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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 100, 110, and 165**

**[Docket Number USCG–2025–0903]**

**RIN 1625–AA08, AA01, AA87**

## Special Local Regulation, Temporary Anchorage Ground Suspension, and Security Zones: Sail 4th 250, International Naval Review 250; Port of New York and New Jersey

**AGENCY:** Coast Guard, Department of Homeland Security.

**ACTION:** Temporary final rules.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations and multiple security zones, and temporarily suspending certain anchorage grounds in New York Harbor, Sandy Hook Bay, and the Hudson River before, during, and after Sail 4th 250 events, the U.S. Navy's International Naval Review 250 and International Aerial Review, and Independence Day fireworks displays to be held between July 1, 2026 and July 9, 2026. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during these events.

**DATES:** Effective July 1, 2026, 33 CFR 110.155(c)(1), (c)(2), (c)(5)(ii), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), (d)(8), (d)(11), (d)(12), (d)(13), (d)(14), (d)(15), (e)(1), (m)(2), and (m)(3) are stayed until July 9, 2026. The regulations at 33 CFR 100.T0199–0903 and 33 CFR 165.T01–0903 are effective from July 1, 2026, through July 9, 2026. In some cases, portions of the rules will only be subject to enforcement during specified periods and these enforcement periods are identified in the **SUPPLEMENTARY INFORMATION** section and in the regulatory text.

**ADDRESSES:** To view documents mentioned as available in the docket, go to *https://www.regulations.gov* and search for USCG–2025–0903.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email: Mr. Craig Lapiejko, Waterways Management, Coast Guard Northeast District, telephone 571–607–6314, email *Craig.D.Lapiejko@uscg.mil,* or CDR Timothy Bonner, Sector New York Waterways Management Division, U.S. Coast Guard; telephone 571–610–1808, email *Timothy.A.Bonner@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
CGD–NE Coast Guard Northeast District Commander
COTP Captain of the Port, Sector New York
DHS Department of Homeland Security
FR Federal Register
IAR International Aerial Review
INR 250 International Naval Review 250
NJ New Jersey
NY New York
NPRM Notice of proposed rulemaking
§ Section
U.S. United States
U.S.C. United States Code
VTS Vessel Traffic Service, New York

### II. Background and Authority

On June 1, 2025, Sail 4th 250® [1] and the United States Navy formally notified the Coast Guard Captain of the Port, New York (COTP) that, from July 1, 2026, through July 9, 2026, they will be conducting a series of major marine events in New York Harbor including a Tall Ship Parade of Sail,[2] an International Naval Review 250 (INR 250),[3] and an International Aerial Review (IAR) [4] in celebration of America's 250th birthday. The Sail250® Tall Ships tour, which also includes the ports of New Orleans, LA; Norfolk, VA; Baltimore, MD; and Boston, MA, has been designated as a Marine Event of National Significance.[5] Under the authorities in 33 U.S.C. 2071; 46 U.S.C. 70006, 70034, 70041, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4; the Coast Guard Northeast District Commander (CGD–NE) and the COTP, have determined these regulations are necessary for the safety of Sail 4th 250 participants, INR 250 participants, spectators and other non-participants, and their vessels operating in and around Port of New York and New Jersey, and life and property.

On December 19, 2025, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special local regulation, Temporary anchorage ground suspension, and Security Zones: Sail 4th 250, International Naval Review 250; Port of New York and New Jersey (90 FR 59422). In that NPRM, the Coast Guard explained why the NPRM was issued and invited comments on the proposed regulatory actions related to these events.

### III. Discussion of Comments, Changes, and the Rule

*Discussion of Comments*

During the comment period that ended on February 17, 2026, the Coast Guard received 287 submissions. These comments were submitted by a broad spectrum of stakeholders, including commercial operators, community boating organizations, industry associations, government agencies, event organizers, small businesses, and individual recreational users. A portion of the comments expressed support for the Coast Guard's safety and security objectives, recognizing the need for special regulations during large-scale maritime events involving increased vessel traffic and heightened safety and security concerns. These commenters emphasized the importance of clearly identified regulated areas, effective communication, and coordination with event organizers to ensure public safety and operational continuity.

Opposition to the NPRM primarily came from paddlecraft users, community boating organizations, jet ski tour operators, and small businesses, who argued that the restrictions were overbroad, unjustified, and harmful to public access and local economic activity. Most concerns focused on the ''blanket ban'' of paddlecraft, the impact on summer paddlecraft programs, and the disproportionate effect on small operators and nonprofits. We discuss these comments in greater detail, below.

The Coast Guard received a significant number of comments, representing approximately 85% of all submissions, regarding the proposed

[1] *https://www.sail250.org/.*

[2] *https://sail4th.org/.*

[3] *https://www.navy.mil/Navy-250/Events/.*

[4] *https://www.navy.mil/Navy-250/Events/* as part of the America 250th celebration, headlined by the U.S. Navy Blue Angels.

[5] 46 CFR 26.03–8.

prohibition on paddlecraft, rowboats, and other human-powered vessels in the proposed Regulated Area ''B'' from July 1–9, 2026. The overwhelming majority of these commenters opposed the prohibition, describing it as an overly broad ''blanket ban'' that was not justified by any specific risk data. They argued it would be detrimental to nonprofit and community-based programs, economically harmful to small businesses that provide tours and instruction, and an affront to the historical significance of human-powered craft in New York Harbor.

Many commenters offered constructive alternatives, such as establishing managed transit corridors along the shorelines (a ''pierhead-to-pierhead'' access zone), creating designated spectator areas for paddlers, exempting tributaries and embayments from the restricted area, and applying the same rules to paddlecraft as are applied to other recreational vessels.

The Coast Guard acknowledges the considerable feedback from the paddlecraft community and appreciates the constructive alternatives proposed. The initial proposal for a broad restriction was based on the unique safety and security challenges posed by an event of this scale, which includes numerous large naval vessels and tall ships, high-density recreational traffic, the difficulty of monitoring small, low-profile craft in such a complex environment, and the unconfirmed totality of competing, concurrent, and complex events during this period.

The Coast Guard carefully considered these recommendations and recognizes the historical importance and value of paddlecraft in New York Harbor. In response to public input and in alignment with the final safety and security plan for the event based on a firmer understanding of the totality of the events, the Coast Guard has determined that a less restrictive approach can be implemented without compromising the core objectives of safety and security. Therefore, this temporary final rule has been amended to allow for limited, managed access for paddlecraft. The Coast Guard is removing the prohibition and will allow paddlecraft to operate in Regulated Area ''B'' under the same rules as other recreational vessels, except on July 4th. On July 4th, a modified prohibition on paddlecraft remains in effect. Paddlecraft are not permitted unrestricted transit throughout Regulated Area ''B'' due to increased vessel traffic and heightened safety and security concerns associated with Independence Day activities, but they may launch at specific locations in Regulated Area ''B.'' Paddlecraft launching from one of those locations must remain within one of the four designated paddlecraft-only spectator areas discussed later in this document. Additionally, the Coast Guard will be reducing the boundaries of Regulated Area ''B'' on the East River to include only the portion between the Williamsburg Bridge and the Upper Bay, and to exclude the Gowanus Canal east of the Hamilton Avenue Bridge, and the Harlem River to further support general public access. Designated paddlecraft-only spectator areas will be established to enable their participation as spectators without compromising the safety of life, property, and the environment. These modifications are intended to balance the needs of the paddlecraft community with the paramount requirement for event safety and security.

Numerous commenters, including commercial vessel operators, marina managers, and community boating organizations, expressed concerns about the scope and duration of the proposed security zones. Many noted that the fixed security zones could restrict access to marinas, essential services, and waterfront facilities for extended periods, and requested that the Coast Guard minimize impacts by reducing the size and enforcement periods of these zones. Stakeholders also recommended establishing transit corridors and open channels to allow safe passage for vessels, especially during periods when naval vessels are not present.

In response, the Coast Guard revised the proposed regulation text to clarify enforcement periods, ensuring that security zones are only active when U.S. or foreign naval vessels are anchored or moored. Furthermore, the security zones were segmented to establish transit corridors designed to accommodate anticipated high-density vessel traffic areas near Edgewater Marina, Port Imperial Terminal, Weehawken Cove, Hoboken Station, Newport Marina, and Morris Canal. We have modified certain boundaries of the proposed security zones, particularly those that follow the shoreline, to ensure effective monitoring and enforcement. As a result, certain zones cannot be further reduced without compromising the ability to maintain security during the event.

The Coast Guard received significant public input on the proposed spectator areas. Many commenters, especially from the paddlecraft and boating communities, requested expanded access, including additional designated areas for non-motorized vessels. Some commenters raised concerns that the initial proposal did not adequately accommodate the diversity of waterway users and would negatively impact public access and local programs during the event.

In response, we have added four paddlecraft-only spectator areas on July 4th in the temporary final rule. These will be available exclusively to paddlecraft situated within the Hudson River embayments between Pier 94 and Pier 97, as well as in the vicinity of Maxwell Place Park, Pier 40 South, and Pier 26. On July 4th, paddlecraft may launch within these areas but they must remain within the corresponding designated paddlecraft-only spectator area. Those planning to use these paddlecraft-only spectator areas are advised that state and local ordinances may apply. They should also be aware that access to some of these paddlecraft-only spectator areas may only be available through private property, businesses, marinas, or clubs. They should therefore make inquiries to the respective owner or operator regarding access and launching requirements and procedures.

In the NPRM, the Coast Guard stated that vessel operators seeking to attend in designated spectator areas during the Sail 4th 250 event would have the opportunity to obtain a ticket through procedures established by the event sponsor. Responding to the ticketing restriction, however, some commenters, small charter vessel operators in particular, expressed concern about being excluded from spectator areas.

After considering these comments, and after further coordination with the event sponsor, the Coast Guard decided that tickets would not be required for access to spectator areas. This change is intended to simplify access, reduce administrative burdens, and promote broader participation while maintaining effective oversight, safety, and security for all attendees. We do wish to emphasize, however, that while registration is not mandatory, vessel operators may only access spectator areas subject to capacity, safety, and security considerations.

To facilitate event planning and enhance safety and security in light of this change, the Coast Guard strongly encourages voluntary registration for vessels intending to attend in spectator areas. Voluntary registration will assist authorities in managing traffic, ensuring adequate security measures, and providing timely information to participants. Please note that voluntary registration does not guarantee a spot in the spectator areas, as access remains available on a first-come, first-served basis. You may register through the

process established by the event sponsor at *https://tickettree.us/events/sail-250.*

Accordingly, the temporary final rule establishes a first-come, first-served plan for access to spectator areas, with entry subject to vessel type and size restrictions applicable to each area. No ticket is required for vessel operators to enter these areas. Additionally, it is important to note that these spectator areas could be changed, adjusted, or removed prior to or on the day of the event based on the need for a heightened security posture. Taking all security measures into account closer to the event, the COTP will make notifications of any changes, adjustments, or removals to the local maritime community through the Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices.

Finally, the Coast Guard also refined the geographic boundaries of several spectator areas to improve safety, reduce congestion, and address stakeholder concerns. These changes reflect the Coast Guard's commitment to balancing event safety and security with equitable public access and participation.

Several personal watercraft (PWC) 'jet ski' tour companies commented that a complete ban on PWC would cause significant financial hardship. They drew a distinction between their professionally supervised, guided tours—which follow strict safety protocols and defined routes—and unsupervised private or rental PWC operations. These operators expressed a willingness to operate under enhanced safety measures, such as smaller group sizes and reduced speeds, within specific time windows. Conversely, other commenters supported the PWC ban, citing concerns about erratic maneuvering and safety risks in congested areas.

The Coast Guard recognizes the operational differences between vetted, professional PWC tours and general, private PWC use. To address these competing concerns, the temporary final rule has been modified to provide a risk-based solution. While the general prohibition on PWC activity within Regulated Area ''B'' remains, this rule grants the COTP the authority to authorize, on a case-by-case basis, vetted commercial PWC tour operators to engage in commercial service activities with prior authorization from the COTP. This approach supports small businesses while maintaining a high level of maritime safety and security. Furthermore, the reduced size of Regulated Area ''B'' from the NPRM to the final rule will have less impact on all PWC operators.

A number of commercial maritime stakeholders—including the Sandy Hook Pilots, the Port Authority of NY and NJ, the American Waterways Operators, and tug and barge companies—raised critical concerns about the temporary suspension of anchorage grounds. The primary concern was the lack of designated ''bailout anchorages'' for deep-draft commercial vessels that may experience an emergency.

Additionally, tug and barge operators and their associated industry groups (*e.g.,* Buchanan Marine, Towboat Harbor Carriers Association) detailed the substantial logistical and financial burdens associated with relocating hundreds of barges from their permitted moorings, and requested that barges on fixed, non-swinging four-point moorings be allowed to remain. Other commenters requested the implementation of a harbor wide ''No Wake Zone'' to reduce navigational risk from vessel wakes in the congested environment.

The Coast Guard agrees that the availability of emergency bailout anchorages is essential for the safe navigation of the port. The temporary final rule and associated operational plans will designate two specific anchorages in Stapleton, and in Gravesend Bay, exclusively for emergency use by deep-draft vessels, except during the period from 6 p.m. on July 3, 2026, to 8 p.m. on July 4, 2026, when the Stapleton anchorage will be occupied by event participants.

Furthermore, after reviewing mooring configurations, the Coast Guard has determined that four-point moored barges do not pose an undue risk to navigation. The COTP will coordinate directly with operators to allow these barges to remain in place while requiring movement of other barges from designated spectator areas, mitigating significant cost and supply chain disruptions while also ensuring safety for the spectator vessels. The Coast Guard has also taken the request for wake mitigation under advisement and will enforce speed restrictions and no-wake zones in high-traffic spectator areas as necessary to ensure safety.

Ferry operators, including Statue Cruises, the Staten Island Ferry, and NYC Ferry, noted that the security zones as proposed would disrupt their established routes and negatively impact tens of thousands of passengers. They requested a clear process for obtaining authorization to transit through regulated areas. Concessionaires and other businesses on Liberty and Ellis Islands expressed concern about significant revenue losses if ferry access were curtailed. These concerns were echoed by many other small businesses and non-profits who estimated collective economic losses in the hundreds of thousands of dollars.

The Coast Guard's intent is to minimize interruptions to essential transportation services. This temporary final rule clarifies that the COTP will establish procedures for scheduled ferry services and other essential commercial traffic to obtain authorization for transit through regulated areas. These procedures will be communicated directly to operators and ensure minimal disruption to these vital services. The modifications made in this temporary final rule to allow limited operations for paddlecraft and PWC tours, and to clarify transit for commercial vessels, are intended to mitigate some of the economic burdens identified by commenters, while still achieving the necessary level of safety and security for this historic event.

Several commenters highlighted the need for careful coordination with other concurrent events, such as the FIFA Fan Festival at Liberty State Park (of note, at this time, the larger FIFA Fan Festival which most certainly was going to require additional water security measures has since been cancelled). Stakeholders also requested clear and timely communication of all final restrictions, regulated areas, and transit routes. Finally, some commenters expressed support for the Coast Guard's mission, acknowledging that an event of this complexity requires robust safety measures.

The Coast Guard is actively coordinating with all federal, state, and local partners, as well as with organizers of concurrent events, to ensure that critical access routes are maintained wherever possible. In response to requests for improved communication, the Coast Guard will publish additional Marine Safety Information Bulletins containing chartlets showing regulated areas and clear instructions for all waterway users.

A few commenters also raised concerns about the prohibition on swimming, requesting that permitted, supervised open-water swim events be allowed to continue. The prohibition on swimming within Regulated Area 'B' remains in place due to the significant risks posed by high vessel traffic density and security operations, however those desiring to swim or conduct swim events may request prior written authorization from the COTP or designated representative.

Comments regarding environmental impacts from restricted access to pump-out facilities were carefully considered. The Coast Guard will coordinate with local agencies and marina operators to ensure continued access to essential services and minimize environmental risks during the enforcement period.

The Coast Guard thanks all commenters for their participation in the rulemaking process. The feedback provided has been invaluable in creating a temporary final rule that balances the need for robust safety and security with the interests of the diverse New York and New Jersey maritime communities.

*Discussion of Changes to the Rule*

In response to public comments, stakeholder engagement, and further internal review, the Coast Guard has made several changes to the regulatory text between what was proposed in the NPRM and this temporary final rule for the Sail 4th 250 and International Naval Review 250 events. These changes are intended to clarify requirements, enhance safety and security, and address operational needs for participants and the maritime community. The principal changes are summarized below:

1. Addition and Modification of Regulated Areas in § 100.T0199–0903

The temporary final rule introduces a new Regulated Area 'C' covering the East River main channel from the Williamsburg Bridge to the Throgs Neck Bridge, enforced on July 3, 2026, to accommodate the Class B tall ship parade.

Boundaries for Regulated Area 'B' have been reduced and clarified, including references to the Williamsburg Bridge and Hamilton Avenue Bridge in Gowanus Bay, to improve navigational precision.

For clarity, the Coast Guard summarizes the regulated areas as follows:

Regulated Area 'A' remains as proposed with no changes.

- Regulated Area 'A': all waters of New York Harbor Lower Bay and Sandy Hook Bay south of the Verrazano-Narrows Bridge; west of a line along 074°00′00″ W between Coney Island, NY, and Highlands, NJ; and east of a line along 074°03′12″ W between Fort Wadsworth, Staten Island, and Leonardo, NJ, as well as all waters of Ambrose Channel shoreward of buoys '1' and '2'.

Enforced: July 2, 6 a.m.–July 4, 4 p.m.

- Regulated Area 'B': all waters of New York Harbor, Upper Bay, the Hudson, and East Rivers, and the Kill Van Kull Channel within the following boundaries: south of 40°52′37.26″ N on the Hudson River west of the Williamsburg Bridge on the East River; west of the Hamilton Avenue Bridge in the Gowanus Bay; north of the Verrazano-Narrows Bridge; and east of a line along 074°05′15″ W between New Brighton, Staten Island, and Constable Hook, NJ, in the Kill Van Kull Channel.

Enforced: July 1, 10 a.m.–July 9, 11:59 p.m.

- Regulated Area 'C': East River main channel (Williamsburg Bridge to Throgs Neck Bridge).

Enforced: July 3, 11 a.m.–July 3, 4 p.m.

2. Expansion and Clarification of Spectator Areas in § 100.T0199–0903

The temporary final rule establishes a first-come, first-served plan for access to spectator areas, with entry subject to vessel type and size restrictions applicable to each area. No ticket is required for vessel operators to enter these areas. The event sponsor will provide a voluntary registration process for spectator vessels as opposed to the mandatory system proposed in the NPRM. This change is intended to simplify access, reduce administrative burden, and promote broader participation while maintaining effective oversight, safety, and security for all attendees. Additionally, we have added a note in table 1 to § 100.T0199–0903: Supplemental information for paragraph (b) in the regulatory text has been added to clarify that spectator areas may be modified or removed before or during the event if heightened security measures are required. Taking all security measures into account closer to the event, the COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices.

The temporary final rule expands spectator access by establishing four paddlecraft-only spectator areas (PC–1 through PC–4) in the Hudson River, with specific coordinates and enforcement periods (July 4, 2026, from 6 a.m. until parade conclusion). These areas provide designated access for paddlecraft vessels only and were not present in the NPRM. A note was added following the regulatory text stating, ''. . . Those planning to use these paddlecraft-only spectator areas are advised that state ordinances, local ordinances, or both may apply. Please also keep in mind that access to some of these paddlecraft-only spectator areas may be through private property, businesses, marinas, or clubs, and the public should make inquiries to the respective owner or operator regarding access and launching procedures or restrictions.''

Vessel type and size restrictions for each spectator area have been clarified. For example, certain areas are now designated for vessels inspected under 46 CFR Subchapter T or Subchapter K, or for vessels of specific lengths, to improve safety and crowd management.

Proposed Spectator Area '8' has been deleted due to the presence of vulnerable infrastructure in the area and proposed Spectator Area '9' has been divided into two areas, Spectator Area '8' and Spectator Area '9'. Additionally, adjustments to boundary coordinates of the other spectator areas were made for accuracy and to reflect navigational realities.

3. Staging Areas in § 100.T0199–0903

The temporary final rule provides more precise coordinates and enforcement periods for staging areas and clarifies their exclusive use for participant vessels and command vessels overseeing the Sail 4th 250 Parade of Sail.

4. Hudson River Traffic Corridor in § 100.T0199–0903

A new section creating the 'Hudson River Traffic Corridor' in conjunction with the reporting requirements for Vessel Movement Reporting System users are detailed and its enforcement period has been added to the temporary final rule, reflecting operational needs for vessel movement reporting and traffic management.

5. Expanded Definitions in § 100.T0199–0903

The definition for ''Commercial Service'' has been added to the temporary final rule to ensure consistent interpretation and enforcement.

6. Activity Restrictions and Vessel Movement in § 100.T0199–0903

The temporary final rule clarifies and expands activity restrictions. The rule has been amended to allow for limited, managed access for paddlecraft to operate in Regulated Area 'B' under the same rules as other recreational vessels except for July 4, 2026, in § 100.T0199–0903. On July 4, 2026, paddlecraft are permitted to launch and operate only within designated paddlecraft-only spectator areas. Personal watercraft prohibition remains except for those engaged in commercial service with prior authorization. Seaplane operations are prohibited on July 3 and 4, 2026, without prior authorization.

In addition, with the security zones being segmented in § 165.T01–0903, transit corridors were created to accommodate anticipated high-density vessel traffic areas near Edgewater Marina, Port Imperial Terminal, Weehawken Cove, Hoboken Station, Newport Marina, and Morris Canal.

7. Security Zones in § 165.T01–0903

The Coast Guard has added a new 50-yard security zone for Tall Ships participating in the Parade of Sail. This was not explicitly present in the NPRM, which focused primarily on 100-yard security zones for foreign naval vessels and larger fixed/moving zones for U.S. Navy vessels.

Enforcement periods and notification procedures for security zones are clarified.

The table of named security zones (Alpha, Bravo, Charlie, etc.) is expanded with more detailed coordinates.

These changes are intended to provide greater clarity, safety, and operational flexibility for the Sail 4th 250 and International Naval Review 250 events. The Coast Guard again appreciates the input received through public comments and has modified the temporary final rule to minimize impacts on maritime interests while ensuring the necessary level of safety and security for all participants and spectators.

*Discussion of the Rule*

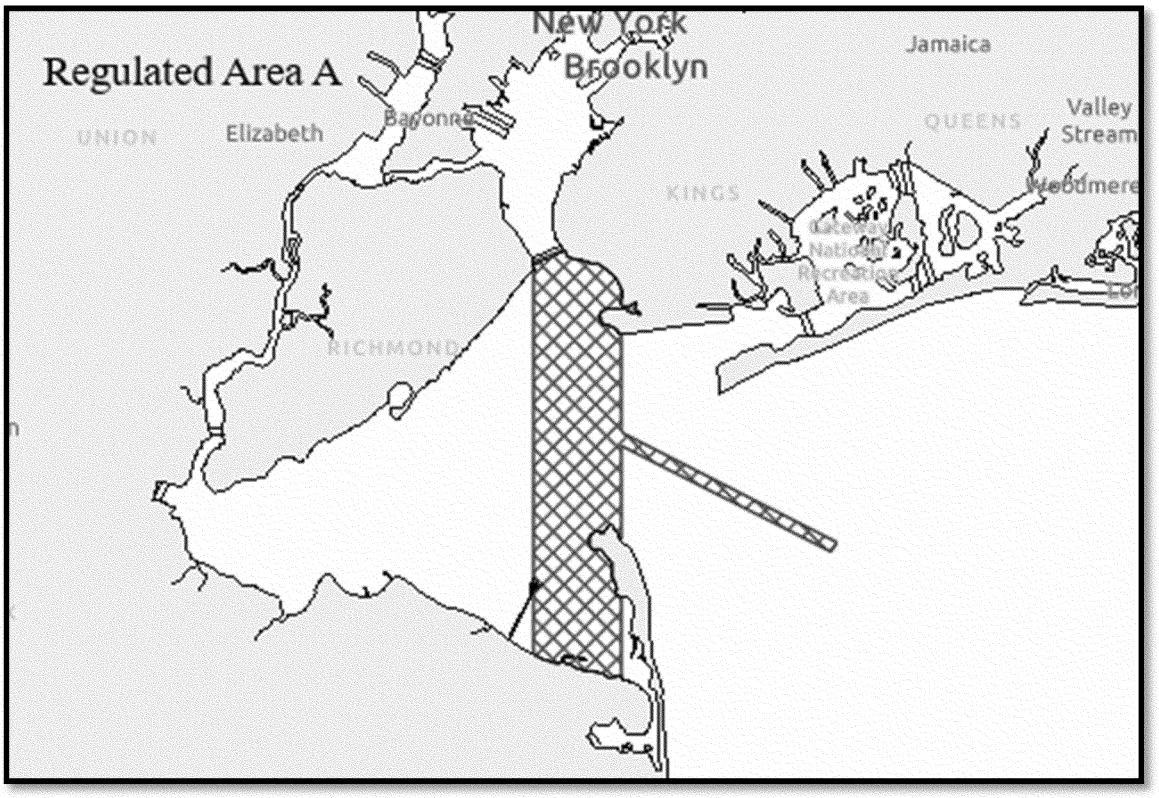
Special Local Regulation—The Three Regulated Areas

The Coast Guard is establishing three regulated areas in the Port of New York and New Jersey, effective from July 1, 2026, through July 9, 2026. These regulated areas are designed to protect the maritime public and participating vessels from hazards associated with the International Naval Review (INR) on the Hudson River and Upper New York Bay, the Tall Ship Parade of Sail in Sandy Hook Bay, New York Harbor, Hudson River, and East River, and the presence of numerous naval vessels, tall ships, and spectator craft in close proximity throughout the event. The regulated areas incorporate designated spectator areas, staging areas, and vessel operating restrictions to ensure safe navigation and event security.

