.

(iv) *Presentation.* The Cash Price without Optional Add-ons disclosure and declination set forth in paragraphs (b)(1)(i) and (ii) of this section must be limited to the information required by this section, and cannot be presented with any other written materials.

(2) *Cash Price without Optional Add-ons in a financed transaction.*—(i) *Disclosure.* Before charging for any optional Add-on in a financed transaction, the Motor Vehicle Dealer must Clearly and Conspicuously disclose:

(A) The total of the Cash Price without Optional Add-ons plus the finance charge, factoring in any cash down payment and trade-in valuation, and excluding optional Add-ons. This disclosure must separately itemize the Cash Price without Optional Add-ons, the finance charge, any cash down payment, and any trade-in valuation; and

(B) That the consumer can finance the vehicle for that total; and

(ii) *Declination.* The consumer must decline to purchase the vehicle for that total set forth in paragraph (b)(2)(i)(A).

(iii) *Form and signature.* The disclosure and declination set forth in paragraphs (b)(2)(i) and (ii) of this section must be in writing, date and time recorded, and signed by the consumer and a manager of the Motor Vehicle Dealer.

(iv) *Presentation.* The disclosure and declination set forth in paragraphs (b)(2)(i) and (ii) of this section must be limited to the information required by this section, and cannot be presented with any other written materials.

(3) *Itemization of optional Add-ons.* Before charging for any optional Add-on, the Motor Vehicle Dealer must separately itemize and Clearly and Conspicuously disclose:

(i) For a non-financed transaction:

(A) The Cash Price without Optional Add-ons;

(B) Charges for any optional Add-ons selected by the consumer, separately itemized; and

(C) The sum of the items set forth in paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this section; or

(ii) For a financed transaction,

(A) The total described in paragraph (b)(2)(i)(A) of this section;

(B) Charges for any optional Add-ons selected by the consumer, separately itemized; and

(C) The sum of the items set forth in paragraphs (b)(3)(ii)(A) and (b)(3)(ii)(B) of this section.

(c) *Any item without Express, Informed Consent.* A Dealer may not charge a consumer for any item unless the Dealer obtains the Express, Informed Consent of the consumer for the charge.

§ 463.6 Recordkeeping.

(a) Any Motor Vehicle Dealer subject to this part must create and retain, for a period of twenty-four months from the date the record is created, all records necessary to demonstrate compliance with this part, including the following records:

(1) Copies of all Materially different advertisements, sales scripts, training materials, and marketing materials regarding the price, financing or lease of a motor vehicle, that the Motor Vehicle Dealer disseminated during the relevant time period. Provided that a typical example of a credit or lease advertisement may be retained for advertisements that include different

vehicles, or different amounts for the same credit or lease terms, where the advertisements are otherwise not Materially different;

(2) Copies of all Materially different Add-on Lists and all documents describing such products or services that are offered to consumers;

(3) Copies of all purchase orders; financing and lease documents with the Motor Vehicle Dealer signed by the consumer, whether or not final approval is received for a financing or lease transaction; and all written communications relating to sales, financing, or leasing between the Motor Vehicle Dealer and any consumer who signs a purchase order or financing or lease contract with the Motor Vehicle Dealer;

(4) Records demonstrating that Add-ons in consumers' contracts meet the requirements of § 463.5, including copies of all service contracts, GAP Agreements and calculations of loan-to-value ratios in contracts including GAP Agreements; and the Cash Price without Optional Add-ons disclosures and declinations required by § 463.5(b); and

(5) Copies of all written consumer complaints relating to sales, financing, or leasing, inquiries related to Add-ons, and inquiries and responses about vehicles referenced in § 463.4.

(b) Any Motor Vehicle Dealer subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they may already keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section will be a violation of this part.

§ 463.7 Waiver not permitted.

It is a violation of this part for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this part.

§ 463.8 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions will continue in effect.

§ 463.9 Relation to State laws.

(a) *In General.* This part will not be construed as superseding, altering, or affecting any other State statute, regulation, order, or interpretation relating to Motor Vehicle Dealer requirements, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part.

By direction of the Commission.

April J. Tabor,

Secretary.

Note: The following statement will not appear in the Code of Federal Regulations: Joint Statement of Chair Lina M. Khan, Commissioner Noah Joshua Phillips, Commissioner Rebecca Kelly Slaughter, and Commissioner Alvaro M. Bedoya Regarding the Notice of Proposed Rulemaking on a Motor Vehicle Dealers Trade Regulation Rule (June 23, 2022)

The Commission has voted today to release a Notice of Proposed Rulemaking to address unfair and deceptive practices in car sales. Cars are vital for Americans, especially those living in rural areas or where mass transit is limited. They are crucial for people to get to work, to shop for groceries, and to get to doctor's appointments. For many Americans, buying a car is the most expensive purchase they will ever make. And in this time of rising prices and supply shortages, it is vitally important that Americans not be deceived when purchasing a car, particularly when it comes to ''junk fees'' or unnecessary add-ons.[190] Add-ons can cost consumers thousands of dollars and can significantly increase the overall cost to the consumer in the transaction

The proposed rule builds on the FTC's work over decades, which confirmed that add-ons are a significant pain point for the car buying public.[191] FTC staff's in-depth interviews with consumers during a recent study revealed that consumers were unaware which add-ons they had purchased, were unable to identify add-ons in the paperwork, were unclear what those add-ons included, and sometimes did not realize they had purchased any add-ons at all. Indeed, add-ons were the single greatest area of confusion observed in the study.[192]

If this rule is finalized, the FTC will be able to bring enforcement actions to obtain civil penalties or redress for consumers from those who violate the rule's provisions. This tool will be especially important given last year's Supreme Court decision in *AMG,*[193] which held that the FTC cannot use Section 13(b) of the FTC Act to make consumers who are harmed by deception or unfair practices financially whole. The proposed rule also has been crafted carefully not to impose unnecessary burdens on the mostly small businesses in this industry.

This proposed rule is another example of how the FTC is using the full set of tools granted us by Congress to protect Americans from deceptive or unfair practices. Here, we are using—for the first time—authority that Congress gave us back in 2010 through the Dodd-Frank Act,[194] which authorizes the FTC to prescribe rules governing motor vehicle dealers, and to do so pursuant to the FTC Act and the Administrative Procedure Act.

Given the panoply of harms that Americans face from unlawful business practices, bringing an end to unlawful fees that hurt Americans already struggling with high prices is critical. We thank the Bureau of Consumer Protection staff for their excellent work on this effort and look forward to hearing from the public on this vital initiative.

Dissenting Statement of Commissioner Christine S. Wilson

Today the Commission votes to seek comment on a proposed Motor Vehicle Dealers Trade Regulation Rule. Experience reveals that even when motivated by the best of intentions, regulatory schemes frequently fail to generate promised improvements for their intended beneficiaries. Instead, they tend to create market distortions that stifle innovation, increase costs and prices, and ultimately harm consumers. For these reasons, I respectfully dissent.

Here, there is no question that our staff is motivated by the best of intentions. The FTC has brought scores of law enforcement actions attempting to curb deceptive or unfair practices in this industry, including deceptive pricing claims and undisclosed charges for add-ons. Staff also has conducted an industry study, worked extensively with industry trade associations to educate

[190] *See* Nat'l Consumer L. Ctr., Auto Add-Ons Add Up: How Dealer Discretion Drives Excessive, Arbitrary and Discriminatory Pricing (2017), *https://www.nclc.org/images/pdf/car_sales/report-auto-add-on.pdf.* Not all add-ons provide no value. The NPRM limits its prohibition to ones that do.

[191] Fed. Trade Comm'n, Buckle Up: Navigating Auto Sales and Financing (2020), *https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf.*

[192] *Id.* at 9.