From 6 a.m. on July 4, 2026, through the conclusion of the Sail 4th 250 Tall Ship Parade of Sail, only Sail 4th 250 or INR 250 participating vessels, and their assisting tugs may enter or navigate within Regulated Areas 'A' or 'B', unless specifically authorized by the Captain of the Port (COTP) or their designated representative. Vessels operating on established schedules, such as ferries, may be granted authorization to transit these areas. All vessels transiting through the Port of New York and New Jersey during this period must comply with vessel movement control measures as directed by the COTP or their representative.

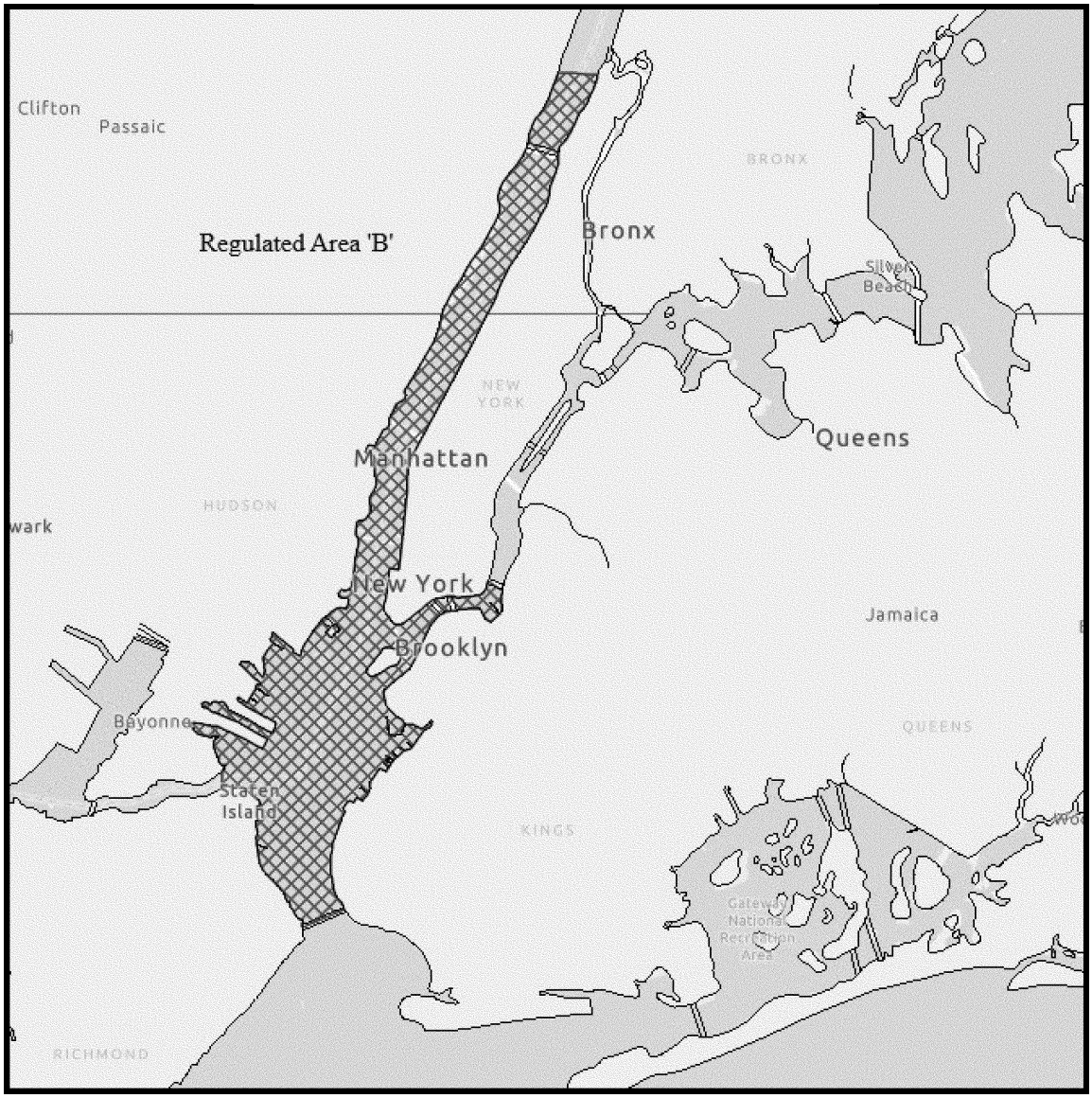
*Regulated Area 'A':* includes all waters of New York Harbor Lower Bay and Sandy Hook Bay south of the Verrazano-Narrows Bridge; west of a line along 074°00′00″ W between Coney Island, NY, and Highlands, NJ; and east of a line along 074°03′12″ W between Fort Wadsworth, Staten Island, and Leonardo, NJ, as well as all waters of Ambrose Channel shoreward of buoys '1' and '2'. These coordinates are based on the World Geodetic System (WGS 84). Please see Figure 1 below depicting Regulated Area 'A'. This area serves as a primary staging area for vessels participating in the Tall Ship Parade of Sail and will be enforced from 6 a.m. on July 2, 2026, until 4 p.m. on July 4, 2026.

**(Figure 1. Chartlet Showing the Regulated Area 'A'.)**



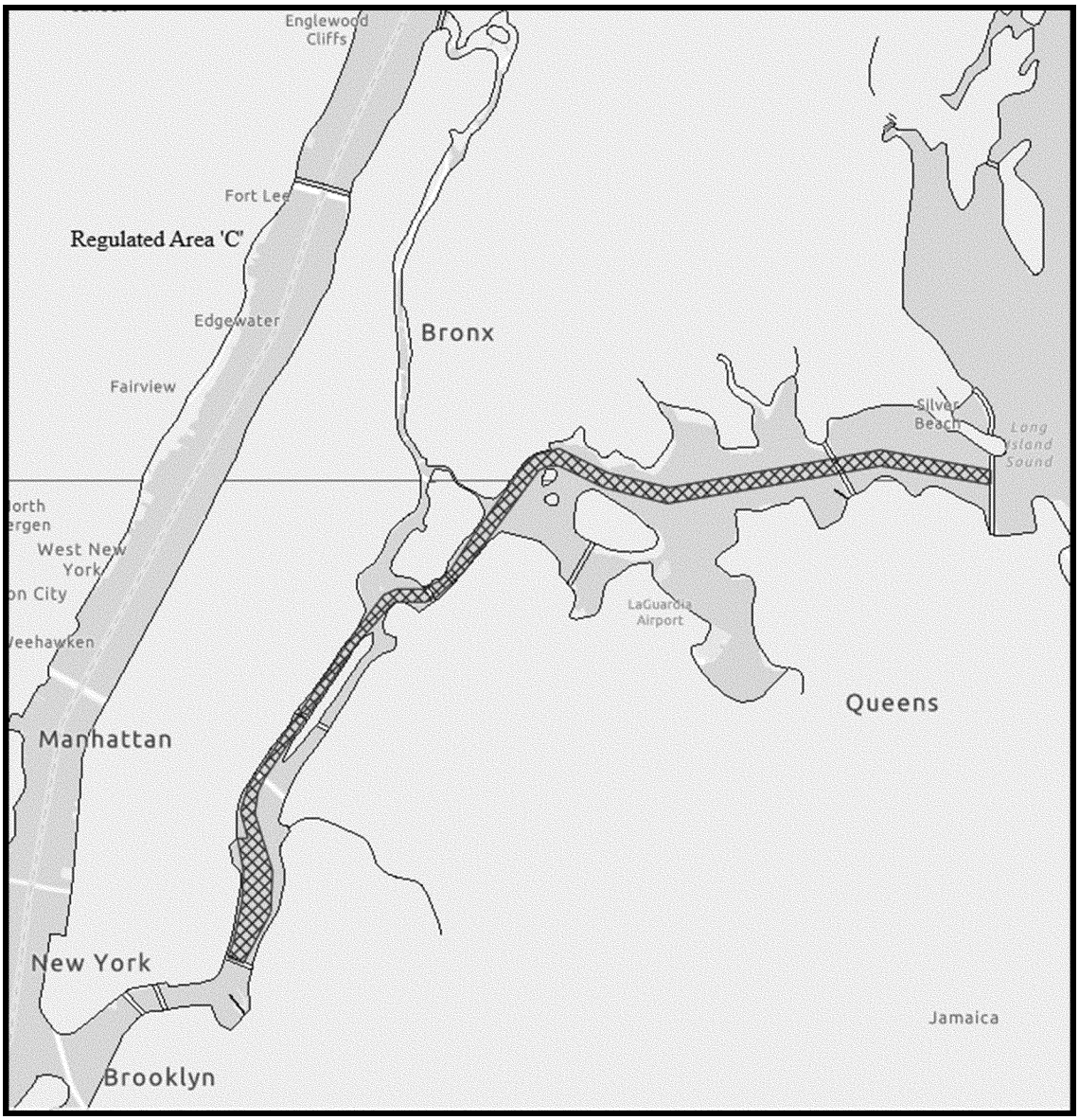
*Regulated Area 'B':* encompasses all waters of New York Harbor, Upper Bay, the Hudson, and East Rivers, and the Kill Van Kull Channel within the following boundaries: south of 40°52′37.26″ N on the Hudson River west of the Williamsburg Bridge on the East River; west of the Hamilton Avenue Bridge in the Gowanus Bay; north of the Verrazano-Narrows Bridge; and east of a line along 074°05′15″ W between New Brighton, Staten Island, and Constable Hook, NJ, in the Kill Van Kull Channel. These coordinates are based on the World Geodetic System (WGS 84). Please see Figure 2 below depicting Regulated Area 'B'. This area is for the Sail 4th 250 Tall Ship Parade of Sail, INR 250 and totality of events that are occurring throughout the week. Swimming, conducting underwater diving operations, operating surface or underwater drones, and conducting surveying operations are prohibited for the duration of these events, unless expressly permitted by the COTP or a designated representative. The heightened safety and security posture within the Port of New York and New Jersey will continue until departure of the participating naval vessels and tall ships. The regulated area will be enforced from 10 a.m. on July 1, 2026, until 11:59 p.m. on July 9, 2026.

**(Figure 2. Chartlet Showing the Regulated Area 'B'.)**




*Regulated Area 'C':* is newly established in the temporary final rule and includes all waters of the East River within the main channel from the Williamsburg Bridge to the Throgs Neck Bridge. Please see Figure 3 below depicting Regulated Area 'C'. This area is intended to support the Class B Tall Ship Parade and will be enforced from 11 a.m. to 4 p.m. on July 3, 2026.

**(Figure 3. Chartlet Showing the Regulated Area 'C'.)**




Regulations governing the SLR areas can be found at the end of this document under 100.T0199–0903.

**Special Local Regulation—Spectator Areas**

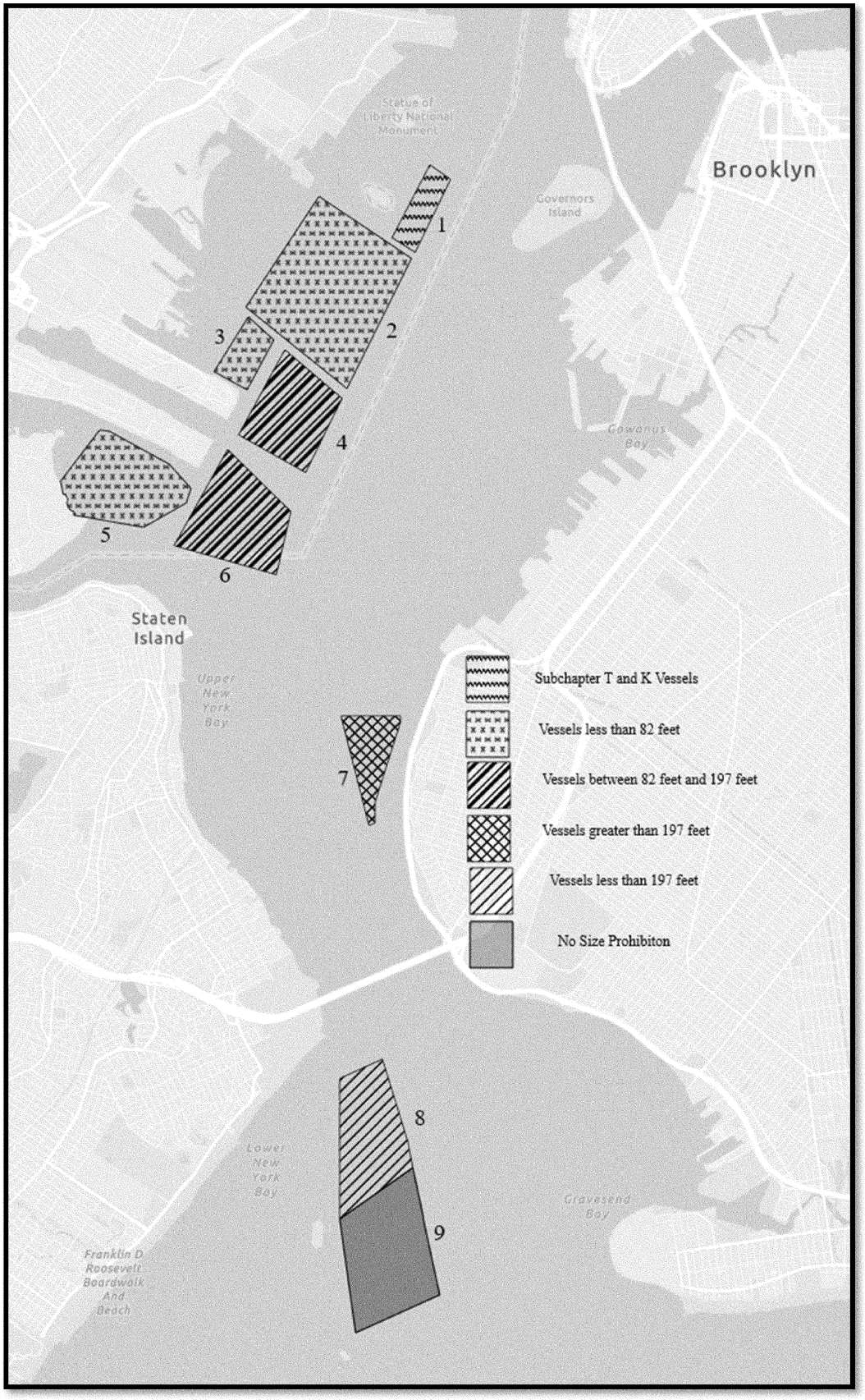
The Coast Guard is establishing nine temporary spectator areas during the Sail 4th 250 Tall Ship Parade of Sail, INR 250, and IAR from 3 p.m. on July 3, 2026, through 8 a.m. on July 5, 2026. These spectator areas will be located in the vicinity of Liberty Island, Caven Point, Jersey Flats, Robbins Reef, Bay Ridge, and South Beach, Staten Island. In addition, the temporary final rule establishes four paddlecraft-only spectator areas in the Hudson River, specifically designated for kayaks, canoes, and other non-motorized vessels. The size, location, and type of vessels authorized in each spectator area, including the paddlecraft-only zones, are outlined in the regulatory text at the end of this document under § 100.T0199–0903.

Vessel operators seeking to attend in spectator areas may do so through a first-come, first-served plan, with entry subject to vessel type and size restrictions specific to each area. No ticket is required for access. To facilitate event planning and enhance safety, the Coast Guard highly encourages voluntary registration for vessels intending to participate in spectator areas. Voluntary registration will assist authorities in managing vessel traffic, ensuring adequate safety and security measures, and providing timely information to participants. However, registration is not mandatory, and vessel operators may access spectator areas without prior registration, subject to capacity, safety, and security considerations.

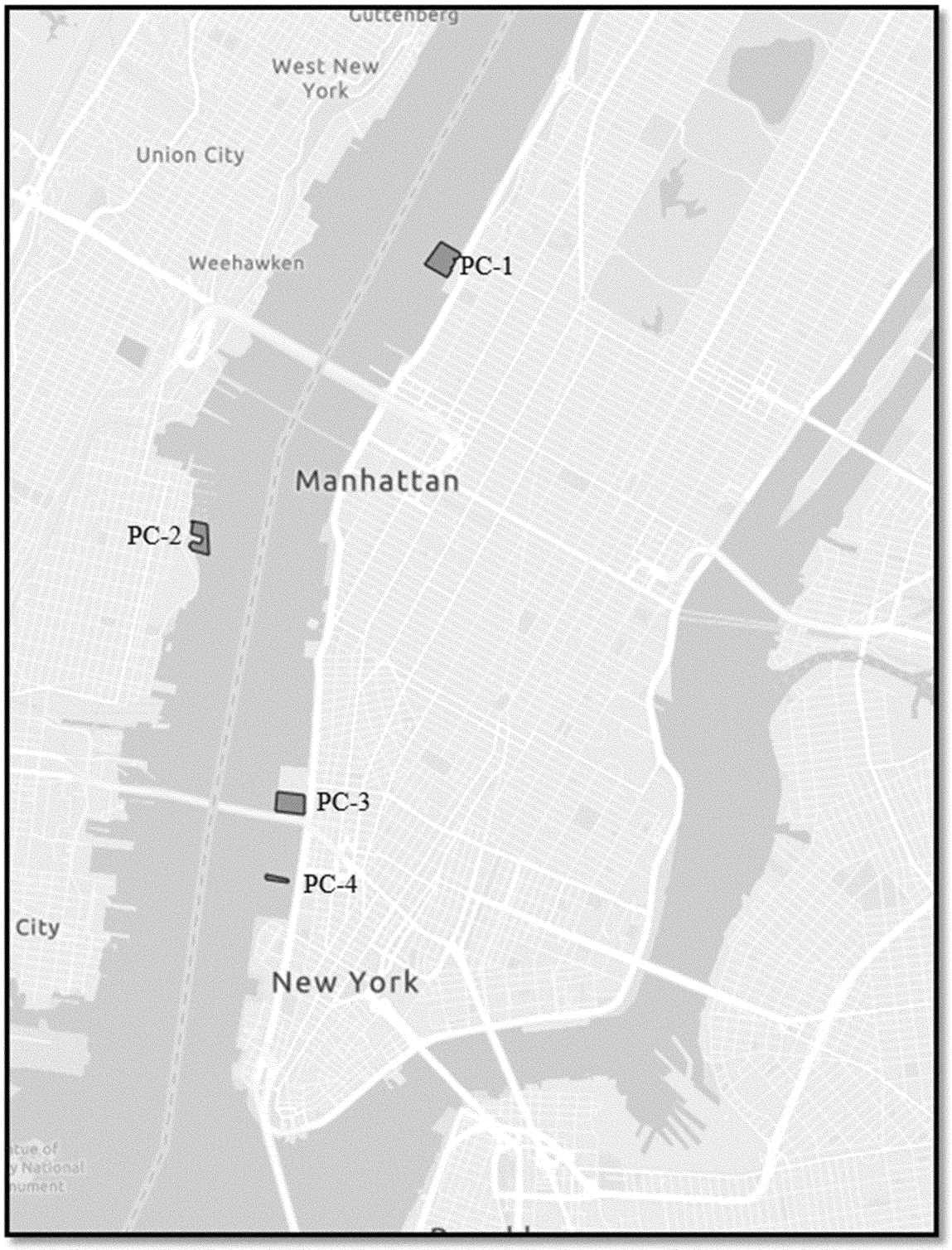
Following the completion of the Sail 4th 250 Tall Ship Parade of Sail, vessel operators will be able to depart from their respective spectator areas as on-scene safety and security concerns allow. Transits to the south through the Narrows and to the west through the Kill van Kull may be allowed to depart significantly earlier than those transiting through the East River and Hudson River.

The locations of the temporary spectator areas are shown in Figure 4 and Figure 5.

**(Figure 4. Chartlet Showing the Locations of the Temporary Spectator Areas.)**


Statue of Liberty National Monument
Brooklyn
Governors Island
Gowanus Bay
Staten Island
Upper New York Bay
Lower New York Bay
Gravesend Bay
Franklin D. Roosevelt Boardwalk And Beach
1
2
3
4
5
6
7
8
9
Subchapter T and K Vessels
Vessels less than 82 feet
Vessels between 82 feet and 197 feet
Vessels greater than 197 feet
Vessels less than 197 feet
No Size Prohibiton

**(Figure 5. Chartlet Showing the Locations of the Paddlecraft Only Spectator Areas.)**




**Special Local Regulation—Staging Areas**

The Coast Guard is establishing six staging areas for use by Sail 4th 250 participant vessels and command vessels overseeing the Tall Ship Parade of Sail in the vicinity of Ellis Island, Governors Island, Gravesend Bay, and Sandy Hook Bay.