[193] *AMG Capital Mgmt., LLC.* v. *FTC,* 141 S. Ct. 1341 (2021).

[194] 12 U.S.C. 5519.

businesses on best practices, and engaged in consumer education about vehicle purchases. Despite this array of efforts that spans law enforcement, consumer and business education, and guidance on industry self-regulatory programs, unlawful practices persist.

The proposals in this **Federal Register** Notice generally are tied to the practices challenged in our law enforcement. Notably, the Commission has authority to promulgate this Rule under the Administrative Procedures Act (APA), and therefore does not need to demonstrate prevalence as would be necessary for a Rule proposed under Section 18 of the FTC Act (*i.e.,* a so-called Mag-Moss Rule). Nevertheless, the Notice sets forth a record of law enforcement that likely would satisfy a prevalence analysis. I commend staff on their careful approach to this proposed Rule.

Despite staff's meticulous analysis and drafting, I have concerns about this proposal. It prohibits deceptive practices but also requires numerous disclosures related to offering price, add-ons, and monthly financing. Although staff endeavored to tailor these provisions to the deceptive practices challenged in our cases, I anticipate unintended but negative consequences.

Several factors drive this concern. First, even APA rulemaking is cumbersome and lengthy, making it difficult to keep rules up to date.[1] Politically charged topics (as this one may be) impose even greater delays on rulemaking.[2] Second, historical experience demonstrates that complex regulatory frameworks stifle innovation, increase costs, raise prices, limit choice, and decrease output. For example, the intricate regulatory frameworks for the airline and railroad industries suppressed competition and harmed the very parties they were intended to benefit.[3] Ultimately, they were repealed on a bipartisan basis.[4] The FTC has its own experience with rules that limit competition: the FTC's Care Labeling Rule has been criticized for excluding new competition in the form of wet cleaners that would compete with dry cleaners.[5] Third, attempts to narrowly tailor rules are frequently unsuccessful. Technologies and markets evolve in ways regulators are unable to predict, leading either to mission creep [6]—the expansion of regulatory regimes to address these unforeseen developments—or to ossification, given the opportunity cost of frequent updates to reflect emerging market realities.

Notably, the motor vehicle industry has benefitted from innovation in all areas—safety, performance, options, and sales.[7] For example, in the 1980s, GM created the Saturn project, introducing a then-revolutionary way to manufacture, market, and sell cars.[8] More recently, consumer car shopping has moved online with services that assist consumers in price negotiation and location of desired vehicles.[9] In addition, Tesla and Carvana have introduced sales models that obviate the need to enter a dealership at all.[10] And sales practices will continue to evolve.[11] The market dynamism flowing from these innovations make it likely that an FTC rule will be incomplete even as it is finalized.

Stakeholder input on these potential concerns would be constructive. I would be interested in comments on the following issues:

1. Anticipated changes in the automobile marketplace with respect to technology, marketing, and sales, and whether it is possible to future-proof the proposed Rule so that it avoids inhibiting beneficial changes in these areas.

2. Insights into why deceptive practices persist in this industry and whether additional business education would assist businesses with compliance.

3. Avenues for consumer education to assist consumers with navigating these and other important financial transactions and decisions, including through improved financial literacy. How could state and local agencies support and amplify FTC consumer education efforts? To what extent is financial literacy taught in middle schools and high schools, and how effective are those efforts? What more could be done?

4. Potential negative consequences of, or costs attendant to, the Rule that the Commission may not have anticipated.

I encourage stakeholders to provide detailed comments on these questions, as well as on the issues in the **Federal Register** Notice. I look forward to reviewing the record as it develops. But for the reasons discussed above, I respectfully dissent.

[FR Doc. 2022–14214 Filed 7–12–22; 8:45 am]

BILLING CODE 6750–01–P

[1] One study found the FTC takes more than five years, on average, to formulate a consumer protection rule. *See* Jeffrey S. Lubbers, *It's Time to Remove the 'Mossified' Procedures for FTC Rulemaking,* 83 Geo.Wash. L. Rev. 1979 (2015), *https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2086&context=facsch_lawrev.*

[2] The updates to the Contact Lens Rule generated significant interest from Congress and industry trade groups, for example, and took 5 years to complete. *See* Remarks of Christine S. Wilson for the Federalist Society at ''The Future of Rulemaking at the FTC'' Event, Hey, I've Seen This One: Warnings for Competition Rulemaking at the FTC (June 9, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1591666/wilson_statement_back_to_the_future_of_rulemaking.pdf.*

[3] Christine S. Wilson & Keith Klovers, *The Growing Nostalgia for Past Regulatory Misadventures and the Risk of Repeating These Mistakes with Big Tech,* 8 J. Antitrust Enf't. 10 (2019), *https://academic.oup.com/antitrust/article/8/1/10/5614371;* Remarks of Christine S. Wilson at British Institute of International and Comparative Law, Remembering Regulatory Misadventures: Taking a Page from Edmund Burke to Inform Our Approach to Big Tech (June 28, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1531816/wilson_remarks_biicl_6-28-19.pdf;* Dissenting Statement of Christine S. Wilson on the Energy Labeling Rule, Comm'n Matter No. R611004 (Oct. 22, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf.*

[4] *See* Remarks of Christine S. Wilson for the Federalist Society at ''The Future of Rulemaking at the FTC'' Event, *supra* note 2.

[5] *Id.* at 9.

[6] *Id.* at 8 (describing how ICC jurisdiction over railroads expanded to include other forms of transportation, including trucks, barges, and pipelines, as those industries grew to compete with railroads).

[7] *See, e.g.,* McFadden, Christopher, *20+ Greatest Innovations and Inventions of Automobile Engineering: From the First Engine to Today,* Interesting Engineering (Jun. 18, 2020), *https://interestingengineering.com/20-greatest-innovations-and-inventions-of-automobile-engineering-from-the-first-engine-to-today* (discussing the 20 greatest innovations in automobiles from the steam engine to internal combustion, including flashing turn signals, air bags, rear back-up cameras, GPS and connected cars).

[8] *See* Stern, Randy, *Historiography: A Different Kind of Car Company,* Victory & Reseda (Jul. 25, 2020), *https://www.randystern.net/historiography-saturn/.*

[9] *See, e.g.,* Howarth, Josh, *5 Important Auto Industry Trends (2022–2024),* exploding topics (May 19, 2022), *https://explodingtopics.com/blog/auto-industry-trends* (noting over 90% of car purchasers perform online research; 80% of buyers used third-party services to assist in purchasing a car in 2019; and Carvana's sales grew 37% in 2020); Soucie, Hale, *NADA 2022: Top 3 Trends & Strategies To Watch, Edifice Automotive Marketing* (Mar. 2022), *https://blog.edificeautomotive.com/nada-2022-top-3-trends* (noting continued increase in digital car buying).

[10] Stenquist, Paul, *Why You Might Buy Your Next Car Online,* N.Y. Times, Jun. 21, 2022, *https://www.nytimes.com/2022/06/21/business/tesla-online-sales-dealerships.html?referringSource=articleShare* (discussing the Tesla online car buying system); Korn, Morgan, *More consumers are shopping online for cars. Can dealerships keep up? ABC News,* Mar. 28, 2021, *https://abcnews.go.com/Business/consumers-shopping-online-cars-dealerships/story?id=76650042* (discussing increase in online shopping for cars, limited trips to dealerships to buy chosen vehicles, and solely online purchases through Carvana and Tesla).