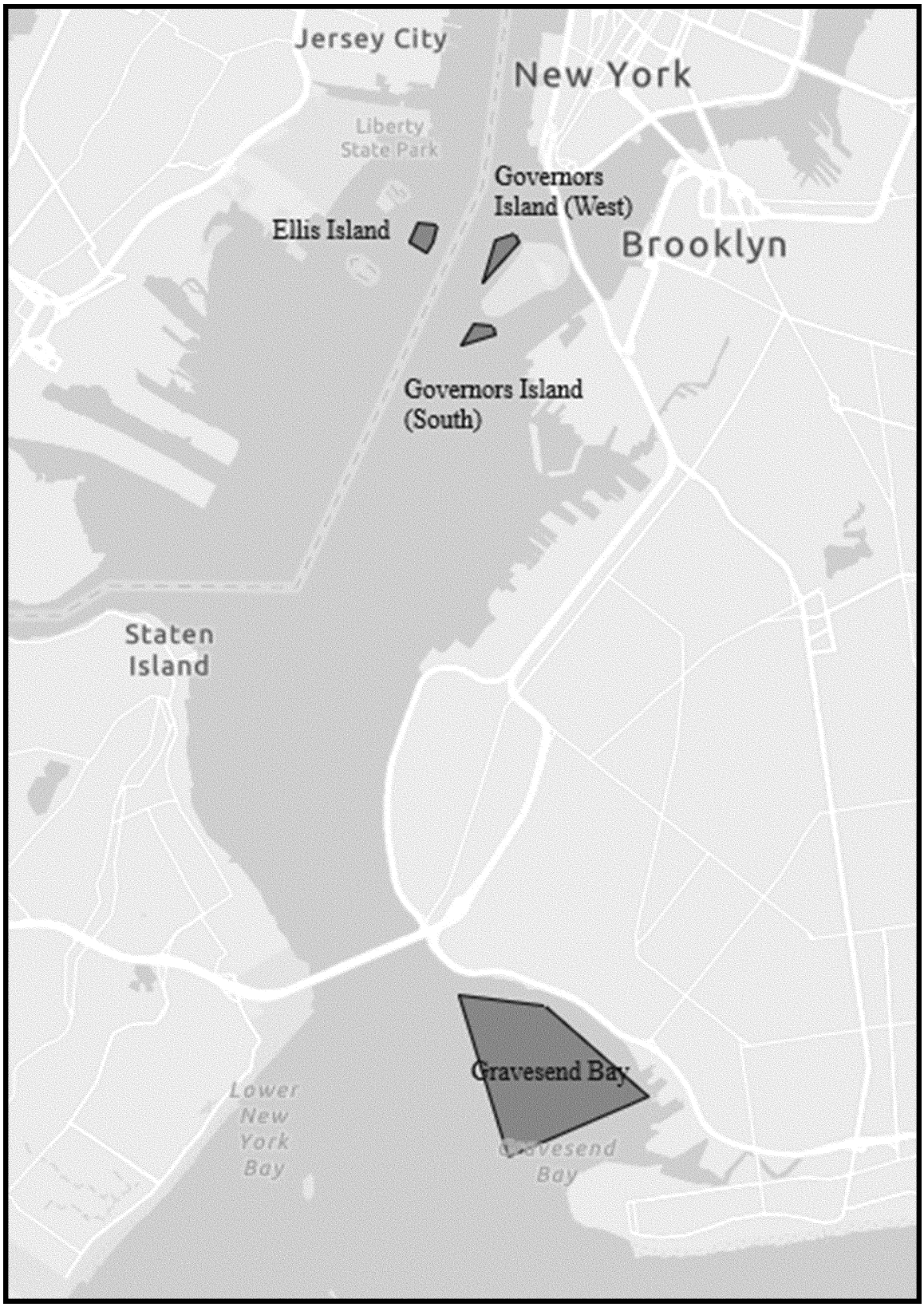
The staging areas in the vicinity of Ellis Island and Governors Island are established from 3 p.m. on July 3, 2026, through 8 a.m. on July 5, 2026. The staging area in the vicinity of Gravesend

Bay is established from 1 p.m. on July 3, 2026, to 4 p.m. on July 4, 2026. The staging areas in the vicinity of Sandy Hook Bay are established from 6 a.m. on July 2, 2026, through 4 p.m. on July 4, 2026.

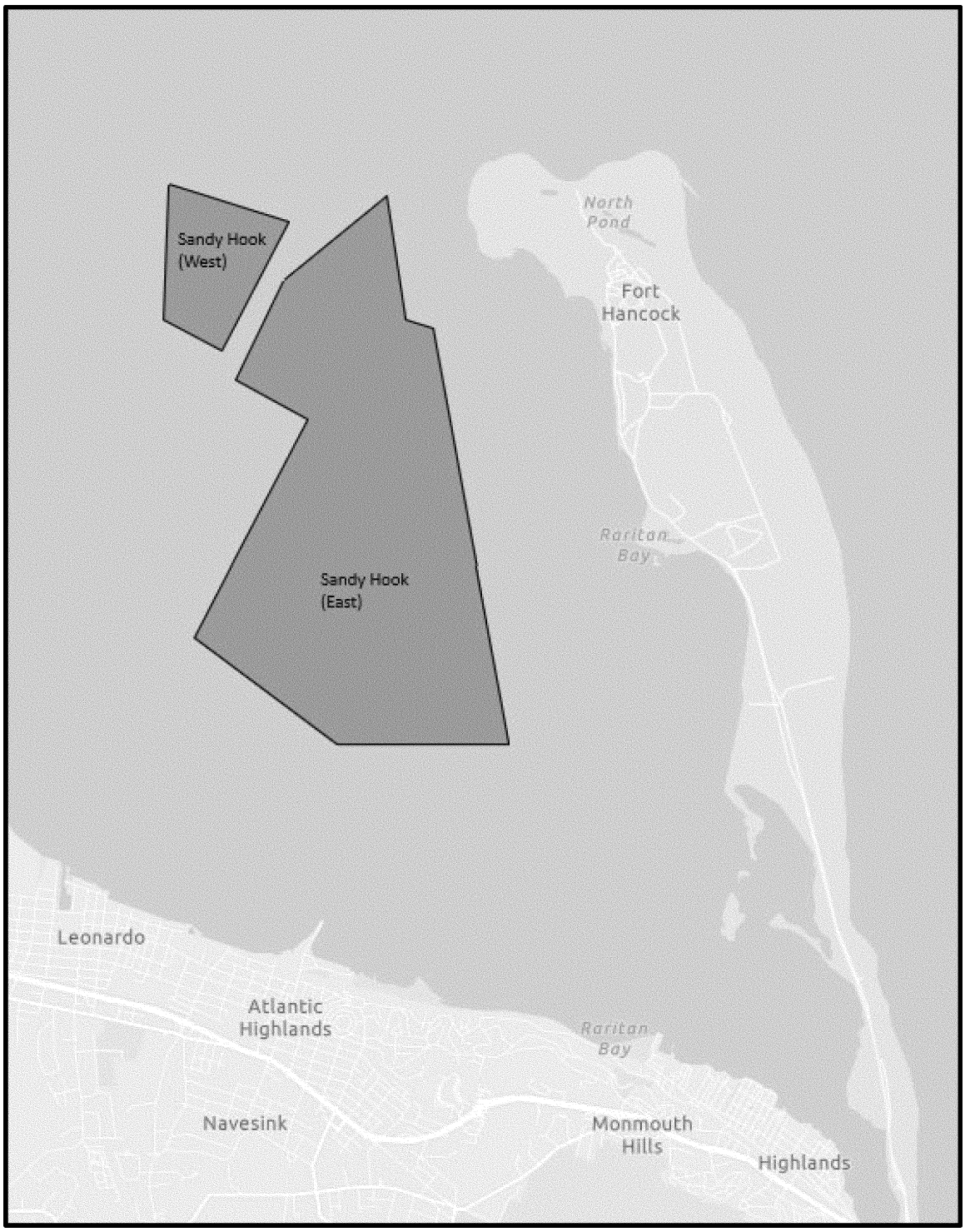
No vessels other than Sail 4th 250 participant vessels, command vessels, designated assist tugs, and enforcement vessels will be permitted to anchor, loiter, or approach within 100 yards of any Sail 4th 250 participant vessel when it is navigating or at anchor in these areas.

The locations of the temporary staging areas are shown in Figures 6 and 7.

**(Figure 6. Chartlet Showing the Locations of the Temporary Staging Locations.)**



**(Figure 7. Chartlet Showing the Temporary Staging Areas in Sandy Hook Bay.)**




Security Zones

The Coast Guard is establishing multiple security zones as discussed in the regulatory text at the end of this document under 165.T01–0903. On July 1, 2026, naval vessels will commence transiting into New York Harbor, with U.S. Naval Vessels operating under the protection of naval vessel protection zones as cited in 33 CFR 165.2025.[6] For all participating foreign naval vessels, this rule will enforce a 100-yard security zone while within all navigable waters within Sector New York Marine Inspection and Captain of the Port

[6] eCFR: 33 CFR 165.2025—Atlantic Area.

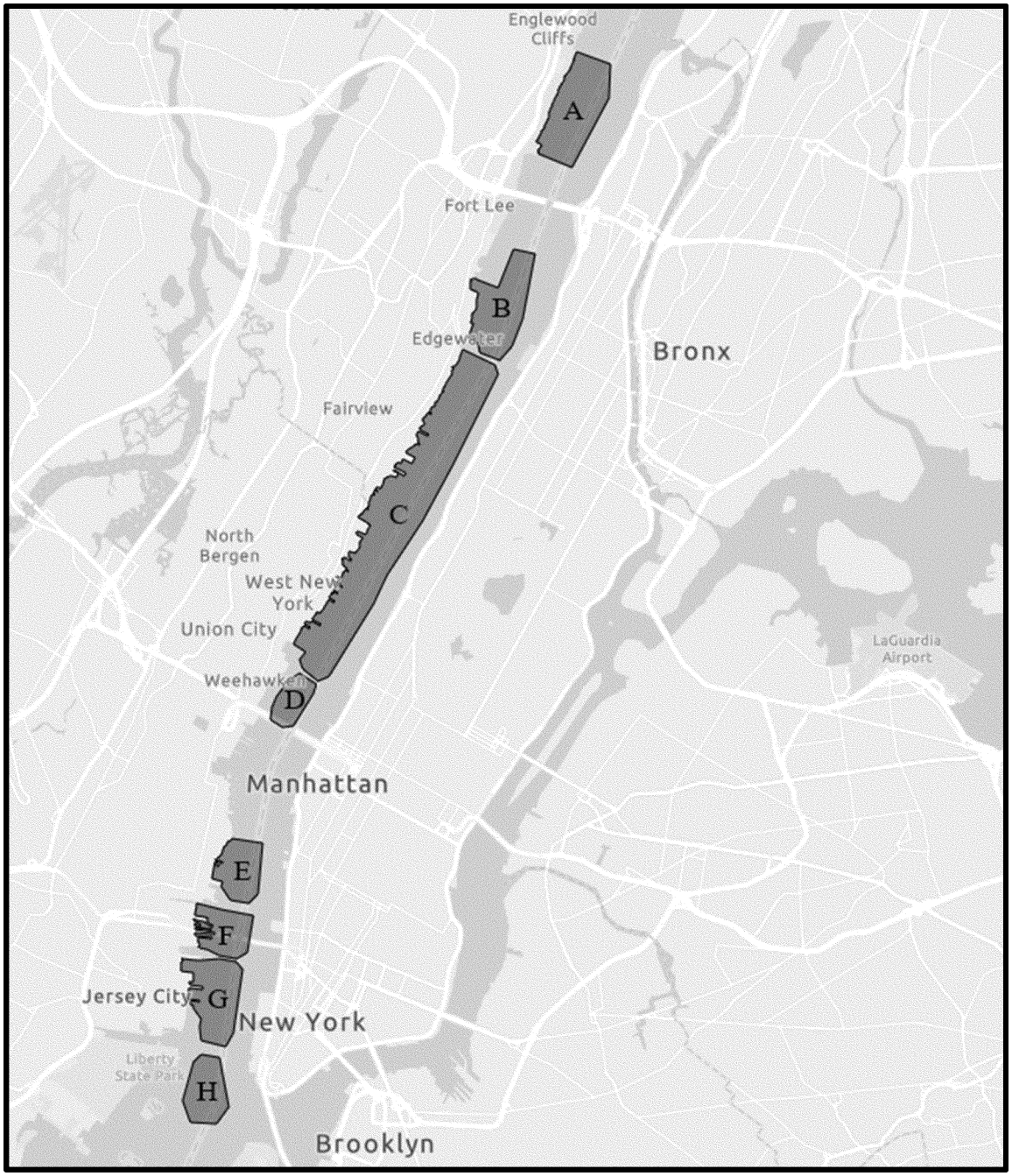
Zones as described in 33 CFR 3.05–30 [7] and a 50-yard security zone for all designated Tall Ships. Additionally, the Coast Guard is establishing nine fixed security zones to be enforced upon U.S. and foreign naval vessels anchored in the Port of New York and New Jersey. These security zones are to protect U.S. and foreign naval vessels before, during, and after the Sail 4th 250 Tall Ship Parade of Sail, INR 250, and IAR. These security zones will be enforced when occupied by naval vessels from 12:01 a.m. July 1, 2026, through 11:59 p.m. on July 9, 2026.

The locations of the temporary security zones ALPHA through LIMA are depicted in Figures 8, 9, and 10.

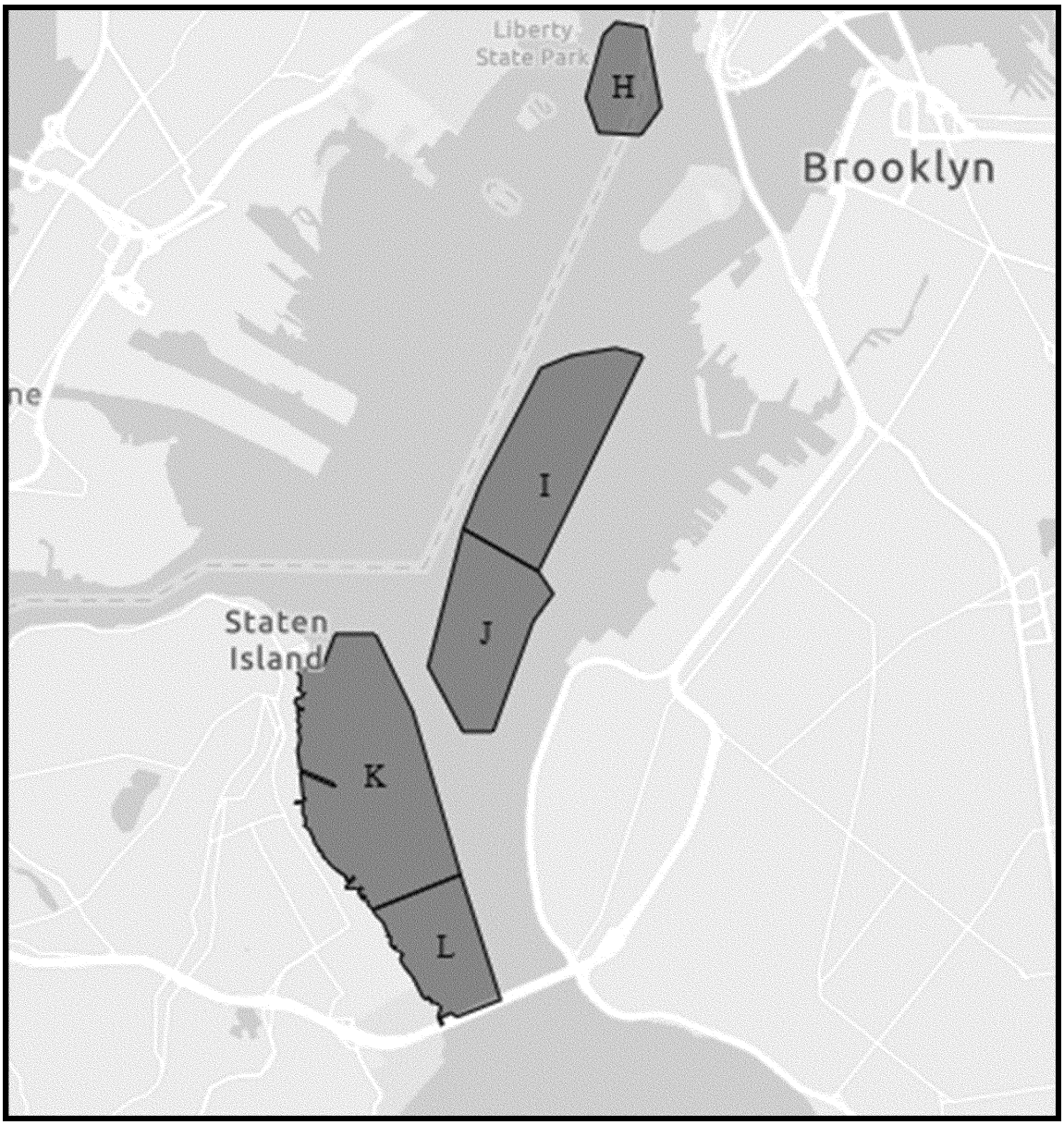
**(Figure 8. Chartlet Showing the Locations of the Security Zones.)**

[7] *https://www.ecfr.gov/current/title-33/chapter-I/subchapter-A/part-3/subpart-3.05/section-3.05-30.*

**(Figure 9. Chartlet Showing the Security Zones in the Hudson River.)**



**(Figure 10. Chartlet Showing the Security Zones in the Upper Bay.)**




Furthermore, the Coast Guard is establishing a moving security zone for the ''U.S. Naval Review Ship'' reviewing the naval fleet. This security zone will include all navigable waters from surface to bottom within a 500-yard radius of the ''U.S. Naval Review Ship'' from 5 a.m. to 1 p.m. on July 4, 2026. This zone will only be enforced while the vessel is underway reviewing the naval fleet.

Finally, the Coast Guard is establishing a security zone for the ''Reviewing Official Viewing Platform.'' This security zone will include all waters from surface to bottom within a 500-yard radius of the U.S. Naval Vessel anchored in the vicinity of Federal Anchorage 21–B and will be enforced from 8 a.m. to 11:59 p.m. on July 4, 2026.

The COTP will make notification of exact dates and times in advance of each enforcement period for each security zone to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners on VHF–FM Channel 16.

Vessels seeking permission to transit security zones shall contact the COTP or designated representative on VHF–FM 16 or (844) NYC–USCG.

Temporary Suspension of Anchorages

This rule includes the temporary suspension of certain anchorage grounds within 33 CFR 110.155 (Port of New York) [8] through the temporary stay of their associated regulations governing their use, during the periods that the regulated areas, temporary spectator areas, staging areas, and security zones are temporarily in effect. The anchorages we will be suspending are Anchorage No. 16, Anchorage No. 17, Anchorage No. 19 West, Anchorage No. 20–A, Anchorage No. 20–B, Anchorage

[8] *https://www.ecfr.gov/current/title-33/section-110.155.*

No. 20–C, Anchorage No. 20–D, Anchorage No. 20–E, Anchorage No. 20–F, Anchorage No. 20–G, Anchorage No. 21–B, Anchorage No. 21–C, Anchorage No. 23–A, Anchorage No. 23–B, Anchorage No. 24, Anchorage No. 25, Anchorage No. 49–F, and Anchorage No. 49–G. The rule is effective July 1, 2026, through July 9, 2026. However, vessels seeking to anchor in a traditional anchorage ground while it is temporarily suspended and not being used as a spectator area or staging area for the exclusive use of Sail 4th 250 and INR 250 can request permission to do so from VTS New York via VHF–FM channel 14 or by telephone at (718) 354–4088; see 33 CFR 110.155(d)(16) and (l) for additional permission to anchor guidance. All vessels granted permission to anchor need to comply with lawful instructions of the VTS.

## IV. Regulatory Analyses

The Coast Guard developed this rule after considering numerous statutes and Executive orders related to rulemaking. The Coast Guard's analyses based on a number of these statutes and Executive orders are summarized below.

### *A. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Coast Guard certifies that, although some small entities may intend to transit the regulated areas discussed above, this rule will not have a significant economic impact on a substantial number of small entities. This regulation will temporarily suspend certain anchorage grounds, create spectator areas and staging areas, impose traffic control measures and security zones in portions of the Port of New York and New Jersey, and designate areas for viewing the Sail 4th 250 Tall Ship Parade of Sail, INR 250, IAR, and U.S. Navy Fleet Week events, all of which will allow for maximum use of the waterway by commercial tour boats that usually operate in the area. However, while the traffic control measures are in place over a substantial portion of the Port of New York and New Jersey, vessel movements will only be restricted for a limited period of time during the aforementioned events.

We received comments regarding economic impact and made numerous adjustments between the NPRM and TFR to minimize economic impact while still ensuring safety and security. The suspension of temporary anchorage grounds and implementation of security zones will only be effective for up to nine days. Vessels seeking to anchor in a traditional anchorage ground while they are temporarily suspended and not being used as a spectator area or staging area for the exclusive use of the Sail 4th 250 Tall Ship Parade of Sail and the INR 250 can request authorization from the VTS. While the security zones are effective for the entire nine days and consume a major portion of the Hudson River, they will not be enforced for the entire period and will allow for vessel traffic to proceed through the federal channel as normal for most of those nine days. As naval vessels vacate each zone to proceed to berth after the events on July 4, 2026, the enforcement of these temporary security zones will be suspended. Selected vessels, such as ferries operating on established routes, will have the opportunity to continue to transit through these zones with permission from the COTP or designated representative. The Coast Guard will establish a process for vetting these certain vessels. Advance notice will be made to mariners via appropriate means, which may include broadcast notice to mariners, local notice to mariners, marine safety information bulletins, local port operators group meetings, Harbor Safety Committee meetings, the internet, handouts, or local newspapers and media. The advance notice will permit mariners to adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this rule will affect your small business, organization, or governmental jurisdiction and you have questions, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards by calling 1–888–REG–FAIR (1–888–734–3247).

### *B. 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).

### *C. Federalism and Indian Tribal Governments*

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

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.

### *D. Unfunded Mandates Reform Act*

As required by The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Coast Guard certifies that this rule will not result in an annual expenditure of $100,000,000 or more (adjusted for inflation) by a State, local, or tribal government, in the aggregate, or by the private sector.

### *E. Environment*

The Coast Guard has 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 has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This rule involves temporarily suspending permanent anchorages, proposing temporary spectator areas, and establishing temporary security zones and vessel traffic control measures to facilitate the safety and security of all spectator and participant vessels in the Sail 4th 250 Tall Ship Parade of Sail, INR 250, and IAR events. It is categorically excluded from further review under paragraphs L59(b), L60(a), and L61.

**List of Subjects in 33 CFR Parts 100, 110, 165**

*33 CFR Part 100*

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

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 165*

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100, 110, and 165 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

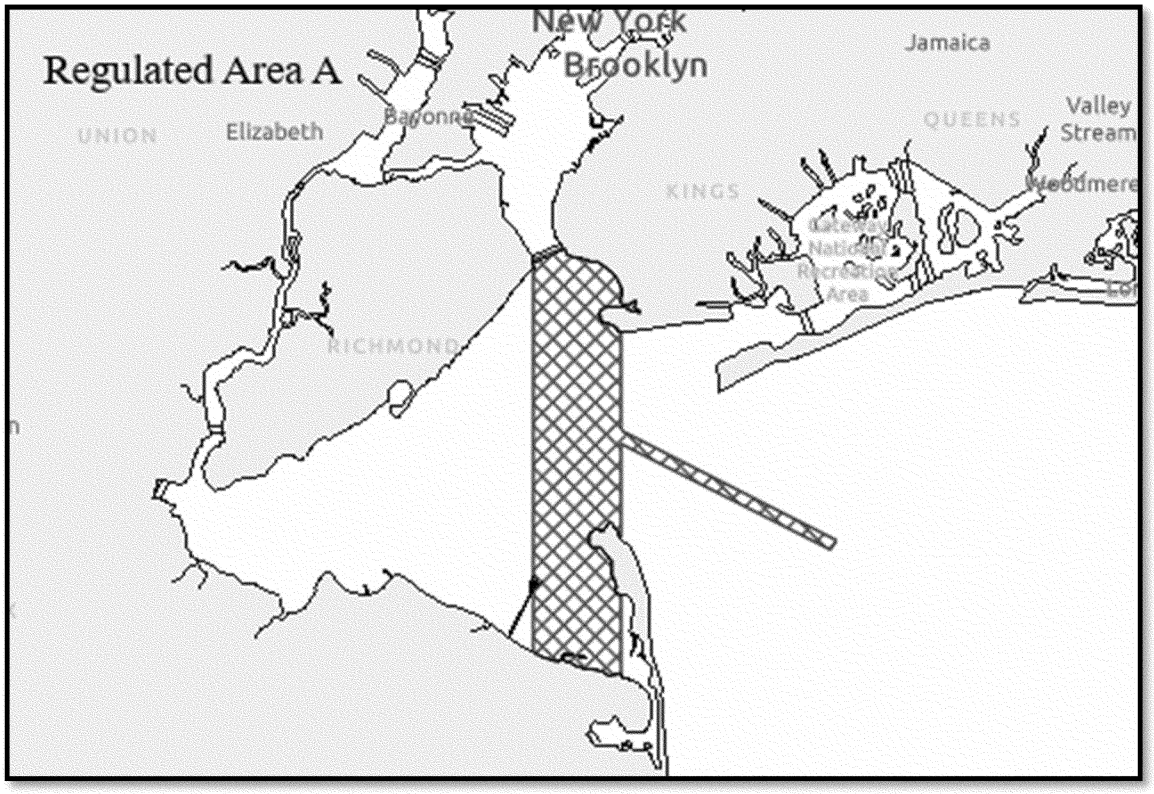
**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T0199–0903 to read as follows:

### § 100.T0199–0903 Sail 4th 250 and International Naval Review 250, Port of New York and New Jersey

(a) *Regulated areas.* (1) Regulated Area 'A'—(i) Location. The following area is a special regulated area: All waters of New York Harbor Lower Bay and Sandy Hook Bay within the following boundaries: south of the Verrazano-Narrows Bridge; west of a line drawn shore to shore along 074°00′00″ W between Coney Island, New York, and Highlands, New Jersey; and east of a line drawn shore to shore along 074°03′12″ W between Fort Wadsworth, Staten Island, New York, and Leonardo, New Jersey, and all waters of Ambrose Channel shoreward of buoys 1 and 2. These coordinates are based on the World Geodetic System (WGS 84).

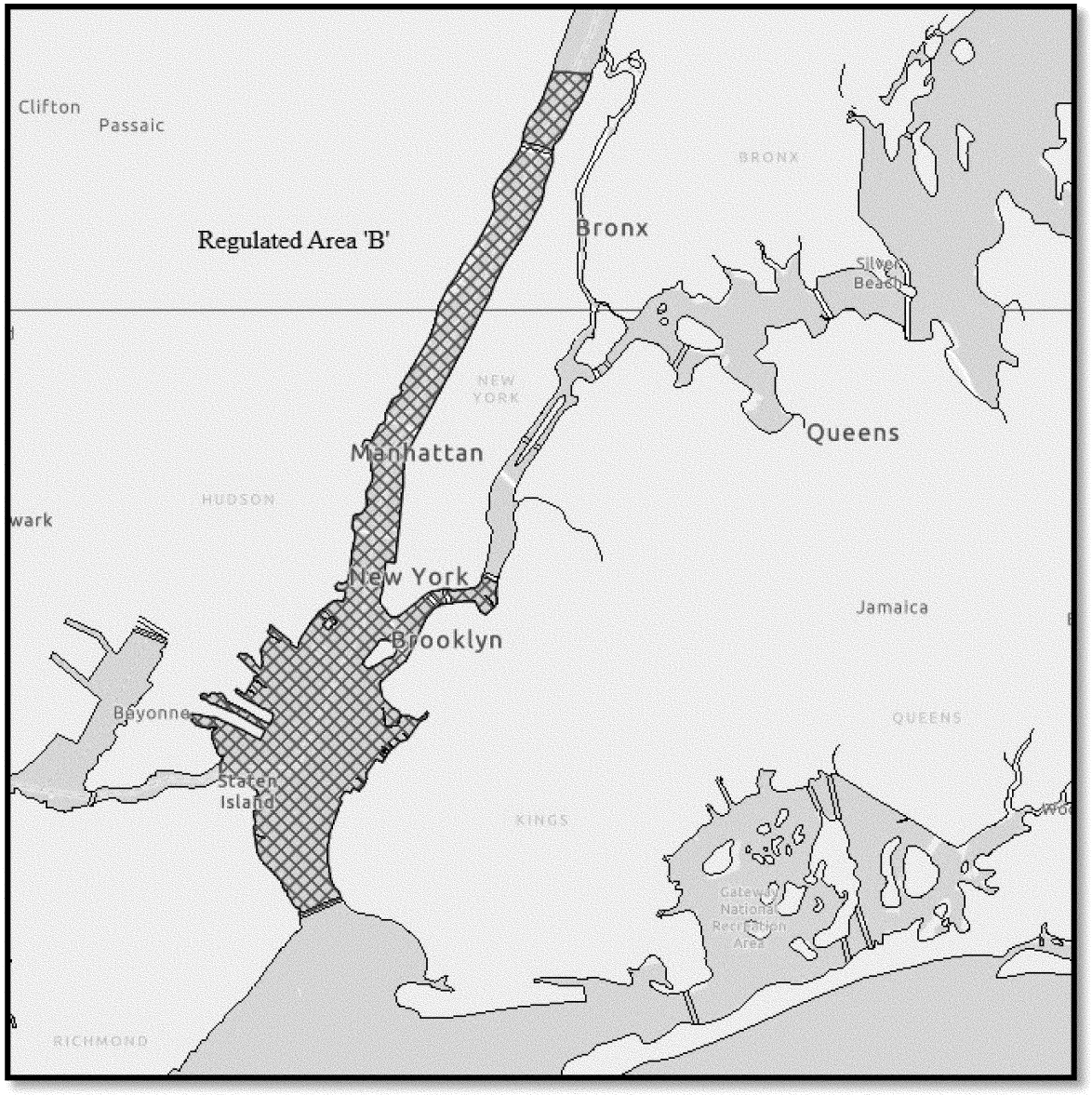
**(Figure 1 to § 100.T0199–0903: Chartlet Showing Regulated Area 'A'.)**




(ii) This section will be enforced from 6 a.m. July 2, until 4 p.m. on July 4, 2026.

(2) Regulated Area 'B'—(i) Location. The following area is a special regulated area: All waters of New York Harbor, Upper Bay, the Hudson, and East Rivers, and the Kill Van Kull Channel within the following boundaries: south of 40°52′37.26″, on the Hudson River; west of the Williamsburg Bridge on the East River; west of the Hamilton Avenue Bridge in Gowanus Bay; north of the Verrazano-Narrows Bridge; and east of a line drawn from shore to shore along 074°05′15″ W, between New Brighton, Staten Island, New York, and Constable Hook, New Jersey, in the Kill Van Kull Channel. These coordinates are based on the World Geodetic System (WGS 84).

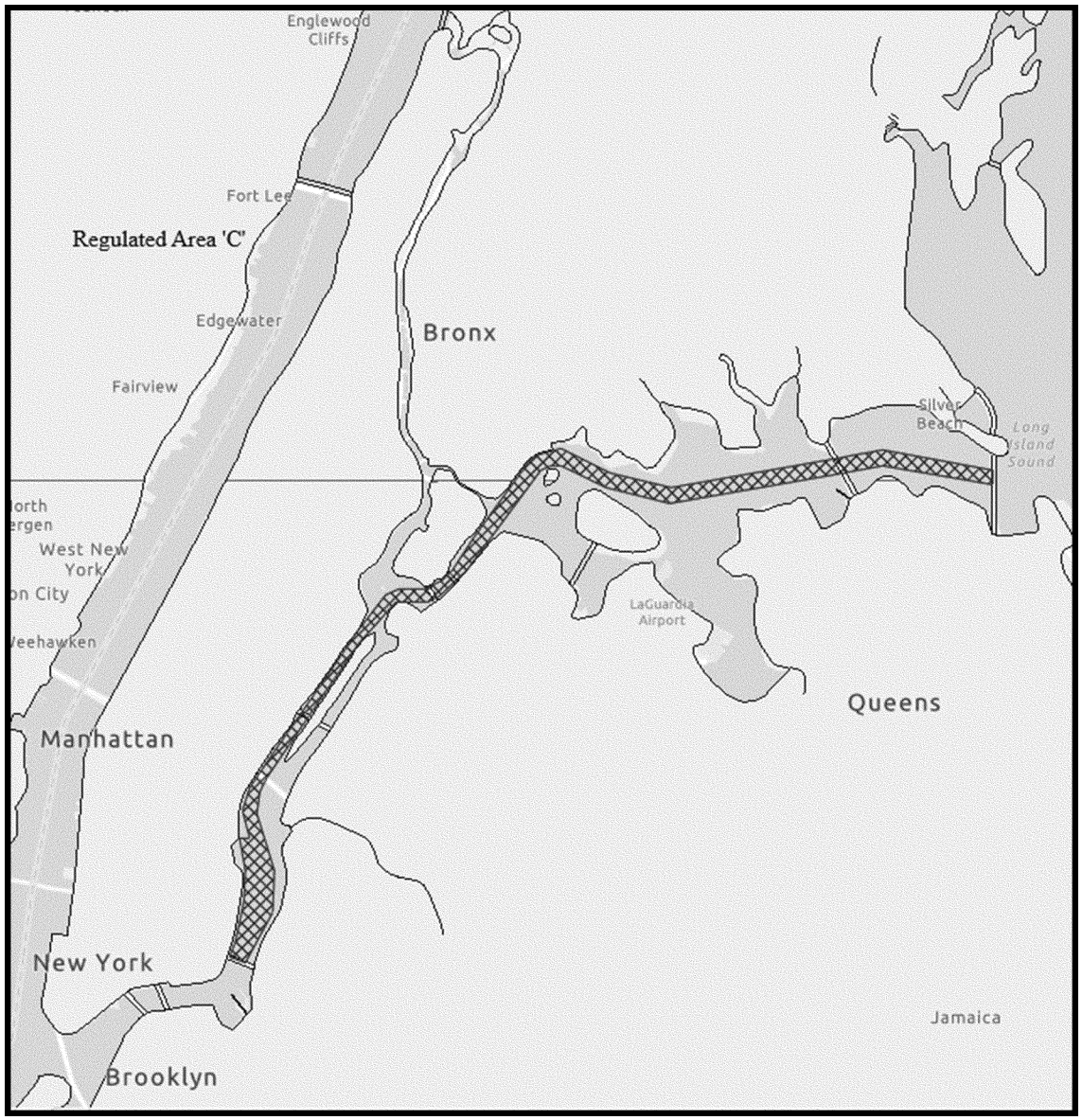
**(Figure 2 to § 100.T0199–0903: Chartlet Showing the Regulated Area 'B'.)**




(ii) This section will be enforced from 10 a.m. on July 1, until 11:59 p.m. on July 9, 2026.

(3) Regulated Area 'C'—(i) Location. The following area is a special regulated area: All waters of the East River within the main channel from the Williamsburg Bridge to the Throgs Neck Bridge;

**(Figure 3 to § 100.T0199–0903: Chartlet Showing the Regulated Area 'C'.)**




(ii) This section will be enforced from 11 a.m. July 3, until 4 p.m. on July 3, 2026.

(b) *Spectator areas.* (i) Location, enforcement period, and prohibition. Each area provided in the table below, expressed in Degrees (°) Minutes (′) Seconds (″) (DMS) based on the World Geodetic System (WGS 84), constitutes a spectator area along with its prohibitions.

TABLE 1 TO PARAGRAPH (b) OF § 100.T0199–0903

| Spectator area | Location | Enforcement period | Prohibitions |
|---|---|---|---|
| 1 ..... | All navigable waters of the Upper Bay in the vicinity of Liberty Island within a polygon formed by connecting the latitude and longitude points in the following order: 40°41′35.62″ N, 074°02′17.28″ W; thence to 40°41′30.07″ N, 074°02′06.3″ W; thence to 40°41′02.03″ N, 074°02′24.76″ W; thence to 40°41′07.57″ N, 074°02′36.46″ W; then returning to its point of origin at 40°41′35.62″ N, 074°02′17.28″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026.<br>* The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for vessels certificated under 46 CFR Subchapter T or Subchapter K spectator vessels. |

TABLE 1 TO PARAGRAPH (b) OF § 100.T0199–0903—Continued

| Spectator area | Location | Enforcement period | Prohibitions |
|---|---|---|---|
| 2 ..... | All navigable waters of the Upper Bay south of Liberty Island, within a polygon formed by connecting the latitude and longitude points in the following order: 40°41′23.45″ N, 074°03′13.23″ W; thence to 40°40′59.45″ N, 074°02′26.45″ W; thence to 40°40′09.39″ N, 074°02′59.28″ W; thence to 40°40′40.90″ N, 074°03′50.15″ W; then returning to its point of origin at 40°41′23.45″ N, 074°03′13.23″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for spectator vessels less than 82 feet (25 meters) in length. |
| 3 ..... | All navigable waters of the Upper Bay north of Port Liberty, New Jersey within a polygon formed by connecting the latitude and longitude points in the following order: 40°41′37.14″ N, 074°03′49.36″ W; thence to 40°40′28.30″ N, 074°03′35.89″ W; thence to 40°40′09.12″ N, 074°03′49.98″ W; thence to 40°40′16.04″ N, 074°04′06.14″ W; then returning to its point of origin at 40°41′37.14″ N, 074°03′49.36″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for spectator vessels less than 82 feet (25 meters) in length. |
| 4 ..... | All navigable waters of the Upper Bay East of Port Liberty, New Jersey within a polygon formed by connecting the latitude and longitude points in the following order: 40°40′24.58″ N, 074°03′30.29″ W; thence to 40°40′05.59″ N, 074°03′01.78″ W; thence to 40°39′37.30″ N, 074°03′20.33″ W; thence to 40°39′51.52″ N, 074°03′54.28″ W; then returning to its point of origin at 40°40′24.58″ N, 074°03′30.29″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for spectator vessels between 82 feet (25 meters) and 197 feet (60 meters). |
| 5 ..... | All navigable waters of the Upper Bay south of Bayonne Dry Dock and west of Robbins Reef within a polygon formed by connecting the latitude and longitude points in the following order: 40°39′53.70″ N, 074°05′04.44″ W; thence to 40°39′53.16″ N, 074°04′59.22″ W; thence to 40°39′40.68″ N, 074°04′29.06″ W; thence to 40°39′31.03″ N, 074°04′18.39″ W; thence to 40°39′25.49″ N, 074°04′20.77″ W; thence to 40°39′16.24″ N, 074°04′42.47″ W; thence to 40°39′19.80″ N, 074°05′10.03″ W; thence along the shoreline to 40°39′34.05″ N, 074°05′24.49″ W; then returning to its point of origin at 40°39′53.70″ N, 074°05′04.44″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026 * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for spectator vessels less than 82 feet (25 meters) in length. |
| 6 ..... | All navigable waters of the Upper Bay in the vicinity of Robbins Reef within a polygon formed by connecting the latitude and longitude points in the following order: 40°39′46.13″ N, 074°03′59.42″ W; thence to 40°39′22.16″ N, 074°03′27.69″ W; thence to 40°38′57.98 N, 074°03′34.90″ W; thence to 40°39′09.13″ N, 074°04′26.80″ W; then returning to its point of origin at 40°39′46.13″ N, 074°03′59.42″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026 * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for spectator vessels between 82 feet (25 meters) and 197 feet (60 meters). |
| 7 ..... | All navigable waters of the Upper New York Bay on the east side of the Anchorage Channel in the vicinity of Bay Ridge Channel within a polygon formed by connecting the latitude and longitude points in the following order: 40°38′03.37″ N, 074°03′02.01″ W; thence to 40°38′03.43″ N, 074°02′30.84″ W; thence to 40°37′36.07″ N, 074°02′42.31″ W; thence to 40°37′23.34″ N, 074°02′40.48″ W; thence to 40°37′21.69″ N, 74°02′47.88″ W; thence to 40°37′21.37″ N, 074°02′47.77″ W; then returning to its point of origin at 40°38′03.37″ N, 074°03′02.01″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for spectator vessels greater than 197 feet (60 meters). |

TABLE 1 TO PARAGRAPH (b) OF § 100.T0199–0903—Continued

| Spectator area | Location | Enforcement period | Prohibitions |
|---|---|---|---|
| 8 ..... | All navigable waters of the Upper New Bay on the east side of the Anchorage Channel in the vicinity of the Verrazano-Narrows Bridge within a polygon formed by connecting the latitude and longitude points in the following order: 40°35′43.77″ N, 074°03′02.84″ W; thence to 40°35′50.99″ N, 074°02′40.96″ W; thence to 40°35′19.33″ N, 074°02′28.42″ W; thence to 40°35′09.49″ N, 074°02′25.68″ W; thence to 40°34′49.43″ N, 074°03′02.80″ W; then returning to its point of origin at 40°35′43.77″ N, 74°03′02.84″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for spectator vessels less than 197 feet (60 meters). |
| 9 ..... | All navigable waters of the Lower New York Bay west of Ambrose Channel within a polygon formed by connecting the latitude and longitude points in the following order: 40°34′49.43″ N, 074°03′02.80″ W; thence to 40°35′09.49″ N, 074°02′25.68″ W; thence to 40°34′20.73″ N, 074°02′11.99″ W; thence to 40°34′05.86″ N, 074°02′54.46″ W; then returning to its point of origin at 40°34′49.43″ N, 074°03′02.80″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for any spectator vessel on a first-come first-served basis. |
| PC–1 ..... | All navigable waters of the Hudson River between Pier 94 and Pier 97 within the pierhead line. | From 6 a.m. on July 4, 2026, until the conclusion of the Tall Ship Parade of Sail. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for paddlecraft on a first-come first-served basis. All paddlecraft shall launch from access points within this established area. |
| PC–2 ..... | All navigable waters of Hudson River between the Union Dry Dock pier and Maxwell Place Park Pier within the pierhead line of the bound by the following coordinates: 40°45′01.13″ N, 074°01′24.50″ W; then along the pier to 40°45′00.16″ N, 074°01′18.25″ W; thence to 40°44′50.99″ N, 074°01′17.56″ W; then along the pier to 40°44′52.26″ N, 074°01′24.45″ W; then returning to its point of origin along the shoreline to 40°45′01.13″ N, 074°01′24.50″ W. | From 6 a.m. on July 4, 2026, until the conclusion of the Tall Ship Parade of Sail. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for paddlecraft on a first-come first-served basis. All paddlecraft shall launch from access points within this established area. |
| PC–3 ..... | All navigable waters of the Hudson River south of Pier 40 within the pierhead line bound by the following coordinates: 40°43′42.48″ N, 074°00′51.70″ W; then along the pier to 40°43′41.63″ N, 074°00′40.98″ W; then along the shoreline to 40°43′36.23″ N, 074°00′41.53″ W; thence to 40°43′37.29″ N, 074°00′52.57″ W; then returning to its point of origin at 40°43′42.48″ N, 074°00′51.70″ W. | From 6 a.m. on July 4, 2026, until the conclusion of the Tall Ship Parade of Sail. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for paddlecraft on a first-come first-served basis. All paddlecraft shall launch from access points within this established area. |
| PC–4 ..... | All navigable waters of the Hudson River north of pier 26 within the pierhead line bound by the following coordinates: 40°43′18.66″ N, 074°00′56.03″ W; thence to 40°43′17.58″ N, 074°00′47.16″ W; then along the shoreline to 40°43′16.50″ N, 074°00′47.37″ W; then along the pier to 40°43′17.57″ N, 074°00′56.25″ W; then returning to its point of origin at 40°43′18.66″ N, 074°00′56.03″ W. | From 6 a.m. on July 4, 2026, until the conclusion of the Tall Ship Parade of Sail. * The COTP will notify the local maritime community of any modifications or removals of spectator areas via Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices. | Exclusive use for paddlecraft on a first-come first-served basis. All paddlecraft shall launch from access points within this established area. |

(c) *Staging areas.* (i) Location, effective period, and prohibitions. Each area provided in the table below, expressed in Degrees (°) Minutes (′) Seconds (″) (DMS) based on the World Geodetic System (WGS 84), constitutes a staging area with its effective period and prohibitions.

TABLE 2 TO PARAGRAPH (c) OF § 100.T0199–0903

| Staging area | Location | Effective period | Prohibitions |
|---|---|---|---|
| Ellis Island ..... | All navigable waters of the Upper Bay in the vicinity of Ellis Island within a polygon formed by connecting the latitude and longitude points in the following order: 40°41′44.14″ N, 074°02′11.28″ W; thence to 40°41′42.36″ N, 074°02′00.65″ W; thence to 40°41′35.58″ N, 074°02′02.95″ W; thence to 40°41′30.19″ N, 074°02′06.60″ W; thence to 40°41′35.21″ N, 074°02′16.47″ W; then returning to its point of origin at 40°41′44.14″ N, 074°02′11.28″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. | Exclusive use for Sail 4th 250 Command Vessels overseeing the Tall Ship Parade of Sail. |
| Governors Island (West). | All navigable waters of the Upper Bay west of Governors Island, within a polygon formed by connecting the latitude and longitude points in the following order: 40°41′36.07″ N, 074°01′27.39″ W; thence to 40°41′38.67″ N, 074°01′16.46″ W; thence to 40°41′35.56″ N, 074°01′12.92″ W; thence to 40°41′17.37″ N, 074°01′34.78″ W; then returning to its point of origin at 40°41′36.07″ N, 074°01′27.39″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. | Exclusive use for Sail 4th 250 Command Vessels overseeing the Tall Ship Parade of Sail. |
| Governors Island (South). | All navigable waters of the Upper Bay south of Governors Island within a polygon formed by connecting the latitude and longitude points in the following order: 40°41′00.04″ N, 074°01′38.95″ W; thence to 40°40′58.71″ N, 074°01′28.0″ W; thence to 40°40′54.63″ N, 074°01′26.48″ W; thence to 40°40′49.98″ N, 074°01′47.08″ W; then returning to its point of origin at 40°41′00.04″ N, 074°01′38.95″ W. | From 3 p.m. on July 3, 2026, until 8 a.m. on July 5, 2026. | Exclusive use for Sail 4th 250 Command Vessels overseeing the Tall Ship Parade of Sail. |
| Gravesend Bay | All navigable waters of Gravesend Bay within a polygon formed by connecting the latitude and longitude points in the following order: 40°36′06.70″ N, 074°01′47.53″ W; thence to 40°36′02.82″ N, 074°00′58.32″ W; thence 40°35′23.06″ N, 073°59′59.16″ W; thence to 40°34′57.08″ N, 074°01′19.96″ W; then returning to its point of origin at 40°36′06.70″ N, 074°01′47.53″ W. | From 1 p.m. on July 3, 2026, until 4 p.m. on July 4, 2026. | Exclusive use for Sail 4th 250 Participant vessels awaiting the Tall Ship Parade of Sail. |
| Sandy Hook (West). | All navigable waters of Sandy Hook Bay in the vicinity of Naval Weapons Station Earle within a polygon formed by connecting the latitude and longitude points in the following order: 40°28′33.4″ N, 074°03′00.2″ W; thence to 40°28′23.0″ N, 074°02′17.0″ W; 40°27′47.7″ W, 074°02′40.9″ W; thence to 40°27′56.2″ N, 074°03′01.9″ W; then returning to its point of origin at 40°28′33.4″ N, 074°03′00.2″ W. | From 6 a.m. on July 2, 2026, until 4 p.m. on July 4, 2026. | Exclusive use for Sail 4th 250 Participant vessels awaiting the Tall Ship Parade of Sail. |
| Sandy Hook (East). | All navigable waters of Sandy Hook Bay within a polygon formed by connecting the latitude and longitude points in the following order: 40°28′30.0″ N, 074°01′42.0″ W; thence to 40°27′56.0″ N, 074°01′35.0″ W; thence to 40°27′54.0″ N, 074°01′25.0″ W; thence to 40°26′00.0″ N, 074°00′58.0″; thence to 40°26′00.0″ N, 074°02′00.0″ W; thence to 40°26′29.0″ N, 074°02′51.0″ W; thence to 40°27′29.0″ N, 074°02′10.0″ W; thence to 40°27′40.0″ N, 074°02′36.0″ W; thence to 40°28′07.0″ N, 074°02′19.0″ W; then returning to its point of origin at 40°28′30.0″ N, 074°01′42.0″ W. | From 6 a.m. on July 2, 2026, until 4 p.m. on July 4, 2026. | Exclusive use for Sail 4th 250 Participant Vessels awaiting the Tall Ship Parade of Sail. |

(d) *Hudson river traffic corridor* (i). Location. All waters of the Hudson River from the Holland Tunnel Ventilators to the George Washington Bridge.

(ii) Enforcement Period. This section will be enforced from 10 a.m. on July 1, until 11:59 p.m. on July 9, 2026.

(e) *Definitions.* As used in this section—

*Captain of the Port Representative or COTP Representative* means a commissioned, warrant, or petty officer of the Coast Guard designated by name by the COTP to verify an event's compliance with the conditions of its approved permit.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce the regulations in this section.

*Commercial Service* means any type of trade or business that involves the transportation of goods or individuals, including offering a vessel for such a purpose, with or without charging a fee or receiving other consideration. This includes, but is not limited to, fishing, towing, and carrying passengers.

*Official patrol vessel or official patrol* means any vessel assigned or approved by the respective COTP with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the COTP in accordance with current local agreements.

*Inflatable boat* means a vessel that uses air-filled flexible material for buoyancy.

*Paddlecraft* means a vessel powered only by its occupants, using a single- or double-bladed paddle as a lever without the aid of a fulcrum provided by oarlocks, thole pins, crutches, or similar arrangements.

*Participant* means all persons and vessels registered with the Sail 4th 250 and International Naval Review 250 sponsors as a participant in their events.

*Personal watercraft* means any vessel propelled by a water-jet pump or other machinery as its primary source of motive power and designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than sitting or standing within the vessel's hull.

*Rowboat* means an open vessel manually propelled by oars.

*Seaplane* means any aircraft designed to maneuver on the water.