[11] *See, e.g., The future of car buying: Omnichannel, personalized, and fun,* McKinsey & Co. (Sept. 2020), *https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/The%20Next%20Normal/The-Next-Normal-The-future-of-car-buying-vF.*

FEDERAL REGISTER

Vol. 87 Wednesday,
No. 133 July 13, 2022

Part IV

The President

Proclamation 10422—Death of Abe Shinzo
Executive Order 14076—Protecting Access to Reproductive Healthcare Services
Notice of July 11, 2022—Continuation of the National Emergency With Respect to Hong Kong

Federal Register
Vol. 87, No. 133
Wednesday, July 13, 2022

Presidential Documents

Title 3—

The President

Proclamation 10422 of July 8, 2022

Death of Abe Shinzo

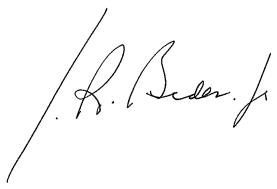
By the President of the United States of America

A Proclamation

The longest serving Prime Minister in Japan's history, Abe Shinzo was a proud servant of the Japanese people and a faithful friend to the United States. He worked with American Presidents of both parties to deepen the Alliance between our nations and advance a common vision for a free and open Indo-Pacific. Even in the moment he was attacked and killed, he was engaged in the work of democracy, to which he dedicated his life.

As a mark of respect for the memory of Abe Shinzo, former Prime Minister of Japan, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, July 10, 2022. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



[FR Doc. 2022–15135
Filed 7–12–22; 11:15 am]
Billing code 3395–F2–P

Presidential Documents

Executive Order 14076 of July 8, 2022

Protecting Access to Reproductive Healthcare Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Nearly 50 years ago, *Roe* v. *Wade,* 410 U.S. 113 (1973), articulated the United States Constitution's protection of women's fundamental right to make reproductive healthcare decisions. These deeply private decisions should not be subject to government interference. Yet today, fundamental rights—to privacy, autonomy, freedom, and equality—have been denied to millions of women across the country.

Eliminating the right recognized in *Roe* has already had and will continue to have devastating implications for women's health and public health more broadly. Access to reproductive healthcare services is now threatened for millions of Americans, and especially for those who live in States that are banning or severely restricting abortion care. Women's health clinics are being forced to close—including clinics that offer other preventive healthcare services such as contraception—leaving many communities without access to critical reproductive healthcare services. Women seeking abortion care—especially those in low-income, rural, and other underserved communities—now have to travel to jurisdictions where services remain legal notwithstanding the cost or risks.

In the face of this health crisis, the Federal Government is taking action to protect healthcare service delivery and promote access to critical reproductive healthcare services, including abortion. It remains the policy of my Administration to support women's right to choose and to protect and defend reproductive rights. Doing so is essential to justice, equality, and our health, safety, and progress as a Nation.

Sec. 2. *Definitions.* (a) The term ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than one considered to be an independent regulatory agency, as defined in 44 U.S.C. 3502(5).

(b) The term ''reproductive healthcare services'' means medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

Sec. 3. *Protecting Access to Reproductive Healthcare Services.* (a) Within 30 days of the date of this order, the Secretary of Health and Human Services shall submit a report to the President:

(i) identifying potential actions:

(A) to protect and expand access to abortion care, including medication abortion; and

(B) to otherwise protect and expand access to the full range of reproductive healthcare services, including actions to enhance family planning services such as access to emergency contraception;

(ii) identifying ways to increase outreach and education about access to reproductive healthcare services, including by launching a public awareness initiative to provide timely and accurate information about such access, which shall:

(A) share information about how to obtain free or reduced cost reproductive healthcare services through Health Resources and Services Administration-Funded Health Centers, Title X clinics, and other providers; and

(B) include promoting awareness of and access to the full range of contraceptive services, as well as know-your-rights information for those seeking or providing reproductive healthcare services; and

(iii) identifying steps to ensure that all patients—including pregnant women and those experiencing pregnancy loss, such as miscarriages and ectopic pregnancies—receive the full protections for emergency medical care afforded under the law, including by considering updates to current guidance on obligations specific to emergency conditions and stabilizing care under the Emergency Medical Treatment and Labor Act, 42 U.S.C. 1395dd, and providing data from the Department of Health and Human Services concerning implementation of these efforts.