*Spectator area* means an area bound by coordinates provided in latitude and longitude within the regulated area that outlines the boundary of an area reserved for spectator vessels watching the parade of sail or event.

*Spectator* means all persons and vessels not serving as official patrol vessels or registered with the event sponsors as participants.

*Staging area* means an area bound by coordinates provided in latitude and longitude within the regulated area that outlines the boundary of an area reserved for Sail 4th 250 participant vessels and command vessels overseeing the Tall Ship Parade of Sail.

(f) *Patrol of the marine event.* COTP may assign one or more official patrol vessels, as described in § 100.40, to the regulated event. The Event PATCOM will be designated to oversee the patrol. The patrol vessel and the Event PATCOM may be contacted on VHF–FM Channel 16. The Event PATCOM may terminate the event with approval from the COTP at any time if deemed necessary for the protection of life or property.

(g) *Special local regulations.* (1) No vessel except Sail 4th 250/International Naval Review 250 participating vessels and their assisting tugs, and those vessels exempt from the regulations in this section may enter or navigate within Regulated Areas 'A' or 'B', unless specifically authorized by the Coast Guard Captain of the Port New York, or their designated representative from 6 a.m. on July 4, 2026, until the conclusion of the Tall Ship Parade of Sail.

(2) All vessels transiting Regulated Area 'B' must do so at a slow no wake speed when operating within established spectator areas and when within 100 yards of tall ships, U.S. Naval Vessels, foreign naval vessels, and law enforcement vessels anchored or moored.

(3) Not withstanding paragraph (g)(1) of this section, no vessel other than participating tall ships and naval vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the main shipping channel (including Ambrose Channel, Anchorage Channel South, and Anchorage Channel North) or Hudson River in Regulated Area 'B' during the Sail 4th 250 Tall Ship Parade of Sail and International Naval Review 250 unless specifically authorized by the COTP or their designated representative. No vessel in Regulated Area 'B' is permitted to cross through the Tall Ship Parade of Sail, cross within 500 yards of the lead or last vessel in the Tall Ship Parade of Sail, or maneuver within 100 yards of any participant unless authorized to do so by the COTP or their designated representative.

(4) On July 3, 2026, no vessel in Regulated Area 'C' is permitted to cross or maneuver within 100 yards of any participant in the Class B tall ship parade unless authorized to do so by the COTP or their designated representative.

(5) On July 4, 2026, any vessel transiting through Regulated Area 'A' or 'B' must make a direct passage. No vessel may stop, fish, or loiter. Vessels transiting to spectator areas may stop once in their authorized spectator area.

(6) No vessel is permitted to anchor in the main shipping channel (including Ambrose Channel, Anchorage Channel South, and Anchorage Channel North) or Hudson River outside of the designated spectator areas in Regulated Area 'B' at any time without authorization from the COTP or their designated representative.

(7) No vessel, other than Sail 4th 250 or International Naval Review 250 participant vessels, their assisting tugs, and enforcement vessels, are permitted to transit the waters between Governors Island and The Battery in southern Manhattan from 6 a.m., July 4, 2026, until the end of the Tall Ship Parade of Sail. Vessels which must transit to or from the East River outside of the restrictions established by paragraph (g)(3) of this section may only do so by using Buttermilk Channel unless otherwise authorized by the COTP or their designated representative.

(8) No vessels may anchor, loiter, or approach within 100 yards of any Sail 4th 250 participant vessel when navigating or anchored within an established staging area except for other participating vessels and their assisting tugs.

(9) On July 4, 2026, only those ferry services with prior written authorization from the COTP or designated representative will be authorized to operate in Regulated Area 'B'. Ferry operators must follow all instructions given by the COTP or their designated representative.

(10) The operation of *seaplanes,* including taxiing, landing, and taking off, is prohibited in Regulated Area 'B' and Regulated Area 'C' on July 3, 2026, and in Regulated Area 'B' on July 4, 2026, without prior written authorization from the COTP or designated representative.

(11) The operation of *personal watercraft* is prohibited within Regulated Area 'B' except those engaged in *commercial service* with prior authorization from the COTP or designated representative.

(12) On July 4, 2026, the operation of *inflatable boats, paddlecraft, and rowboats* are prohibited in Regulated Area 'B' unless in a designated spectator area for paddlecraft as described in Table 1 to § 100.T0199–0903.

(13) All persons are prohibited from swimming, conducting underwater diving operations, operating surface or underwater drones, and conducting surveying operations in Regulated Area 'B', without prior written authorization from the COTP or their designated representative.

(14) All Vessel Movement Reporting System Users as defined in 33 CFR 161.16 operating in the Hudson River Traffic Corridor described in paragraph (d)(i) of this section shall make reports as outlined in 33 CFR 161.19, 33 CFR 161.20, 33 CFR 161.21 and 33 CFR 161.22 on VHF–FM Channel 14 to Vessel Traffic Service New York. All vessels that are exempt from reporting as defined in 33 CFR 161.23 are not required to make reports to the Vessel Traffic Service New York.

(15) Vessels deciding to anchor within the designated spectator areas outlined in Table 1 above of this section are subject to the following regulations:

(i) Ensure their vessels are properly anchored and remain safely in position at anchor during the events.

(ii) Vessels must display anchor lights and day shapes, as required by the Navigation Rules in 33 CFR part 83.

(iii) Do not leave vessels unattended in any spectator area at any time.

(iv) Do not tie off to any aid to navigation, buoy, mooring ball, or mooring barge.

(v) Maintain at least 20 feet of clearance between anchored vessels.

(16) The COTP will provide notice of the regulated areas through advanced notice via the Local Notice to Mariners, Broadcast Notice to Mariners, and by on-scene designated representatives.

*Note 1 to § 100.T0199–0903:* CAUTION: Designated spectator areas in this section have not been subject to any special survey or inspection and charts may not show all seabed obstructions or the shallowest depths. In addition, if you decide to anchor, spectator areas are in areas of substantial currents, and not all spectator areas are over good holding ground.

*Note 2 to § 100.T0199–0903:* Untreated sewage discharges are prohibited within three miles from shore. Section 312 of the Clean Water Act requires the use of operable, U.S. Coast Guard-certified marine sanitation

devices onboard vessels that are equipped with installed toilets and operating on U.S. navigable waters. Additionally, parts of the Hudson River located in EPA Region 02 are No-Discharge Zones. No-Discharge Zones prohibit the discharge of sewage from vessels to protect water quality. Mariners are warned they cannot discharge any treated or untreated sewage within a No-Discharge Zone and must instead retain it on board and use onshore pump-out facilities to dispose of it later. Additional information on commercial pump-out vessels or the location of onshore pump-out facilities dedicated to the collection and legal disposal of marine sewage may be found at *https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state#ny.*

*Note 3 to § 100.T0199–0903:* Vessel operators seeking to attend in spectator areas may do so through a first-come, first-served plan, with entry subject to vessel type and size restrictions specific to each area. No ticket is required for access. Those planning to use paddlecraft-only spectator areas are advised that state ordinances, local ordinances, or both may apply. Please also keep in mind that access to some of these paddlecraft-only spectator areas may be through private property, businesses, marinas, or clubs, and the public should make inquiries to the respective owner or operator regarding access and launching procedures and restrictions.

## PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 2071; 46 U.S.C. 70006, 70034; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

■ 2. Temporarily stay paragraphs (c)(1), (c)(2), (c)(5)(ii), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), (d)(8), (d)(11), (d)(12), (d)(13), (d)(14), (d)(15), (e)(1), (m)(2), and (m)(3) of 33 CFR 110.155, effective from July 1, 2026, through July 9, 2026.

■ 3. Add a Note to § 110.155, effective from July 1, 2026, through July 9, 2026, to read as follows:

*Note to § 110.155:* Vessels seeking to anchor in an anchorage ground while it is temporarily suspended and not being used as a spectator area or staging area for the exclusive use of Sail 4th 250 and International Naval Review 250 must request authorization from the Vessel Traffic Service (VTS) via VHF–FM channel 14 or by telephone at (718) 354–4088. If permission is granted, all vessels must comply with lawful instructions of the VTS.

## 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 2. Add § 165.T01–0903 to read as follows:

### § 165.T01 -0903 Security Zones; Sail 4th 250, International Naval Review 250; Port of New York and New Jersey

(a) The following areas are established as security zones:

(1) Security Zones for Foreign Naval Vessels.

(i) *Location:* All navigable waters within Sector New York Marine Inspection and Captain of the Port Zone as described in 33 CFR 3.05–30 extending from the surface to bottom, within a 100-yard radius of any foreign naval vessels.

(ii) *Effective dates and enforcement period:* This rule will be effective from 12:01 a.m. July 1, 2026, through 11:59 p.m. on July 9, 2026. The Captain of the Port (COTP) will make notification of the exact names of the vessels in advance of each enforcement period for the security zone to the local maritime community through the Local Notice to Mariners (LNMs) and Broadcast Notices to Mariners (BNMs). The Northeast Coast Guard District Local Notice to Mariners can be found at: *http://www.navcen.uscg.gov.*

(2) Security Zones for Participating Tall Ships.

(i) *Location:* All navigable waters within Sector New York Marine Inspection and Captain of the Port Zone as described in 33 CFR 3.05–30 extending from the surface to bottom, within a 50-yard radius of any designated Tall Ship.

(ii) *Effective dates and enforcement period:* This rule will be effective from 12:01 a.m. July 1, 2026, through 11:59 p.m. on July 9, 2026. The Captain of the Port (COTP) will make notification of the exact names of the vessels in advance of each enforcement period for the security zone to the local maritime community through the Local Notice to Mariners (LNMs) and Broadcast Notices to Mariners (BNMs). The Northeast Coast Guard District Local Notice to Mariners can be found at: *http://www.navcen.uscg.gov.*

(3) Moving Security Zone for the U.S. Naval Review Ship.

(i) *Location:* All navigable waters surface to bottom, within a 500-yard radius of the U. S. Naval Review Ship as it transits the Hudson River and Upper New York Bay between the George Washington Bridge and the Verrazano-Narrows Bridge.

(ii) *Effective and enforcement periods:* This rule will be effective from 5 a.m. July 4, 2026, through 1 p.m. on July 4, 2026, but the security zone for the U.S. Naval Review Ship in paragraph(a)(2)(i) of this section will only be enforced while the vessel is underway as the review ship while conducting the International Naval Review. The COTP will make notification of the exact name of the review ship in advance of the enforcement period for the moving security zone to the local maritime community through the LNMs and BNMs.

(4) Security Zone for the Reviewing Official Viewing Platform

(i) *Location:* All navigable waters of Upper New York Harbor in the vicinity of Anchorage 21–B, extending from the surface to bottom, within a 500-yard radius of the U.S. Naval Ship serving as the Reviewing Official viewing platform during the Tall Ship Parade of Sail. The COTP will make notification to the local maritime community of the exact name of the vessel in advance of the enforcement period through the Local Notice to Mariners.

(ii) *Enforcement period:* This rule will be effective from 8 a.m. until 11:59 p.m. on July 4, 2026.

(5) Security Zone Areas. Each area provided in the table below, expressed in Degrees (°) Minutes (′) Seconds (″) (DMS) based on the World Geodetic System (WGS 84), constitutes a security zone.

TABLE 3 TO PARAGRAPH (a)(5) OF § 165.T01–0903

| Security zone name | Location |
|---|---|
| SECURITY ZONE ALPHA ... | All navigable waters of the west side of the Hudson River between Englewood Cliffs and Linwood, NJ, within a polygon formed by connecting the latitude and longitude points in the following order: 40°52′37.11″ N, 073°56′45.29″ W; thence to 40°52′29.37″ N, 073°56′17.68″ W; thence to 40°52′09.28″ N, 073°56′19.69″ W; thence to 40°51′26.98″ N, 073°56′48.88″ W; thence to; thence to 40°51′35.36″ N, 073°57′15.94″ W; then returning to its point of origin along the shoreline at 40°52′37.11″ N, 073°56′45.29″ W. |
| SECURITY ZONE BRAVO .. | All navigable waters of the west side of the Hudson River between Fort Lee and Edgewater, NJ, within a polygon formed by connecting the latitude and longitude points in the following order:40°50′18.95″ N, 073°58′04.75″ W; thence to 40°50′13.68″ N, 073°57′47.97″ W; thence to 40°50′37.23″ N, 073°57′36.07″ W; thence to 40°50′34.25″ N, 073°57′17.99″ W; thence to 40°49′54.75″ N, 073°57′28.96″ W; thence to 40°49′38.38″ N, 073°57′37.61″ W; thence to 40°49′29.84″ N, 073°57′47.35″ W; thence to 40°49′34.64″ N, 073°58′03.26″ W; thence to 40°49′40.60″ N, 073°58′04.19″ W; thence to 40°49′42.84″ N, 073°58′10.70″ W; then returning to its point of origin along the shoreline at 40°50′18.95″ N, 073°58′04.75″ W. |
| SECURITY ZONE CHARLIE | All navigable waters of the west side of the Hudson River between Edgewater, NJ, and Weehawken, NJ, within a polygon formed by connecting the latitude and longitude points in the following order: 40°49′36.32″ N, 073°58′16.32″ W; thence to 40°49′27.28″ N, 073°57′50.89″ W; thence to 40°49′21.90″ N, 073°57′48.57″ W; thence to 40°48′27.62″ N, 073°58′24.20″ W; thence to 40°47′52.21″ N, 073°58′49.13″ W; thence to 40°47′19.93″ N 073°59′16.79″ W; thence to 40°47′02.50″ N, 073°59′28.38″ W; thence to 40°46′17.93″ N, 074°00′04.06″ W; thence to 40°46′15.58″ N, 074°00′12.56″ W; thence to 40°46′22.61″ N, 074°00′25.69″ W; thence to 40°46′28.22″ N, 074°00′27.55″ W; thence to 40°46′33.49″ N, 074°00′23.07″ W; thence to 40°46′37.94″ N, 074°00′33.12″ W; then returning to its point of origin along the shoreline at 40°49′36.32″ N, 073°58′16.32″ W. |
| SECURITY ZONE DELTA ... | All navigable waters of the west side of the Hudson River in the vicinity of Weehawken, NJ, within a polygon formed by connecting the latitude and longitude points in the following order: 40°46′14.79″ N, 074°00′40.20″ W; thence to 40°46′19.74″ N, 074°00′27.86″ W; thence to 40°46′13.76″ N, 074°00′14.44″ W; thence to 40°46′07.86″ N, 074°00′16.12″ W; thence to 40°45′48.44″ N, 074°00′32.18″ W; thence to 40°45′46.98″ N, 074°00′41.30″ W; thence to 40°45′51.83″ N, 074°00′50.80″ W; thence to 40°45′58.97″ N, 074°00′50.26″ W; thence to 40°46′06.36″ N, 074°00′46.43″ W; thence to 40°46′10.09″ N, 074°00′42.07″ W; thence to 40°46′10.96″ N, 074°00′41.37″ W; thence to 40°46′11.02″ N, 074°00′41.43″ W; then returning to its point of origin at 40°46′14.79″ N, 074°00′40.20″ W. |
| SECURITY ZONE ECHO .... | All navigable waters of the west side of the Hudson River in the vicinity of Hoboken, NJ, within a polygon formed by connecting the latitude and longitude points in the following order: 40°44′40.12″ N, 074°01′22.18″ W; thence to 40°44′37.37″ N, 074°00′56.85″ W; thence to 40°44′05.71″ N, 074°01′01.26″ W; thence to 40°44′00.26″ N, 074°01′08.89″ W; thence to 40°44′02.10″ N, 074°01′23.38″ W; thence to 40°44′10.48″ N, 074°01′30.77″ W; then return to its point of along the shoreline origin at 40°44′40.12″ N, 074°01′22.18″ W. |
| SECURITY ZONE FOX-TROT. | All navigable waters of the west side of the Hudson River between Hoboken, NJ, and Jersey City, NJ, within a polygon formed by connecting the latitude and longitude points in the following order: 40°44′00.47″ N, 074°01′50.30″ W; thence to 40°43′53.43″ N, 074°01′05.32″ W; thence 40°43′30.19″ N, 074°01′09.49″ W; thence to 40°43′26.90″ N, 074°01′18.08″ W; thence to 40°43′29.02″ N, 074°01′31.76″ W; thence to 40°43′32.80″ N, 074°01′42.37″ W; thence to 40°43′33.41″ N, 074°01′47.56″ W; thence to 40°43′34.27″ N, 074°01′48.71″ W; then returning to its point of origin along the shoreline at 40°44′00.47″ N, 074°01′50.30″ W. |
| SECURITY ZONE GOLF ..... | All navigable waters of the west side of the Hudson River in the vicinity of Jersey City, NJ, within a polygon formed by connecting the latitude and longitude points in the following order:40°43′25.76″ N, 074°01′46.38″ W; thence to 40°43′26.44″ N, 074°01′32.33″ W; thence to 40°43′24.63″ N, 074°01′18.35″ W; thence to 40°43′20.35″ N, 074°01′13.95″ W; thence to 40°42′41.65″ N, 074°01′21.13″ W; thence to 40°42′33.10″ N, 074°01′27.46″ W; thence to 40°42′36.79″ N, 074°01′47.16″ W; thence to 40°42′45.58″ N, 074°01′48.09″ W; thence to 40°42′50.55″ N, 074°01′46.78″ W; thence to 40°42′56.71″ N, 074°01′53.21″ W; then returning to its point of origin along the shoreline at 40°43′25.76″ N, 074°01′46.38″ W. |
| SECURITY ZONE HOTEL ... | All navigable waters of the Upper New York Bay on the west side of the Anchorage Channel between Morris Canal, NJ, and Ellis Island within a polygon formed by connecting the latitude and longitude points in the following order: 40°42′23.96″ N, 074°01′53.18″ W; thence to 40°42′28.41″ N, 074°01′47.31″ W; thence to 40°42′27.00″ N, 074°01′32.17″ W; thence to 40°41′56.55″ N, 074°01′24.44″ W; thence to 40°41′46.71″ N, 074°01′34.02″ W; thence to 40°41′47.29″ N, 074°01′54.93″ W; thence to 40°42′00.30″ N, 074°02′01.52″ W; then returning to its point of origin at 40°42′23.96″ N, 074°01′53.18″ W. |
| SECURITY ZONE INDIA ..... | All navigable waters of the Upper New York Bay on the east side of the Anchorage Channel between Red Hook, NY, and Bay Ridge, NY, within a polygon formed by connecting the latitude and longitude points in the following order: 40°40′18.97″ N, 074°02′24.01″ W; thence to 40°40′24.17″ N, 074°02′09.41″ W; thence to 40°40′27.04″ N, 074°01′46.71″ W; thence to 40°40′23.69″ N, 074°01′33.56″ W; thence to 40°39′03.33″ N, 074°02′24.57″ W; thence to 40°39′19.67″ N, 074°03′01.81″ W; thence to 40°39′36.58″ N, 074°02′53.42″ W; then returning to its point of origin at 40°40′18.97″ N, 074°02′24.01″ W. |
| SECURITY ZONE JULIET ... | All navigable waters of the Upper New York Bay on the east side of the Anchorage Channel in the vicinity of Bay Ridge, NY, within a polygon formed by connecting the latitude and longitude points in the following order: 40°39′19.67″ N, 074°03′01.81″ W; thence to 40°39′03.33″ N, 074°02′24.57″ W; thence to 40°38′55.07″ N, 074°02′17.39″ W; thence to 40°38′44.63″ N, 074°02′28.06″ W; thence to 40°38′03.37″ N, 074°02′47.00″ W; thence to 40°38′03.37″ N, 074°03′02.01″ W; thence to 40°38′28.01″ N, 074°03′19.10″ W; then returning to its point of origin at 40°39′19.67″ N, 074°03′01.81″ W. |
| SECURITY ZONE KILO ..... | All navigable waters of the Upper New York Bay on the west side of the Anchorage Channel in the vicinity of Stapleton Anchorage within a polygon formed by connecting the latitude and longitude points in the following order: 40°38′27.86″ N, 074°04′11.98″ W; thence to 40°38′39.94″ N, 074°04′04.79″ W; thence to 40°38′40.15″ N, 074°03′45.58″ W; thence to 40°38′11.15″ N, 074°03′27.22″ W; thence to 40°37′09.55″ N, 074°03′03.99″ W; thence to 40°36′57.15″ N, 074°03′46.94″ W; then returning to its point of origin along the shoreline at 40°42′23.96″ N, 074°01′53.18″ W. |

TABLE 3 TO PARAGRAPH (a)(5) OF § 165.T01–0903—Continued

| Security zone name | Location |
|---|---|
| SECURITY ZONE LIMA ..... | All navigable waters of the Upper New York Bay on the west side of the Anchorage Channel in the vicinity of Stapleton Anchorage within a polygon formed by connecting the latitude and longitude points in the following order: 40°36′57.15″ N, 074°03′46.94″ W; thence to 40°37′09.55″ N, 074°03′03.99″ W; thence to 40°36′23.23″ N, 074°02′43.84″ W; thence to 40°36′16.01″ N, 074°03′06.34″ W; thence to 40°36′18.38″ N, 074°03′07.65″ W; thence to 40°36′16.49″ N, 074°03′13.52″ W; thence to 40°36′14.08″ N, 074°03′12.19″ W; thence 40°36′13.80″ N, 074°03′13.07″ W; then returning to its point of origin along the shoreline at 40°36′57.15″ N, 074°03′46.94″ W. |

(i) *Effective and enforcement period:* This rule will be effective from 12:01 a.m. July 1, 2026, through 11:59 p.m. on July 9, 2026, but the individual security zone locations provided in Table 1 to (a)(5) will only be enforced while U.S. or foreign naval vessels are anchored or moored within the location. The COTP will make notification of the exact dates and times in advance of each enforcement period for each security zone to the local maritime community through the Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletins, or Coast Guard Advisory Notices.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard coxswain, petty officer, or other officer or a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the security zone.

*Foreign Naval Vessel* means any naval vessel of a foreign state, which is not required to be licensed for entry into the U.S. for visit purposes under 22 CFR 126.6, provided it is not undergoing repair or overhaul.

*U.S. Naval Vessel* means any vessel owned, operated, chartered, or leased by the U.S. Navy; any pre-commissioned vessel under construction for the U.S. Navy, once launched into the water; and any vessel under the operational control of the U.S. Navy or a Combatant Command.

(c) *Regulations.* (1) Under the general security zone regulations in subpart C of this part, you may not enter the security zones 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 on VHF–FM channel 16 or by telephone at (844) NYC–USCG. Those in a security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's representative.

(3) The Coast Guard Northeast District Local Notice to Mariners can be found at: *http://www.navcen.uscg.gov.*

**M.E. Platt,**

*Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Northeast District.*

[FR Doc. 2026–09872 Filed 5–15–26; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Parts 563 and 585

**[Docket No. NHTSA–2025–0050]**

**RIN 2127–AM78**

## Event Data Recorders

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends NHTSA's regulation governing Event Data Recorders (EDR or EDRs) to delay the implementation schedule for expanded pre-crash data capture requirements. In response to petitions for reconsideration of a final rule published on December 18, 2024, the agency is adopting a four-year phase-in compliance schedule that begins September 1, 2028. This action ensures the increased pre-crash data capture requirements are integrated into the vehicle fleet in a manner that aligns with manufacturer production cycles and technical feasibility.

**DATES:**

*Effective Date:* This rule is effective June 17, 2026.

*Compliance Dates:* This final rule adopts a four-year phase-in period that begins September 1, 2028 to comply with part 563, as amended by the December 18, 2024 final rule. Under the four-year phase-in, 25 percent of a manufacturer's applicable vehicles produced from September 1, 2028 to August 31, 2029 must comply with part 563 as amended by the final rule published on December 18, 2024, ''Event Data Recorders,'' followed by 50 percent from September 1, 2029 to August 31, 2030, 75 percent from September 1, 2030 to August 31, 2031, and 100 percent on and after September 1, 2031. Applicable vehicles produced by small-volume and limited-line manufacturers are required to comply beginning September 1, 2032. Applicable vehicles manufactured in two or more stages or that are altered are not required to comply with the rule until on or after September 1, 2033. Voluntary early compliance is permitted.

*Petitions for Reconsideration:* If you wish to petition for reconsideration of this rule, your petition must be received by July 2, 2026.

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket number set forth above (NHTSA–2025–0050) and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to the docket for this rulemaking at *www.regulations.gov,* including any personal information provided.

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a submission containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512). NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the Agency

under part 512. Please do not send a hard copy of a request for confidential treatment to NHTSA's headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact him for a secure file transfer link. Manufacturers or any companies that already have a Confidential Business Information (CBI) Portal account or an Enterprise Account with NHTSA should use the CBI Portal for their submission. If you submit a CBI request, please also email a courtesy copy of the request to Eli Wachtel at *eli.wachtel@dot.gov.*

*Privacy Act:* The petition will be placed in the docket. Anyone is able to search the electronic form of all documents 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/individuals/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 technical issues, you may contact Joshua McNeil, Office of Crashworthiness Standards (*joshua.mcneil@dot.gov*). For legal issues, you may contact Eli Wachtel, NHTSA Office of Chief Counsel (*eli.wachtel@dot.gov*). You can reach these officials by phone at 202–366–1810. Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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## I. Executive Summary

This final rule amends NHTSA's regulation governing EDRs [1] to delay the compliance timeline by one year and to establish a four-year phase-in schedule for compliance with expanded pre-crash data capture requirements. These requirements were established by a December 18, 2024 final rule [2] (2024 final rule) issued pursuant to a mandate under the Fixing America's Surface Transportation (FAST) Act.[3] The 2024 final rule required that all vehicles equipped with EDRs and manufactured on or after September 1, 2027, comply with the updated pre-crash data capture requirements. With this action, NHTSA adopts the amendments proposed in the November 28, 2025 notice of proposed rulemaking (NPRM),[4] which was issued in response to petitions for reconsideration of the 2024 final rule submitted by the Alliance for Automotive Innovation (Auto Innovators), SAE International (SAE), and Fiat Chrysler Automobiles U.S. LLC (FCA).[5]

The phase-in schedule, excluding small-volume and multi-stage manufacturers, is as follows:

- 25 percent of the vehicles equipped with EDRs manufactured on or after September 1, 2028 and before September 1, 2029.
- 50 percent of the vehicles equipped with EDRs manufactured on or after September 1, 2029 and before September 1, 2030.
- 75 percent of the vehicles equipped with EDRs manufactured on or after September 1, 2030 and before September 1, 2031.
- 100 percent of the vehicles equipped with EDRs manufactured on or after September 1, 2031.

Small-volume and limited-line manufacturers must comply beginning September 1, 2032. Vehicles manufactured in two or more stages and altered vehicles are not required to comply with the rule until on or after September 1, 2033. This rule also permits voluntary early compliance.

This action ensures that the technical specifications mandated in the 2024 final rule, specifically the capture of pre-crash data elements for 20 seconds at 10 Hz, are integrated into the vehicle fleet in a manner that aligns with manufacturer production cycles. NHTSA estimates that this approach provides the industry with total undiscounted cost savings between $35.54 million and $89.82 million (in 2024 dollars) from 2027 to 2030 [6] while ensuring the objectives of the FAST Act are achieved. To ensure accountability, this final rule establishes new reporting requirements under 49 CFR part 585 as proposed in the NPRM to track the annual percentage of a manufacturer's vehicles equipped with EDRs that meet the data capture requirements.

## II. Background

NHTSA established 49 CFR part 563 in August 2006 [7] to standardize the data elements, format, and survivability of EDRs voluntarily installed in light vehicles. Initially, the regulation applied to EDR-equipped light vehicles manufactured on or after September 1, 2012. The primary objective of an EDR is to assist crash investigators in understanding vehicle kinematics (*e.g.,* speed, braking, and throttle position) in the moments immediately preceding a deployment-level event.[8] The 2006 final rule established requirements to capture pre-crash data elements for 5 seconds at a sampling rate of 2 Hz.

The FAST Act included a mandate for the Administrator to conduct a study to determine the amount of time EDRs installed in passenger motor vehicles should capture and record for retrieval vehicle-related data in conjunction with an event in order to provide sufficient information to investigate the cause of motor vehicle crashes. Public Law 114–94, 24303. The FAST Act also required the Administrator to promulgate regulations to establish the appropriate period during which EDRs installed in passenger motor vehicles may capture and record for retrieval vehicle-related data to the time necessary to provide accident investigators with vehicle-related information pertinent to crashes involving such motor vehicles. Subsequent agency research and the 2022 EDR Duration Study [9] determined that the five-second recording duration was often insufficient to capture critical maneuvers in intersection or road-departure crashes.

On December 18, 2024, NHTSA published a final rule increasing the pre-crash recording duration from 5 seconds to 20 seconds and the sampling

[1] 49 CFR part 563.

[2] 89 FR 102810 (Dec. 18, 2024).

[3] Public Law 114–94, 129 Stat. 1312, December 4, 2015.

[4] 90 FR 54619 (Nov. 28, 2025).

[5] The petitions for reconsideration may be reviewed on *regulations.gov* at Docket No. NHTSA–2024–0084.

[6] When discounting at three percent, the cost savings is approximately $30.67 million to $77.52 million. When discounting at seven percent, the cost savings is approximately $25.40 million to $64.19 million. For the purpose of regulatory budgeting in accordance with Executive Order 14192, discounted cost savings are estimated relative to a base year of 2024.

[7] 71 FR 50998 (Aug. 28, 2006).

[8] Part 563 defines ''event'' to mean a crash or other physical occurrence that causes the trigger threshold to be met or exceeded, or any non-reversible deployable restraint to be deployed, whichever occurs first.

[9] Event Data Recorder Duration Study [Appendix to a Report to Congress. Report No. DOT HS 813 082B], 2022, *https://doi.org/10.219491530244/.*

frequency from 2 Hz to 10 Hz.[10] The final rule required that vehicles equipped with EDRs and manufactured on or after September 1, 2027, comply with the updated pre-crash data capture requirements. This change was intended to provide higher-resolution data for the 20 seconds leading to a crash event. Following the publication of the 2024 final rule, NHTSA received petitions for reconsideration from Auto Innovators,[11] SAE,[12] and FCA.[13] Petitioners cited significant engineering hurdles, including the need for increased non-volatile memory capacity and larger backup power reserves (capacitors) to ensure that 20 seconds of pre-crash data that is held in volatile temporary buffers can be written to non-volatile storage if the vehicle's electrical system fails.

In response to these petitions, NHTSA issued an NPRM on November 28, 2025,[14] proposing to adopt the phased-in compliance timeline requested by SAE and Auto Innovators. The modified timeline provides manufacturers with an additional year of lead time and a four-year phase-in to allow them to integrate the necessary EDR and Airbag Control Module (ACM) architecture changes within their current model development cycles without disrupting existing product plans. NHTSA estimates that this approach will result in industry cost savings primarily by avoiding ''mid-cycle'' hardware redesigns, which may have forced manufacturers to re-engineer existing vehicle platforms prematurely to accommodate larger memory chips and expanded power reserves, while still achieving the objectives of the FAST Act.[15] NHTSA estimates that by implementing the four-year phase-in compliance schedule starting on September 1, 2028, the industry will realize total cost savings between $30.67 million and $77.52 million at a three percent discount rate. These savings represent the difference between an immediate, fleet-wide mandate and a graduated rollout that aligns with natural vehicle product cycles. Allowing manufacturers to integrate the 20-second, 10 Hz recording capability during scheduled model refreshes avoids expenditures associated with mid-cycle hardware redesigns and reduces the strain on engineering resources. Consequently, the phase-in allows the agency to achieve its long-term objective of high-resolution crash data capture while significantly lowering the near-term economic burden on both manufacturers and consumers.

## III. Summary of Comments on 2025 NPRM

In response to the proposed rule, NHTSA received seven comments.[16] The commenters included FCA; Auto Innovators; Motor & Equipment Manufacturers Association, The Vehicle Suppliers Association (MEMA); the Advocates for Highway & Auto Safety (Advocates); the Institute of Electrical and Electronics Engineers (IEEE) Vehicular Technology Study (IEEE–VTS); one individual; and one anonymous commenter.

FCA supported the proposed revised timeline. FCA emphasized that the new requirements involve extensive hardware and software updates across their entire EDR fleet, presenting significant technical feasibility and cost challenges. FCA noted that the proposed timeline is essential to allow manufacturers to implement these changes responsibly while preserving product integrity without compromising ongoing product plans. Furthermore, FCA urged the agency to finalize the regulation promptly. FCA explained that until the proposed change is finalized, manufacturers must treat the September 1, 2027 compliance date from the 2024 final rule as binding, which leads to the inefficient allocation of resources toward requirements that may change. FCA commented that it remains committed to full compliance and working with NHTSA to advance vehicle safety research.

Auto Innovators supported the proposal to extend the initial compliance date to September 1, 2028, and adopt a four-year phase-in schedule. They emphasized that EDRs are highly integrated with other complex vehicle systems, so the original September 1, 2027 compliance date may have forced manufacturers to incur extensive redesign costs or even disable EDR functionality. Auto Innovators also specifically advocated for extending the compliance date for small-volume manufacturers to September 1, 2032, noting that these entities operate on much longer planning cycles for models that stay on the market for extended periods without architectural changes. Though Auto Innovators is supportive of the additional time to manage redesign and production costs, they maintain that NHTSA has likely overestimated the expected safety benefits of the 20-second recording duration and 10 Hz sampling rate and suggest that similar outcomes could be achieved through less burdensome requirements. However, Auto Innovators did not expect extending the lead time to have a significant impact on the overall safety benefits of the rule. Furthermore, they urged prompt finalization of the rule to provide regulatory certainty and noted that manufacturers will continue to incur costs until a new rule is finalized. Finally, Auto Innovators recommended adjusting the proposed amendments to footnote 4 to Table I and footnote 5 to Table II of part 563 to clarify that, because part 563 is an ''if equipped'' standard, the phase-in percentages apply only to vehicles that are actually ''equipped with an EDR.''

MEMA expressed support for the proposed delay of the initial compliance date and the adoption of a four-year phase-in period, noting that the timeline for implementation first proposed in 2022 was a key point of concern for suppliers. The association argued that the additional time is critical for suppliers to integrate complex changes without disrupting existing product plans, noting that increasing pre-crash recording to 20 seconds more than doubles the data volume and requires longer write times to non-volatile memory. MEMA commented that this increase may necessitate larger or multiple capacitors to provide reserve power during a crash, which in turn impacts electronic board layouts, housing, and vehicle mounting spaces. MEMA further commented that following such hardware changes, manufacturers might even require new crash testing to verify that mechanical integrity is preserved. They detailed a development cycle in which software is finished 18 months before production, followed by additional 18-month windows for supplier delivery and system testing and certification. Though welcoming the revised timeline, MEMA emphasized that the costs associated with the changes to part 563 remain significant for the supplier sector.

Advocates opposed the extended lead time and phase-in, asserting that a delay is unnecessary and needlessly postpones a standard and safety benefits during a period of historically high roadway fatalities,[17] and that EDR data

[10] 89 FR 102810 (Dec. 18, 2024).

[11] NHTSA–2024–0084–0005.

[12] NHTSA–2024–0084–0004.

[13] NHTSA–2024–0084–0003.

[14] 90 FR 54619 (Nov. 28, 2025).

[15] See the section titled, ''Cost Savings Associated With This Proposed Rule,'' in the 2025 NPRM. 90 FR 54619 (Nov. 28, 2025).

[16] These comments can be found in Docket No. NHTSA–2025–0050.

[17] Advocates noted that nearly 41,000 people were killed on U.S. roads in 2023, a 24 percent increase over the last decade, citing National Center for Statistics and Analysis, Summary of motor vehicle traffic crashes: 2023 data, Traffic Safety Facts, Report No. DOT HS 813 762, National

is essential for understanding these crashes. Advocates emphasized that over 99 percent of vehicles are estimated to be already equipped with EDRs and that the required updates involve minimal software changes and a small amount of additional memory rather than a substantial hardware redesign. Furthermore, Advocates highlighted that, by pushing full compliance to 2031, this proposal would extend the full compliance date to more than a decade past the original rulemaking deadline established by Congress in the FAST Act.

IEEE–VTS filed what it referred to as a ''petition for reconsideration'' strongly opposing the proposed delay to 2031, characterizing it as a ''failure of regulatory duty'' that ignores globally vetted technical solutions already implemented by 60 other nations.[18] IEEE–VTS asserts that the ''heavy lifting'' for these standards has already been completed through the development of Std-IEEE–1616.1: Data Storage System for Automated and Autonomous Driving (DSSAD). IEEE–VTS commented that the DSSAD provides a ''Scientific Witness'' that distinguishes between human and machine operation, a critical necessity given the 112 daily road fatalities in the U.S. IEEE–VTS disputes the industry's claims of technical burden, noting that the memory requirements for these updates are ''relatively small'' and do not require a substantial hardware redesign. Furthermore, IEEE–VTS states that delaying these requirements leaves vehicle owners vulnerable to ''secondary predators'' (*i.e.,* unauthorized third parties who could access the vehicle's diagnostic port to delete or obtain sensitive data following an event that triggers the EDR to record data). To address this vulnerability, IEEE–VTS advocated for the ''People's Protocol'' (IEEE–1616.1), a standardized security framework that establishes a ''forensic gate.'' This system uses encrypted digital keys to lock EDR data from outside tampering while ensuring it remains accessible to the vehicle owner and those granted a legal exception to access the data according to the Driver Privacy Act of 2015. IEEE–VTS requested NHTSA to rescind the delay (maintain the original September 1, 2027 compliance date), and incorporate by reference IEEE–1616.1 to provide a standardized and secure forensic gate for EDR and DSSAD data.

Michael Ravnitzky commented that the proposed delay is a reasonable way to reduce disruption to vehicle development and to avoid manufacturers removing EDRs from vehicles. The commenter also expressed support for retaining the 20-second, 10 Hz data capture requirements, noting their value for crash investigations and safety research. The individual requested that NHTSA mandate annual progress reports including production volumes, the number of vehicles meeting the new requirements, and any risks to full compliance. The individual also suggested that NHTSA publish aggregate, anonymized summaries of these reports to assist researchers and first responders in understanding the progress without revealing proprietary information.

An anonymous comment stated that expanded recording requirements must be matched with clear and robust privacy protections. They noted that EDRs collect sensitive data regarding driver behavior (*e.g.,* speed, braking, and restraint use) which could have significant implications for vehicle owners if used improperly. They also urged the agency to emphasize safeguards such as clear limits on third-party access, strong data security standards, and accessible disclosures to help owners understand their rights. They emphasized that maintaining public confidence in Federal safety regulations and vehicle technology requires a careful balance between safety innovation and consumer trust.

## IV. Final Rule and Response to Comments

In this final rule, NHTSA amends part 563 and part 585 by implementing the phase-in schedule and reporting requirements as proposed in the NPRM. The phase-in schedule, excluding small-volume and multi-stage manufacturers, is as follows for vehicles equipped with EDRs:

- 25 percent of the vehicles manufactured equipped with EDRs on or after September 1, 2028 and before September 1, 2029.
- 50 percent of the vehicles manufactured equipped with EDRs on or after September 1, 2029 and before September 1, 2030.
- 75 percent of the vehicles manufactured equipped with EDRs on or after September 1, 2030 and before September 1, 2031.
- 100 percent of the vehicles manufactured equipped with EDRs on or after September 1, 2031.

Small-volume manufacturers and multi-stage manufacturers are not subject to the phase-in. Small-volume manufacturers have an additional year to comply, and multi-stage manufacturers and alterers have two additional years. The requirements apply beginning September 1, 2032 to small-volume manufacturers or limited-line manufacturers and September 1, 2033 for vehicles manufactured by manufacturers producing altered vehicles or vehicles in two or more stages.

NHTSA notes that this timeline is the one requested in FCA's petition for reconsideration of the 2024 final rule, except that while FCA suggested starting the phase-in beginning in 2027, the agency has determined that a September 1, 2028 initial compliance date better aligns with wider industry constraints.

NHTSA acknowledges comments from FCA, MEMA, and Auto Innovators that the revised duration requires extensive hardware and software updates, and the agency agrees that a more gradual timeline allows these changes to occur within standard product development cycles without disrupting existing plans. NHTSA acknowledges the technical considerations presented by MEMA regarding the transition to a 20-second recording duration. The agency recognizes that more than doubling the data volume necessitates longer write times to non-volatile memory and may require hardware modifications, such as larger or multiple capacitors, which can impact electronic board layouts and housings. NHTSA is providing lead time that aligns with the development and certification cycles detailed by suppliers, during which software and hardware must often be finalized years before production. This ensures changes are integrated into the vehicle fleet in a manner that matches standard product planning and avoids the technical and cost hurdles associated with mid-cycle re-engineering. NHTSA is also allowing an additional year for small-volume manufacturers (to September 1, 2032) as requested by Auto Innovators. By finalizing this phased approach, NHTSA also provides regulatory certainty and avoids resources being inefficiently allocated to meet the prior timeline.

Regarding NHTSA's estimation of the benefits of the changes finalized in the 2024 final rule, NHTSA acknowledged the uncertainty in its benefit-cost estimates because it was unable to quantify the exact safety benefits, in particular what proportion of future safety benefits from safety standards could be attributed to the improved

Highway Traffic Safety Administration, doi: 10.21949/rdm5–2086 (October 2025).

[18] Under 49 CFR 553.35, any interested person may petition the Administrator for reconsideration of a *rule* issued under that part. Given that IEEE filed this document in response to an NPRM, not a rule, NHTSA is treating IEEE's submission as a comment on the NPRM.

data.[19] Nonetheless, in the 2024 final rule the agency concluded that foundational upgrades to EDR hardware and software will facilitate more sophisticated crash reconstructions and inform future defects investigations and safety standards better and may provide manufacturers with information it can use to develop improvements for vehicle systems. The findings of the EDR Duration Study demonstrate that the previous five-second recording window was insufficient for certain purposes because it captured less than one percent of total intersection event time. By extending the recording duration to 20 seconds, the agency ensures that up to 95 percent of intersection traversal stages, including critical pre-impact maneuvers like rolling stops or running traffic signals, are captured. Furthermore, increasing the sampling frequency to 10 Hz addresses critical data gaps and reduces timing uncertainty. The increased sample rate is necessary to resolve rapid vehicle control inputs, such as anti-lock braking (ABS) activations or pedal misapplications, which may occur in intervals shorter than the previous 2-Hz sampling frequency. This refined resolution allows investigators to correlate driver commands with vehicle dynamics more precisely, providing the clarity needed to analyze multi-impact events and the real-world performance of crash avoidance technologies.

NHTSA shares the concerns of Advocates regarding the increase in roadway fatalities and reaffirms that enhanced EDR data is a vital tool for understanding crash dynamics and assessing safety equipment performance. In addition, the agency reaffirms that, while EDRs are primarily tools for post-crash analysis and reconstruction, the enhanced data they collect is vital for identifying safety design improvements and developing more effective Federal safety regulations. However, there are significant difficulties inherent in quantifying the exact safety benefits of this regulation. NHTSA was unable to estimate the specific portion of safety improvements (such as improved countermeasures) in the form of lives saved or injuries prevented can be directly attributed to an increased volume of EDR data.

The FAST Act did not require a specific compliance timeline for the mandated rule. NHTSA has determined that a rigid and accelerated compliance timeline would likely create a ''regulatory failure'' by imposing a disproportionate economic and technical burden relative to the benefits. Furthermore, the requirements of part 563 only apply if a vehicle is equipped with an EDR. Forcing immediate compliance carries the risk that some manufacturers might choose to disable EDR functionality entirely to avoid non-compliance, which would deny researchers of any crash data for such vehicles throughout their life in the market. Auto Innovators stated in its petition that the September 1, 2027 compliance date from the December 2024 final rule was not achievable without extensive redesign costs and that in cases where EDR redesign was not feasible, that EDR functionality could be disabled until the required design changes were implemented. By adopting a phased implementation, NHTSA ensures a more orderly transition that preserves the long-term objectives of the FAST Act while preventing a loss of critical data during the transition period.

NHTSA is adopting Auto Innovators' recommendation to revise the proposed table footnotes in part 563. This change does not adjust the requirements proposed in the NPRM substantively. However, it provides clarity to manufacturers regarding the application of the requirements. Because part 563 is an ''if-equipped'' standard, the phase-in compliance percentages apply specifically to vehicles equipped with an EDR. The NPRM proposed exactly that structure. Under 49 CFR 563.3, the requirements of part 563 apply only to certain vehicles (and the manufacturers of those vehicles) ''if [the vehicles] are equipped with an event data recorder,'' [20] and the language proposed for the table footnotes would not have adjusted the scope of application. Therefore, the proposed footnote 4 of Table I and footnote 5 of Table II describe percentages of vehicles equipped with an EDR, not percentages of a manufacturer's entire fleet. The language suggested by Auto Innovators makes this clear. Therefore, NHTSA is adopting the footnote language requested by the Auto Innovators.

Regarding progress reports as requested by Michael Ravnitzky, this final rule directly addresses these concerns by establishing a new subpart P under 49 CFR part 585, which creates formal EDR Phase-In Reporting Requirements. Under subpart P, manufacturers must submit annual reports to NHTSA within 60 days after the end of each production year ending August 31 from 2029 through 2032. These reports must state the number of vehicles produced that are equipped with an EDR, identifying how many of those vehicles do and do not meet the revised requirements of § 563.7. Furthermore, the reporting requirements align with the commenter's request for compliance status by requiring manufacturers to provide a formal statement regarding their compliance and the specific basis for that statement. To facilitate agency oversight, manufacturers must also maintain records of the Vehicle Identification Number (VIN) for all reported vehicles until December 31, 2033 and provide detailed identification (including make and model) upon request from NHTSA's Office of Vehicle Safety Compliance.

The regulatory text as finalized in this final rule incorporates an edit to the version proposed in the NPRM to make clearer what information must be reported. It removes redundant language that was proposed to be included in § 585.147(b)(1) regarding reporting vehicles equipped with EDRs that comply with part 563, and now specifies in § 585.147(b)(2) that the report must include information regarding which vehicles equipped with an EDR do or do not meet the updated recording interval and data sample rate requirements. This change is for clarity and is not intended to require different reporting than what was proposed.

Regarding the suggestion to publish aggregate summaries of the phase-in progress reports, the agency is taking this suggestion into consideration but is not acting on it as part of this final rule. The primary purpose of this reporting framework is to assist NHTSA in determining whether manufacturers are complying with the amended recording requirements. Though there may be value for safety research or public awareness in publishing anonymized and aggregated reports, the agency is not certain if these benefits would be commensurate with the additional resources required to compile, to anonymize, and to publish aggregate reports. In addition, this is not necessarily a matter to address in the course of rulemaking nor would taking this action necessarily involve amendments to part 585 or part 563.

On the issue of privacy, NHTSA emphasizes that part 563 does not require EDRs to record personally identifiable data, and captured data in EDRs are continuously overwritten in a temporary buffer, except for specified crash events meeting the trigger threshold to retain data. The Driver Privacy Act of 2015,[21] enacted as part of

[19] See the 2024 final rule's Final Regulatory Evaluation, NHTSA–2024–0084–0002.

[20] 49 CFR 563.3.

[21] Public Law 114–94, § 24301–24302, 129 Stat. 1312, 1713–14 (2015).

the FAST Act, states that data retained by an EDR are the ''property of the owner, or, in the case of a leased vehicle, the lessee of the motor vehicle in which the event data recorder is installed.'' [22] Recorded EDR data may not be accessed by any person other than the vehicle owner or lessee except in the case of one of several enumerated exceptions.[23] One exception is if the data is retrieved for traffic safety research, and the personally identifiable information of an owner or a lessee of the vehicle and the vehicle identification number are not disclosed in connection with the retrieved data. These protections address the privacy concerns raised by the commenter.

NHTSA declines the request from IEEE–VTS to incorporate IEEE 1616.1–2023 by reference at this time. Doing so is outside the scope of the proposal, and any efforts to incorporate these standards would require a new notice and comment rulemaking pursuant to the Administrative Procedure Act, 5 U.S.C. 553. IEEE 1616.1–2023 defines specific metrics for DSSADs for Level 3, 4, and 5 [24] driving automation systems. Though EDRs focus on time-series data for post-crash reconstruction, DSSADs provide timestamped ''flags'' to distinguish between human and machine operation in vehicles equipped with Automated Driving Systems (ADS). However, the FAST Act mandate specifically focused on the pre-crash recording duration necessary to investigate crash causation and did not address ADS-specific data elements. NHTSA is an active participant in the UNECE WP.29 efforts to develop a Global Technical Regulation (GTR) for ADS, which may include DSSAD requirements. As a signatory to the 1998 Agreement, if the U.S. votes in the affirmative to establish a GTR for DSSADs, NHTSA is obligated to initiate a separate rulemaking process to consider those safety requirements for domestic adoption. Until such a GTR is finalized and evaluated under the National Traffic and Motor Vehicle Safety Act, the agency will continue to consider EDR and DSSAD as distinct systems with separate regulatory trajectories.