(b) To promote access to reproductive healthcare services, the Attorney General and the Counsel to the President shall convene a meeting of private pro bono attorneys, bar associations, and public interest organizations in order to encourage lawyers to represent and assist patients, providers, and third parties lawfully seeking these services throughout the country.

Sec. 4. *Protecting Privacy, Safety, and Security.* (a) To address potential heightened safety and security risks related to the provision of reproductive healthcare services, the Attorney General and the Secretary of Homeland Security shall consider actions, as appropriate and consistent with applicable law, to ensure the safety of patients, providers, and third parties, and to protect the security of clinics (including mobile clinics), pharmacies, and other entities providing, dispensing, or delivering reproductive and related healthcare services.

(b) To address the potential threat to patient privacy caused by the transfer and sale of sensitive health-related data and by digital surveillance related to reproductive healthcare services, and to protect people seeking reproductive health services from fraudulent schemes or deceptive practices:

(i) The Chair of the Federal Trade Commission (FTC) is encouraged to consider actions, as appropriate and consistent with applicable law (including the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*), to protect consumers' privacy when seeking information about and provision of reproductive healthcare services.

(ii) The Secretary of Health and Human Services shall consider actions, including providing guidance under the Health Insurance Portability and Accountability Act, Public Law 104–191, 110 Stat. 1936 (1996) as amended by Public Law 111–5, 123 Stat. 115 (2009), and any other statutes as appropriate, to strengthen the protection of sensitive information related to reproductive healthcare services and bolster patient-provider confidentiality.

(iii) The Secretary of Health and Human Services shall, in consultation with the Attorney General, consider actions to educate consumers on how best to protect their health privacy and limit the collection and sharing of their sensitive health-related information.

(iv) The Secretary of Health and Human Services shall, in consultation with the Attorney General and the Chair of the FTC, consider options to address deceptive or fraudulent practices related to reproductive healthcare services, including online, and to protect access to accurate information.

Sec. 5. *Coordinating Implementation Efforts.* (a) The Secretary of Health and Human Services and the Director of the Gender Policy Council shall establish and co-chair an Interagency Task Force on Reproductive Healthcare Access (Task Force). Additional members shall include the Attorney General and the heads of other agencies as determined by the Secretary of Health and Human Services and the Director of the Gender Policy Council. The Task Force shall work to identify and coordinate activities to protect and strengthen access to essential reproductive healthcare services. In addition, the Task Force shall coordinate Federal interagency policymaking, program development, and outreach efforts to address barriers that individuals and entities may face in seeking and providing reproductive healthcare services.

The Department of Health and Human Services shall provide funding and administrative support as may be necessary for the performance and functions of the Task Force.

(b) The Attorney General shall provide technical assistance, as appropriate and consistent with applicable law, concerning Federal constitutional protections to States seeking to afford legal protection to out-of-State patients and providers who offer legal reproductive healthcare.

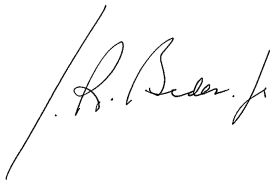
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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 order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.



THE WHITE HOUSE,
July 8, 2022.

[FR Doc. 2022–15138
Filed 7–12–22; 11:15 am]
Billing code 3395–F2–P

Presidential Documents

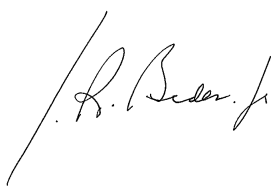
Notice of July 11, 2022

Continuation of the National Emergency With Respect to Hong Kong

On July 14, 2020, by Executive Order 13936, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation with respect to Hong Kong.

The situation with respect to Hong Kong, including recent actions taken by the People's Republic of China to fundamentally undermine Hong Kong's autonomy, continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on July 14, 2020, must continue in effect beyond July 14, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13936 with respect to the situation in Hong Kong.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 11, 2022.

[FR Doc. 2022–15140
Filed 7–12–22; 11:15 am]
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