## V. Summary of Costs and Benefits

In this Final Rule, NHTSA maintains the cost estimates presented in the December 2024 Final Regulatory Evaluation,[25] which projected a total annual industry impact between $13.26 million and $33.52 million (in 2022 dollars). To alleviate the associated financial and technical burdens, NHTSA is providing an extended lead time and phase-in period to allow manufacturers to design, test, and validate EDR architectures, ensuring sufficient processing capability and non-volatile memory are available to capture 20 seconds of pre-crash data at 10 Hz. NHTSA analyzed potential cost savings from different lead time extensions and phase-in schedules in the 2025 NPRM. The lead time and phase-in (one-year extension followed by 25/50/75/100 percent phase-in) means the first model year (MY) impacted by the final rule will apply to consumers purchasing new MY2029 vehicles. The phase-in is projected to save $10.67 to $25.95 million in 2028, $7.11 to $17.96 million in 2029, and $3.56 to $8.98 million in 2030 in 2024 dollars. The lead time extension is projected to save an additional $14.21 to $35.93 million in 2027, resulting in total quantified savings of $35.54 to $89.82 million from 2027 to 2030 in 2024 dollars. When discounting at three percent, the cost savings is approximately $30.67 million to $77.52 million, and when discounting at seven percent, the cost savings is approximately $25.40 million to $64.19 million.[26]

## VI. Rulemaking Analyses and Notices

*Executive Order 12866, Executive Order 14192, and DOT Regulatory Policies and Procedures*

This final rule does not meet the criteria of a ''significant regulatory action'' under Executive Order (E.O.) 12866 (58 FR 51735, Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not reviewed this proposed rule under that Executive Order. NHTSA has considered the impact of this rule under E.O. 12866 and E.O. 14192 (90 FR 9065, Feb. 6, 2025). Please refer to the December 2024 final rule for discussion of the costs and benefits of that rule. The FRE for the December 2024 final rule estimated that the incremental cost associated with the final rule ranged from approximately $13.26 million to $33.52 million in 2022 dollars.

This rulemaking is a deregulatory action under E.O. 14192 because it would reduce the implementation burden associated with the December 2024 final rule, which increased the pre-crash data recording duration and sample rate required under 49 CFR part 563. Though the substantive requirements adopted in the December 2024 final rule remain unchanged, the agency is modifying the compliance schedule in response to petitions for reconsideration that identified implementation challenges and risk of unintended consequences. Based on NHTSA's analysis, the lead time extension and phase-in may result in total quantified savings of $35.54 to $89.82 million from 2027 to 2030 in 2024 dollars. When discounting at three percent, the cost savings is approximately $30.67 million to $77.52 million, and when discounting at seven percent, the cost savings is approximately $25.40 million to $64.19 million. The range in cost savings corresponds directly with the range in incremental costs presented in the Final Regulatory Evaluation (FRE) developed in support of the December 2024 final rule. In that FRE, NHTSA estimated that the unit cost to upgrade EDRs would range from $0.87 (lower bound) for software-only updates to $2.20 (upper bound) for full hardware modernizations. The higher end of the savings range assumes that a greater percentage of the fleet would have required more hardware changes, such as increased non-volatile memory, upgraded microprocessors, and increased energy reserves.

Petitioners explained that the original compliance date imposed a rigid and accelerated timeline that did not align with typical vehicle development cycles. These conditions would have imposed high compliance costs, disrupted product planning, and could have resulted in the removal or disabling of EDR functionality in some vehicle models—undermining the objectives the rule was designed to advance. Quantified cost savings are discussed in more detail above, in Section V. Also, as noted, the safety benefits of the December 2024 final rule were unquantified. This was similar when NHTSA established part 563. This was due to the difficulties in estimating both the exact portion of benefits creditable to an increased amount of EDR data after a standard is implemented or a safety countermeasure is developed and of quantifying how the benefits to safety research and emergency response translate to improved vehicle safety. Nonetheless, the agency acknowledges that it is likely the implementation timeline created a regulatory failure by imposing a disproportionate burden relative to those benefits, particularly for vehicle platforms in late-stage design or

[22] *Id.*

[23] *Id.*

[24] SAE International J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

[25] NHTSA–2024–0084–0002.

[26] For the purpose of regulatory budgeting in accordance with E.O. 14192, discounted cost savings are estimated relative to a base year of 2024.

production. This final rule corrects that failure.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), agencies 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 government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule does not have a significant economic impact on a substantial number of small entities. I certify that this rulemaking action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is provided below.

The delay in the compliance date and creation of a phase-in period reduces the burden on small entities by providing more time to comply with the new requirements. In addition, limited line [27] and small-volume manufacturers [28] would only need to produce vehicles with EDRs that meet the requirements, if the vehicle is equipped with an EDR, on or after September 1, 2032. Manufacturers producing altered vehicles or vehicles in two or more stages would have one additional year, until September 1, 2033, for compliance. In addition, NHTSA determined that the December 2024 final rule would not have a significant economic impact on a substantial number of small entities. The amendments in this rule do not change that finding.

*Executive Order 13132 (Federalism)*

NHTSA has examined this rule pursuant to E.O. 13132 (64 FR 43255, Aug. 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 this rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule does 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.''

This rule would amend an existing regulation. When 49 CFR part 563 was promulgated in 2006, NHTSA explained its view that any State laws or regulations that would not allow manufacturers to use the types of EDRs addressed by part 563 would create a conflict and therefore be preempted.[29] As a result, regarding this rule, NHTSA does not believe there are current State laws or regulations for EDRs that conflict with part 563. In addition, this rule extends the compliance timeline but does not amend the underlying requirements that will be applicable to EDRs.

*Executive Order 12988 (Civil Justice Reform)*

With respect to the review of the promulgation of a new regulation, section 3(b) of E.O. 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) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

NHTSA has reviewed this rulemaking and determined that this rulemaking action conforms to the applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform. The issue of preemption is discussed above, in the section discussing E.O. 13132 (Federalism). There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule. The rule will be effective thirty days after the date of publication in the **Federal Register**.

*Executive Order 13609 (Promoting International Regulatory Cooperation)*

E.O. 13609, ''Promoting International Regulatory Cooperation'' (77 FR 26413, May 1, 2012), promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

The agency is currently participating in the negotiation and development of technical standards for EDRs in the United Nations Economic Commission for Europe (UNECE) World Forum for Harmonization of Vehicle Regulations (WP.29). As a signatory member, NHTSA is obligated to initiate rulemaking to incorporate safety requirements and options specified in Global Technical Regulations (GTRs) if the U.S. votes in the affirmative to establish the GTR. No GTR for EDRs has been developed at this time. NHTSA has analyzed this rule under the policies and agency responsibilities of E.O. 13609 and has determined this rulemaking would have no effect on international regulatory cooperation.

*National Environmental Policy Act*

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).[30] In analyzing the applicability of a categorical exclusion (CE), the agency must also consider whether

[27] Limited line manufacturer means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

[28] Small-volume manufacturer as defined in § 571.127, ''Automatic emergency braking systems for light vehicles,'' is an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States.

[29] The 2006 final rule promulgating 49 CFR part 563 discussed preemption at length. See 71 FR 50907, 51029 (August 28, 2006).

[30] See DOT Order 5610.1D § 9.

extraordinary circumstances are present that would warrant the preparation of an EA or EIS.[31] The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures.[32] To do so, the Operating Administration ''must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.'' [33] This rulemaking, which delays the compliance date, from September 1, 2027 until September 1, 2028, of the December 2024 final rule for compliance with amended pre-crash recording requirements for EDRs and implements a four-year phase-in period for EDRs to meet the updated data capture requirements, is categorically excluded pursuant to 23 CFR 771.118(c)(4): ''Planning and administrative activities not involving or leading directly to construction, such as: Training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.'' NHTSA has coordinated with FTA to ensure that this CE is being applied correctly. NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

*Paperwork Reduction Act*

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must request and receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public, and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number.

NHTSA sought public comment on the reinstatement with modification of the previously approved information collection (OMB Control No. 2127–0535) in the NPRM that was published on November 28, 2025 and submitted an information collection request (ICR) to OMB for approval. As OMB deferred review while NHTSA reviewed the comments to the NPRM, NHTSA will be submitting the ICR for this final rule.

NHTSA's ICR describes the nature of the information collections and their expected burden. This rule establishes new information collection requirements for phase-in reporting and record retention requirements related to EDRs. This collection requires manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 3,855 kg (8,500 pounds) or less that are equipped with EDRs to provide motor vehicle production data for the following four years: September 1, 2028, to August 31, 2029; September 1, 2029, to August 31, 2030; September 1, 2030, to August 31, 2031; and September 1, 2031, to August 31, 2032. Manufacturers annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the EDR requirements of part 563 during the phase-in of those requirements. The purpose of the reporting requirements are to aid the agency in determining whether a manufacturer of vehicles equipped with EDRs has complied with the EDR requirements during the phase-in of those requirements.

NHTSA did not receive any comments in response to the ICR but received one comment to the rulemaking docket that pertains to the information collection. This comment is discussed in full in the preamble to this final rule, above. As described in the NPRM, NHTSA estimates that the total annual hour burden is 22 hours. There has been no change in the estimates for this final rule. The annual burden involves the tasks of collection of the information required by the annual report as well as placing the information in a form suitable for record keeping and data retrieval. Because almost all the information required is already recorded by the manufacturers as part of their production control and tracking systems, a nominal assessment of half a burden hour per respondent is estimated for data retrieval and report preparation and half a burden hour per respondent for the record keeping of the data. Therefore, NHTSA estimates that the average total burden for submitting data will be 11 hours per year (22 manufacturers × .5 hours = 11 hours) and estimates that the average total burden for record retention will be 11 hours per year (22 manufacturers × .5 hours = 11 hours). NHTSA estimates the labor costs associated with these labor hours using hourly labor rates published by the Bureau of Labor Statistics (BLS). BLS estimates that hourly wages represent approximately 70.2 percent of total compensation for private industry workers. For the labor costs associated with this ICR, NHTSA uses the mean hourly wage of $40.64 per hour for ''Technical Writers'' (occupational code 27–3042) for the Motor Vehicle Manufacturing Industry (Sectors 31, 32, and 33) and applies the 70.2 percent factor to find the total compensation rate of $57.89 per hour ($40.64 per hour divided by 0.705). The total annual labor cost associated with the burden hours is estimated to be $1,273.58 (time burden of 22 hours × $57.89 cost per hour). NHTSA estimates that there are no costs associated with the information collection other than labor costs associated with the burden hours. NHTSA will submit supporting statements to OMB explaining this final rule's collection of information.

*National Technology Transfer and Advancement Act*

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE. The NTTAA directs agencies to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA requires agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. Though there are voluntary consensus standards pertaining to EDRs, this rule does not change aspects of part 563 for which there are voluntary consensus standards.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of regulatory actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $206 million (the value equivalent of $100 million in 1995, adjusted for inflation to 2025) or more in any one year. This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for

[31] *Id.* § 9(b).
[32] *Id.* § 9(f).
[33] *Id.*

State, local and Tribal governments, or the private sector of $206 million or more in any one year. Thus, the analytical requirements of the UMRA do not apply to this action.

*Executive Order 13175*

E.O. 13175, ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000) requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. NHTSA has assessed the impact of this rule on Indian Tribes and determined that this rule would not have tribal implications that require consultation under E.O. 13175.

*Privacy Act*

Petitions for review of the final rule will be placed in the docket. Anyone is able to search the electronic form of all documents 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.). For information on DOT's compliance with the Privacy Act, see DOT's Privacy Program website.[34] To see the list of DOT's systems of records notices, please visit *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.*

*Plain Language Requirement*

E.O. 12866 and E.O. 13563 require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA has considered these questions and attempted to use plain language in promulgating this final rule. If readers have suggestions on how we can improve our use of plain language, please write us.

*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 twice a year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

**List of Subjects**

*49 CFR Part 563*

Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

*49 CFR Part 585*

Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

## PART 563—EVENT DATA RECORDERS

■ 1. The authority citation for part 563 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30101, 30111, 30115, 30117, 30166, 30168; delegation of authority at 49 CFR 1.95.

■ 2. Add § 563.4 to read as follows:

### § 563.4 Certification for Phase-in.

(a) *Vehicle certification information.* At any time during the production years ending August 31, 2029, August 31, 2030, August 31, 2031, and August 31, 2032, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been equipped with EDRs meeting the requirements of § 563.7(a) and (b). The manufacturer's designation of a vehicle as equipped with an EDR meeting these requirements is irrevocable.

(b) *Vehicles produced by more than one manufacturer.* For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under § 563.4(a), a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows:

(1) A vehicle which is imported shall be attributed to the importer.

(2) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

(c) *Attributability by express written contract of vehicles produced by more than one manufacturer.* A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under § 563.4(b).

(d) *Average annual production.* For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under § 563.4(a), only count vehicles to which this regulation is applicable as specified § 563.3 and are equipped with an EDR.

■ 2. Amend § 563.7 by revising Table I in paragraph (a) and Table II in paragraph (b) to read as follows:

### § 563.7 Data elements.

(a) * * *

[34] U.S. Department of Transp. Privacy Policy, *https://www.transportation.gov/*privacy (last updated Oct. 10, 2025).

TABLE I TO § 563.7(A)—DATA ELEMENTS REQUIRED FOR ALL VEHICLES EQUIPPED WITH AN EDR

| Data element | Recording interval/time [1] (relative to time zero) | Data sample rate (samples per second) |
|---|---|---|
| Delta-V, longitudinal | 0 to 250 ms or 0 to End of Event Time plus 30 ms, whichever is shorter. | 100 |
| Maximum delta-V, longitudinal | 0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter. | N/A |
| Time, maximum delta-V | 0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter. | N/A |
| Speed, vehicle indicated | −20 to 0 sec [4] | [4] 10 |
| Engine throttle, % full (or accelerator pedal, % full) | −20 to 0 sec | [4] 10 |
| Service brake, on/off | −20 to 0 sec | [4] 10 |
| Ignition cycle, crash | −1.0 sec | N/A |
| Ignition cycle, download | At time of download [3] | N/A |
| Safety belt status, driver | −1.0 sec | N/A |
| Frontal air bag warning lamp, on/off [2] | −1.0 sec | N/A |
| Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, driver. | Event | N/A |
| Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, right front passenger. | Event | N/A |
| Multi-event, number of event | Event | N/A |
| Time from event 1 to 2 | As needed | N/A |
| Complete file recorded (yes, no) | Following other data | N/A |

[1] Pre-crash data and crash data are asynchronous. The sample time accuracy requirement for pre-crash time is −0.1 to 1.0 sec (*e.g.,* T = −1 would need to occur between −1.1 and 0 seconds.)

[2] The frontal air bag warning lamp is the readiness indicator specified in S4.5.2 of FMVSS No. 208 and may also illuminate to indicate a malfunction in another part of the deployable restraint system.

[3] The ignition cycle at the time of download is not required to be recorded at the time of the crash, but shall be reported during the download process.

[4] Except as provided in the following phase-in, for vehicles equipped with an EDR manufactured before September 1, 2031, the required recording interval is −5.0 to 0 sec relative to time zero and the required data sample rate is 2 samples per second. For vehicles manufactured on or after September 1, 2028 but before August 31, 2029, 25 percent of each manufacturer's vehicle production equipped with an EDR must have the recording interval and data sample rate displayed in this table. For vehicles manufactured on or after September 1, 2029 but before August 31, 2030, 50 percent of each manufacturer's vehicle production equipped with an EDR must have the recording interval and data sample rate displayed in this table. For vehicles manufactured on or after September 1, 2030 but before August 31, 2031, 75 percent of each manufacturer's vehicle production equipped with an EDR must have the recording interval and data sample rate displayed in this table. For vehicles equipped with an EDR manufactured before September 1, 2032 by a small-volume manufacturer or limited-line manufacturer, the required recording interval is −5.0 to 0 sec relative to time zero and the required data sample rate is 2 samples per second. For vehicles equipped with an EDR manufactured before September 1, 2033 by manufacturers producing altered vehicles or vehicles in two or more stages, the required recording interval is −5.0 to 0 sec relative to time zero and the required data sample rate is 2 samples per second.

(b) * * *

TABLE II TO § 563.7(B)—DATA ELEMENTS REQUIRED FOR VEHICLES UNDER SPECIFIED MINIMUM CONDITIONS

| Data element name | Condition for requirement | Recording interval/time [1] (relative to time zero) | Data sample rate (per second) |
|---|---|---|---|
| Lateral acceleration | If recorded [2] | N/A | N/A |
| Longitudinal acceleration | If recorded | N/A | N/A |
| Normal acceleration | If recorded | N/A | N/A |
| Delta-V, lateral | If recorded | 0–250 ms or 0 to End of Event Time plus 30 ms, whichever is shorter. | 100 |
| Maximum delta-V, lateral | If recorded | 0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter. | N/A |
| Time maximum delta-V, lateral | If recorded | 0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter. | N/A |
| Time for maximum delta-V, resultant | If recorded | 0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter. | N/A |
| Engine rpm | If recorded | −20 to 0 sec [5] | [5] 10 |
| Vehicle roll angle | If recorded | −1.0 up to 5.0 sec [3] | 10 |
| ABS activity (engaged, non-engaged) | If recorded | −20 to 0 sec [5] | [5] 10 |
| Stability control (on, off, or engaged) | If recorded | −20 to 0 sec [5] | [5] 10 |
| Steering input | If recorded | −20 to 0 sec [5] | [5] 10 |

TABLE II TO § 563.7(B)—DATA ELEMENTS REQUIRED FOR VEHICLES UNDER SPECIFIED MINIMUM CONDITIONS—Continued

| Data element name | Condition for requirement | Recording interval/time [1] (relative to time zero) | Data sample rate (per second) |
|---|---|---|---|
| Safety belt status, right front passenger (buckled, not buckled). | If recorded | −1.0 sec | N/A |
| Frontal air bag suppression switch status, right front passenger (on, off, or auto). | If recorded | −1.0 sec | N/A |
| Frontal air bag deployment, time to nth stage, driver [4] | If equipped with a driver's frontal air bag with a multi-stage inflator. | Event | N/A |
| Frontal air bag deployment, time to nth stage, right front passenger [4]. | If equipped with a right front passenger's frontal air bag with a multi-stage inflator. | Event | N/A |
| Frontal air bag deployment, nth stage disposal, driver, Y/N (whether the nth stage deployment was for occupant restraint or propellant disposal purposes). | If recorded | Event | N/A |
| Frontal air bag deployment, nth stage disposal, right front passenger, Y/N (whether the nth stage deployment was for occupant restraint or propellant disposal purposes). | If recorded | Event | N/A |
| Side air bag deployment, time to deploy, driver | If recorded | Event | N/A |
| Side air bag deployment, time to deploy, right front passenger. | If recorded | Event | N/A |
| Side curtain/tube air bag deployment, time to deploy, driver side. | If recorded | Event | N/A |
| Side curtain/tube air bag deployment, time to deploy, right side. | If recorded | Event | N/A |
| Pretensioner deployment, time to fire, driver | If recorded | Event | N/A |
| Pretensioner deployment, time to fire, right front passenger | If recorded | Event | N/A |
| Seat track position switch, foremost, status, driver | If recorded | –1.0 sec | N/A |
| Seat track position switch, foremost, status, right front passenger. | If recorded | –1.0 sec | N/A |
| Occupant size classification, driver | If recorded | –1.0 sec | N/A |
| Occupant size classification, right front passenger | If recorded | –1.0 sec | N/A |
| Occupant position classification, driver | If recorded | –1.0 sec | N/A |
| Occupant position classification, right front passenger | If recorded | –1.0 sec | N/A |

[1] Pre-crash data and crash data are asynchronous. The sample time accuracy requirement for pre-crash time is −0.1 to 1.0 sec (*e.g.,* T = −1 would need to occur between −1.1 and 0 seconds.)

[2] "If recorded" means if the data is recorded in non-volatile memory for the purpose of subsequent downloading.

[3] "vehicle roll angle" may be recorded in any time duration; −1.0 sec to 5.0 sec is suggested.

[4] List this element n—1 times, once for each stage of a multi-stage air bag system.

[5] Except as provided in the following phase-in, for vehicles equipped with an EDR manufactured before September 1, 2031, the required recording interval is −5.0 to 0 sec relative to time zero and the required data sample rate is 2 samples per second. For vehicles manufactured on or after September 1, 2028 but before August 31, 2029, 25 percent of each manufacturer's vehicle production equipped with an EDR must have the recording interval and data sample rate displayed in this table. For vehicles manufactured on or after September 1, 2029 but before August 31, 2030, 50 percent of each manufacturer's vehicle production equipped with an EDR must have the recording interval and data sample rate displayed in this table. For vehicles manufactured on or after September 1, 2030 but before August 31, 2031, 75 percent of each manufacturer's vehicle production equipped with an EDR must have the recording interval and data sample rate displayed in this table. For vehicles equipped with an EDR manufactured before September 1, 2032 by a small-volume manufacturer or limited-line manufacturer, the required recording interval is −5.0 to 0 sec relative to time zero and the required data sample rate is 2 samples per second. For vehicles equipped with an EDR manufactured before September 1, 2033 by manufacturers producing altered vehicles or vehicles in two or more stages, the required recording interval is −5.0 to 0 sec relative to time zero and the required data sample rate is 2 samples per second.

## PART 585—PHASE–IN REPORTING REQUIREMENTS

■ 3. The authority citation for part 585 continues to read as follows:

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

■ 4. Add subpart P, consisting of §§ 585.142 through 585.148, to read as follows:

### Subpart P—Event Data Recorders Phase-In Reporting Requirements

Sec.

585.142 Scope.
585.143 Purpose.
585.144 Applicability.
585.145 Definitions.
585.146 Response to inquiries.
585.147 Reporting requirements.
585.148 Records.

### Subpart P—Event Data Recorders Phase-In Reporting Requirements

#### § 585.142 Scope.

This subpart establishes requirements for manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service, to submit a report per § 585.147, and maintain records related to the report according to § 585.148, concerning the number of such vehicles that meet the requirements of part 563, Event data recorders (49 CFR 563).

#### § 585.143 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with part 563 (49 CFR 563).

#### § 585.144 Applicability.

This subpart applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle

weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service, for which part 563 applies. However, this subpart does not apply to vehicles excluded by § 563.3 from the requirements of that standard.

**§ 585.145 Definitions.**

*Event data recorder* (EDR) is used as defined in 49 CFR 563.5.

**§ 585.146 Response to inquiries.**

At any time during the production years ending August 31, 2029, August 31, 2030, August 31, 2031, and August 31, 2032, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with part 563 (49 CFR 563). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

**§ 585.147 Reporting requirements.**

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2029, August 31, 2030, August 31, 2031, and August 31, 2032, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the event data recorder requirements of part 563 (49 CFR 563) for applicable vehicles produced in that year. Each report shall:

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with the event data recorder data element capture requirements of part 563 (49 CFR 563) for the period covered by the report and the basis for that statement;

(5) Provide the information specified in paragraph (b) of this section;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

(b) *Report content*—(1) *Basis for phase-in production goals.* Each manufacturer must provide the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service, manufactured for sale in the United States for each of the most recent three previous production years, or, at the manufacturer's option, for the most recently ended production year that are equipped with an EDR. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must submit a report at the end of the initial production year for the number of such vehicles manufactured during the initial production year.

(2) *Production.* Each manufacturer must report for the production year for which the report is filed: the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service, that are equipped with an EDR and that do and do not have the recording interval and data sample rate displayed in Table I to § 563.7(a) or Table II to § 563.7(b) (49 CFR 563.7).

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by § 563.4(c) must:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

**§ 585.148 Records.**

Each manufacturer must maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.147 until December 31, 2033.

Issued under authority delegated in 49 CFR 1.95.

**Jonathan Morrison,**

*Administrator.*

[FR Doc. 2026–09849 Filed 5–15–26; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 217

**[Docket No. 260513–0130]**

**RIN 0648–BN34**

## Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Interstate Bridge Replacement Project on Interstate 5 between Portland, OR, and Vancouver, WA

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

**ACTION:** Final rule; notice of issuance of letter of authorization.

**SUMMARY:** NMFS, upon request from the Interstate Bridge Replacement Program (IBRP), issues this final rule and associated 5-year letter of authorization (LOA) pursuant to the Marine Mammal Protection Act (MMPA), to govern the taking of marine mammals incidental to construction activities conducted in support of the Interstate Bridge Replacement Project (IBR Project) on Interstate 5 (I–5) between Portland, Oregon, and Vancouver, Washington, over the course of 5 years. This final rule prescribes the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat and establishes requirements pertaining to the monitoring and reporting of such taking.

**DATES:** This final rule and LOA are effective from September 15, 2027, through September 14, 2032.

**ADDRESSES:** Electronic copies of the LOA, application, supporting documents, and a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-interstate-bridge-replacement-programs-interstate-bridge.* In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401.

**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 promulgated and a LOA is issued or an incidental harassment authorization (IHA) is issued.

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). If such findings are made, 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 set forth requirements pertaining to the monitoring and reporting of the takings. The definitions of applicable MMPA statutory terms are provided directly below or included in the relevant sections of this rule.

- *U.S. citizen*—individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13); 50 CFR 216.103;
- *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13));
- *Incidental harassment, incidental taking, and incidental, but not intentional, taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental (50 CFR 216.103);
- *Level A harassment*—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3); and
- *Level B harassment*—any act of pursuit, torment, or annoyance which 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 (16 U.S.C. 1362(18); 50 CFR 216.3).

**Purpose of Regulatory Action**

NMFS received an application from the IBRP requesting 5-year regulations and a LOA issued thereunder to take individuals of three species (California sea lion, Steller sea lion, and harbor seal), comprising three stocks of marine mammals, by Level A harassment and Level B harassment incidental to the IBRP's activities. No serious injury or mortality is anticipated or authorized. Please see the Background section for definitions of harassment.

These regulations, promulgated under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), provide a framework for authorizing the take of marine mammals incidental to construction activities associated with the IBR Project, including impact and vibratory pile driving. The regulations include mitigation, monitoring, and reporting requirements. These requirements, which were proposed by IBRP, are expected to minimize the number and/or intensity of incidents of marine mammal take, as well as to provide information to better understand the impacts of the action and document compliance. IBRP has agreed that all of the mitigation measures are practicable. As required by the MMPA, NMFS concurred that these measures are sufficient to achieve the least practicable adverse impact on the affected marine mammal species or stocks and their habitat.

*Legal Authority for the Action*

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs 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 for up to 5 years if, after notice and public comment, the agency makes certain findings and promulgates regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing 5-year regulations and a 5-year LOA.

*Summary of Major Provisions Within the Rule*

Following is a summary of the major provisions of this rule regarding the IBRP's activities. These measures include:

- Prescribing permissible methods of taking of small numbers of marine mammals by Level A harassment and/or Level B harassment incidental to the IBR Project;
- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Establishment of shutdown zones;
- Bubble curtains required for impact driving of steel piles except as necessary to verify bubble curtain effectiveness during hydroacoustic monitoring;
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power;
- Submittal of monitoring reports including a summary of marine mammal species and behavioral observations, construction shutdowns or delays, and construction work completed; and
- Hydroacoustic monitoring to verify effectiveness of noise attenuation devices and sound source level assumptions for modeling.

Through adaptive management, the regulations allow NMFS Office of Protected Resources to modify (*e.g.,* remove, revise, or add to) the existing mitigation, monitoring, or reporting measures summarized above and required by the LOA.

**Summary of Request**

On July 18, 2024, NMFS received an application from the IBRP requesting authorization for take of marine mammals incidental to construction activities related to the IBR Project on I–5 between Portland, OR, and Vancouver, WA. After the IBRP responded to our questions on October 12, 2024, and January 14, 2025, we determined the application was adequate and complete on January 16, 2025. We published a notice of receipt in the **Federal Register** on March 13, 2025 (90 FR 11950, March 13, 2025) and received 38 comments. Of these, 37 were opposed to the IBR Project; most suggested an alternative project design unrelated to IBRP's request for incidental take authorization, and which are outside the scope of NMFS' action in promulgating regulations under the MMPA because the design of the project is at the discretion of the IBRP. One comment letter expressed support for the IBR Project and the potential associated

increases in employment and training opportunities for ironworkers. NMFS determined that these comments did not provide information relevant to our decision under the MMPA. On August 19, 2025, NMFS published a proposed rule (90 FR 40492) (Proposed Rule) and a request for public comments in the **Federal Register**; we received three total comments on the proposed rule, none of which were relevant to our findings due to a lack of substantive information provided or because the comments were on issues outside the scope of NMFS' action (*i.e.,* on the project's design).

**Changes From the Proposed to Final Rule**

There have been several changes from the proposed rule in this final rule. First, in the Estimated Take of Marine Mammals section (table 10 of the Proposed Rule; table 3 of this final rule), the proxy source levels for vibratory driving have been adjusted. This minor change was made to account for the discrepancy between measured and assumed values noted in footnote 4 of table 10 in the Proposed Rule. Specifically, single-hammer vibratory driving proxy source levels have been revised from 175 decibels (dB) root mean square (RMS) re 1 micropascal (µPa) to 170 dB RMS re 1 µPa and associated proxy sound levels (for simultaneous vibratory driving of two piles) have been adjusted from 178 dB RMS to 173 dB RMS, following the methodology outlined in the Proposed Rule for additive sources. The associated Level A and Level B harassment isopleths have been recalculated and are shown in table 4 of this final rule. These changes are small and result in no impact to the estimated take of marine mammals because of the curvature of the river restricting the propagation of sound up and downstream. There were small reductions to the AUD INJ harassment zone isopleths and ensonified areas that are shown in table 3 of this rule.

Secondly, proxy sound levels (dB peak) for simultaneous impact driving of two 24-inch (in) piles and for two 48-in piles were incorrectly calculated in the proposed rule. They have been corrected; these are now 201 dB peak and 210 dB peak, respectively. The RMS and single-strike sound exposure level ($SEL_{ss}$) values shown in the proposed rule were correct and have not changed, and no changes were made to the resulting Level A or Level B harassment zone isopleths and associated estimates of exposures.

Thirdly, the Proposed Monitoring and Reporting section of the Proposed Rule and section 217.146(e)(v) of the proposed regulatory text incorrectly included hydroacoustic monitoring of vibratory pile driving; this language has been removed from the final rule. The inclusion of hydroacoustic monitoring for vibratory pile driving was purely a clerical error; monitoring of impact driving is required under the applicant's U.S. Army Corps of Engineers consultation due to potential injurious take of endangered salmonid fishes. Vibratory driving has no potential for injurious take of fishes, and thus no hydroacoustic monitoring is required under that consultation. Hydroacoustic monitoring of impact driving is planned and remains included in this final rule.

Finally, in the regulatory text, the following changes were made: all of section 217.145(a)(4)(ii), and part of section 217.145(a)(6)(iii) were deleted to remove confusion about whether the shutdown zone must be fully visible in order to be effectively monitored during short periods of adverse weather conditions; section 217.145(a)(6)(v) was deleted to reduce redundancy in the regulatory text with section 217.145(a)(3); and section 217.147(c) was deleted because the LOA as issued is valid for the duration of the effective dates. Additionally, § 217.146(d)(4) of the proposed rule was missing a standard requirement to report the number of marine mammals detected within the harassment zones, by species. This language has been added to the regulatory text (§ 217.146(d)(4)(ix)) and the associated LOA. Other clerical errors such as numbering were corrected and clerical changes corresponding to the substantive changes described above were made as needed.

**Description of Specified Activity**

*Overview*

The IBR Project will improve I–5 corridor mobility by addressing present and future travel demand and mobility needs in the IBR Project area. The project consists of multiple components and interchanges, extending from approximately Columbia Boulevard in the south to State Route (SR) 500 in the north; one component of the project is to replace the existing bridges over the Columbia River and North Portland Harbor to accommodate increasing travel demand and congestion, improve safety related to traffic accidents, and reduce vulnerability to seismic events. The existing bridges do not meet current seismic standards and are vulnerable to failure in an earthquake. The IBR Project is anticipated to take approximately 9 to 15 years to complete and will require in-water work in up to 9 construction seasons. These regulations are effective for the first 5 construction years (2027–2032). IBRP anticipates requesting additional future incidental take authorizations as necessary in association with subsequent years of construction.

Exact project sequencing is still in development; however, it is currently anticipated that work to be conducted during the first 5 years of the IBR Project will include construction of the new Columbia River Bridge and associated approaches, and construction of the transit bridge crossing the North Portland Harbor. In-water pile driving for the first 5 construction years will include both impact and vibratory driving of temporary steel pipe (24- in (0.61 meters (m)) and 48-in (1.2 m) diameter) and steel sheet piles. Permanent bridge foundations will be constructed using 10-foot (ft) (3-m) diameter steel casings installed with an oscillator, analogous to a rotary drill. Impact driving would be conducted primarily with the use of a bubble curtain, with a minimal amount of unattenuated driving to confirm bubble curtain effectiveness. In-water pile driving associated with the project will include installation and potential removal of approximately 1,560 temporary steel pipe piles, and 1,500 linear ft (457 m) of steel sheet piles over the 5-year period.

*Dates and Duration*

IBRP anticipates that in-water construction activities associated with this project will begin on September 15, 2027, and extend through September 14, 2032. In-water pile installation for the first 5 years of the IBR Project is expected to occur on approximately 1,725 non-consecutive days. While the exact project design and sequence of construction are not yet finalized, in-water project elements and estimated durations are shown in table 1. Land-based project elements do not have the potential to cause take of marine mammals; for a description and information on the duration of land-based elements, please see the Proposed Rule. Construction timing, sequencing, and duration are dependent on funding, design assumptions, contractor schedules and equipment, and weather, among other factors. The duration estimates shown are based on the best available information at the time of publication of this final rule; however, the schedule may shift such that actual activities occur in different years than specified below.

Impact driving will be restricted to an in-water work window between September 15 and April 15 of each year.

This window was determined via coordination with state (Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fish and Wildlife (WDFW)) and Federal (U.S. Army Corps of Engineers, Federal Highway Administration, Federal Transit Administration, and NMFS) agencies, Tribal parties, and public input to reduce potential impacts to Endangered Species Act (ESA)-listed fishes. Vibratory pile driving will occur year-round.

TABLE 1—IN-WATER PROJECT ELEMENTS, LOCATIONS AND ESTIMATED DURATIONS FOR THE IBR PROJECT

| Project element | Estimated duration | Element location | Notes |
|---|---|---|---|
| Columbia River Bridges | 4 to 7 years | In-water | Years 1–5: Construction is likely to begin with the main river bridges. General sequence will include initial preparation and installation of foundation piles, shaft caps, pier columns, superstructure, and deck. |
| North Portland Harbor Bridges. | 4 to 10 years | In-water | Years 1–5: Existing North Portland Harbor bridge will be demolished in phases to accommodate traffic during construction of the new bridges. |
| Demolition of the existing Interstate Bridge. | 1.5 to 3 years | In-water | Years 6–15: Demolition of the existing Interstate Bridge could begin only after traffic is rerouted to the new Columbia River bridges. |

*Specified Geographical Region*

The IBR Project will replace the bridge spans across the Columbia River and North Portland Harbor and the associated highway interchanges on an approximately 5-mile (mi) (8 kilometer (km)) stretch of I–5 between Portland, OR, and Vancouver, WA (figure 1). In-water work will occur in the subset of the IBR Project area between the north bank of the Columbia River in Washington and the south shore of the North Portland Harbor in Oregon, between river miles 106 and 107. The widths of the Columbia River and North Portland Harbor at this location are approximately 0.5 mi (841 m) and 0.18 mi (295 m), respectively.

Figure 1—Overview of IBR Project Location along I–5 between Portland, OR, and Vancouver, WA

*Detailed Description of the Specified Activity*

A detailed description of IBRP's planned activities are provided in the Proposed Rule. Since publication of the proposed rule, IBRP has not made any modifications to their activities; therefore, we direct the reader to the proposed rule for a detailed description. Similar to the proposed rule, mitigation, monitoring, and reporting measures proposed by IBRP, and included in this final rule are, described in detail later in this document (please see Mitigation and Monitoring and Reporting).

**Description of Marine Mammals in the Area of Specified Activities**

Three species of marine mammals, comprising three stocks, may be taken by harassment incidental to IBRP's specified activities. A complete description of marine mammal status and trends, life history, habitat use, and threats is included in IBRP's application and NMFS' Proposed Rule. These details are not repeated here except for the reference table containing status, stock abundance, potential biological removal levels, and annual rates of mortality and serious injury (table 2).

TABLE 2—SPECIES WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

| Common name | Scientific name | MMPA Stock | ESA/ MMPA status; strategic (Y/N) [1] | Stock abundance $N_{best}$, (CV, $N_{min}$, most recent abundance survey) [2] | Potential Biological Removal (PBR) | Annual Mortality/ Serious Injury (M/SI) [3] |
|---|---|---|---|---|---|---|
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Otariidae (eared seals and sea lions): | | | | | | |
| California sea lion | *Zalophus californianus* | U.S | -, -, N | 257,606 (N/A, 233,515, 2014). | 14,011 | >321 |
| Steller sea lion | *Eumetopias jubatus* | Eastern | -, -, N | 36,308 (N/A, 36,308, 2022) [4]. | 2,178 | 93.2 |
| Family Phocidae (earless seals): | | | | | | |
| Harbor seal | *Phoca vitulina* | OR/WA Coastal | -, -, N | 22,549 (UND, 19,561, 2022) [5]. | UND [6] | 10.6 |

[1] ESA status: endangered (E), threatened (T)/MMPA status: depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal Stock Assessment Reports (SARs) online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable (N/A).

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the United States only.

[5] Most recent SAR does not include an abundance estimate for this stock. These data are for the Washington coast and thus underestimate the size of the OR/WA Coastal stock; estimates are from Pearson *et al.* (2024).

[6] UND means undetermined.

## Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the IBRP's construction activities have the potential to result in harassment of marine mammals in the Columbia River. We refer the reader to the Proposed Rule for a full discussion of the effects of anthropogenic noise on marine mammals in general and the potential effects of the specified activities on marine mammals and their habitat. There is no newly available relevant information that would change our analyses or the results thereof.

## Estimated Take of Marine Mammals

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* pile driving activities) have the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (AUD INJ) (Level A harassment) to result, primarily for phocids because predicted AUD INJ zones are larger than for otariids. The required mitigation and monitoring measures are expected to minimize the potential for take and, if take were to occur, the severity of the taking to the extent practicable. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity.

This final rule incorporates the harassment thresholds used in the proposed rule to estimate the manner and number of takes analyzed in this final rule and LOA. In summary, IBRP's proposed activity includes the use of continuous (vibratory pile driving and extraction) and impulsive (impact pile driving) sources, and therefore the RMS sound pressure level (SPL) thresholds of 120 and 160 dB re 1µPa are applicable. NMFS also applied the Updated Acoustic Technical Guidance (NMFS, 2024) to determine the potential for Level A harassment, as described in the proposed rule.

Since publication of the proposed rule, NMFS has revised our consideration of the proposed source values for vibratory pile driving to account for the discrepancy between measured and assumed values noted in footnote 4 of table 10 in the Proposed Rule. Specifically, we made the following modifications:

- Single-hammer vibratory driving proxy source levels have been revised from 175 dB RMS to 170 dB RMS. Sound pressure levels above 170 dB RMS have not been measured for 24- to 48-in piles at any location; however, 170 dB RMS at 10 m from the incident pile is characteristic of the average measured values across locations;
- Proxy sound levels (dB RMS) for simultaneous vibratory driving of two piles have been adjusted from 178 dB RMS to 173 dB RMS, following the methodology outlined in the Proposed Rule for additive sources; and
- Proxy sound levels (dB peak) for simultaneous impact driving of two 24-in piles and for two 48-in piles have been adjusted due to an error in the proposed rule. The peak values were not correctly adjusted; these are now 201 dB peak and 210 dB peak, respectively. The RMS and $SEL_{ss}$ values shown in table 10 of Proposed Rule were correct and have not changed, and no changes were made to the resulting Level A or Level B harassment zone isopleths and associated estimates of exposures.

As a result, straight-line distances to Level B harassment thresholds for vibratory pile driving decreased, but the ensonified area did not change due to the river curvature and site geography limiting sound propagation. Table 3 contains updated distances to thresholds and corresponding areas for vibratory pile driving activities in both the Columbia River and North Portland Harbor sites.

TABLE 3—UPDATED CALCULATED LEVEL A AND B HARASSMENT ISOPLETHS IN THE COLUMBIA RIVER AND NORTH PORTLAND HARBOR FOR VIBRATORY PILE DRIVING

| Pile size and type | Level A harassment zone ($m/km^2$)—Phocids & Otariids [a] | | Level B harassment zone ($m/km^2$) [b] | |
|---|---|---|---|---|
| | Proposed | Final | Proposed | Final |
| **Columbia River** | | | | |
| 24-in steel pipe (Unattenuated, single)<br>48-in steel pipe (Unattenuated, single)<br>Steel sheet (Unattenuated, single) | 236.3; 0.18 | 219; 0.15 | 46,414; 17.63 | 21,544; 17.63 |
| 24-in and or 48-in and or sheet (Unattenuated, concurrent) | 374.5; 0.58 | 348; 0.53 | 73,564; 17.63 | 34,145; 17.63 |
| **North Portland Harbor** | | | | |
| 24-in steel pipe (Unattenuated, single)<br>48-in steel pipe (Unattenuated, single)<br>Steel sheet (Unattenuated, single) | 236.3; 0.12 | 219; 0.11 | 46,414; 2.25 | 21,544; 2.25 |
| 24-in and or 48-in and or sheet (Unattenuated, concurrent) | 374.5; 0.22 | 348; 0.20 | 73,564; 2.25 | 34,145; 2.25 |

[a] Level A harassment zones for phocids have been applied to both phocids and otariids in this analysis. The calculated Level A isopleths for otariids are 73.8 and 117.0 m for single and concurrent scenarios, respectively.
[b] Level B harassment ensonified areas are limited by the river curvature and geography of the two locations.

The Proposed Rule included a description of the methodology IBRP used to estimate exposures from the specified activities. Potential take, by Level A and Level B harassment, was quantified for all three species as a guild based on recent surveys done by ODFW and WDFW (15.2 in September through April; 6.7 in May through August), the likelihood of exposure during each construction activity, and the number of days estimated for each activity. The estimated exposures for each activity in a given year were then summed to estimate total annual exposures. None of the changes in this final rule resulted in changes to the proposed estimates of take by Level A or Level B harassment (table 4).

TABLE 4—CALCULATED ANNUAL AND 5-YEAR TOTAL ESTIMATED TAKE PER ACTIVITY BY LEVEL A AND LEVEL B HARASSMENT

| Activity | Year | Annual Level A harassment | Annual Level B harassment | Total annual take |
|---|---|---|---|---|
| Impact—Unattenuated | 1 | 8 | 76 | 84 |
| | 2 | 4 | 38 | 42 |
| | 3 | 4 | 38 | 42 |
| | 4 | 4 | 38 | 42 |
| | 5 | 4 | 38 | 42 |
| | 5-year estimate | 24 | 228 | 252 |
| Impact—Attenuated | 1 | 182 | 912 | 1,094 |
| | 2 | 152 | 760 | 912 |
| | 3 | 114 | 570 | 684 |
| | 4 | 114 | 570 | 684 |
| | 5 | 114 | 570 | 684 |
| | 5-year estimate | 676 | 3,382 | 4,058 |
| Vibratory | 1 | 0 | 2,713 | 2,713 |
| | 2 | 0 | 2,713 | 2,713 |
| | 3 | 0 | 2,713 | 2,713 |
| | 4 | 0 | 2,713 | 2,713 |
| | 5 | 0 | 2,713 | 2,713 |
| | 5-year estimate | 0 | 13,365 | 13,365 |
| All Activities | Maximum Annual | 190 | 3,701 | 3,891 |
| | 5-year estimate | 700 | 17,175 | 17,785 |

The percentages of take estimated by Level A harassment shown in the Proposed Pule (0 percent for vibratory pile installation and extraction; 5 percent for unattenuated impact piling; 10 percent for attenuated impact piling) were based on the activity duration in a typical day, the estimated Level A harassment isopleths, and the ability of pinnipeds to avoid the areas with highest sound exposure levels by swimming through other areas of the river or harbor. The maximum average travel speed of California sea lions in the Columbia River moving between the Bonneville Dam and the river mouth has been calculated at approximately 5.4 km per hour (hr) (Wright *et al.,* 2010). For animals traveling at half of the maximum speed (2.7 km/hr) to traverse the entirety of the largest predicted Level A harassment zone (from 0.52 km downstream to 0.52 km upstream during concurrent impact driving) would take approximately 22 minutes, and approximately 1 hour for animals traveling at 1 km/hr. The largest Level

A harassment zone calculated for 10 continuous hours of vibratory driving is 0.35 km (total of 0.7 km diameter) and would take an estimated 16 or 42 minutes for an animal to transit at 2.7 km/hr or 1 km/hr, respectively. The widths of the Columbia River and North Portland Harbor at the project site are approximately 841 m and 295 m, respectively. Therefore, animals in the Columbia River could potentially avoid the Level A harassment area entirely by increasing their distance from the relevant sound source. Animals in the North Portland Harbor would not be able to avoid the Level A harassment zone during transit.

NMFS considers it unlikely that an individual animal would remain in the 1 km zone immediately adjacent to the project site for more than 2 hours as there are no known resting or foraging areas in this urban, industrialized portion of the river. However, given the lack of site-specific observational data, the conservative proportions of take by Level A harassment presented in table 15 of the Proposed Rule and repeated in table 4 of this rule remain appropriate. Table 5 shows the maximum annual amount of take authorized in the LOA by species and stock, and the percentages of each stock that could be affected.

TABLE 5—CALCULATED MAXIMUM ANNUAL TAKE AUTHORIZED BY LEVEL A AND LEVEL B HARASSMENT INCLUDING PERCENTAGE OF STOCKS TAKEN

| Species | Stock | Maximum annual Level A take | Maximum annual Level B take | Total maximum annual take | Percentage of stock taken |
|---|---|---|---|---|---|
| Harbor seal | OR/WA Coastal | 190 | 3,701 | 3,891 | 17.3 |
| Steller sea lion | Eastern | | | | 1.5 |
| California sea lion | U.S. | | | | 10.7 |

**Mitigation**

The MMPA requires NMFS set forth in regulations the permissible methods of taking pursuant to the activity and other means of effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (referred to in shorthand as mitigation). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to effect the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors which are described below. For a full discussion of NMFS' implementation of the least practicable adverse impact standard, see 89 FR 31488, 31517 (April 24, 2024) as an example.

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (*e.g.,* likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability of implementation as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

This final rule incorporates all mitigation measures contained within the proposed rule without change. We refer the reader to the Proposed Rule on those measures and the expected benefit to marine mammals. In summary, the mitigation measures in this final rule include providing training of the protocols and operating procedures to all relevant personnel before the start of all pile driving, soft starts and bubble curtain use during impact driving, as well as standard shutdown zones to avoid physical interaction of marine mammals and construction equipment. IBRP would utilize NMFS-approved protected species observers (PSOs) during all activities that have the potential to result in take. As fully described in the Proposed Rule, NMFS has determined that the mitigation measures proposed by IBRP and contained within this final rule result in the least practicable adverse impact on marine mammals.

*PSOs*

The IBRP must employ PSOs and establish monitoring locations as described in a NMFS-approved Marine Mammal Monitoring and Mitigation Plan. For all pile driving activities, land-based PSOs must be stationed at the best vantage points practicable to monitor for marine mammals and implement mitigation procedures. A minimum of two locations must be used to monitor the harassment zones to the maximum extent possible based on positioning and daily visibility conditions. PSOs must be able to implement shutdown or delay procedures when applicable through communication with the equipment operator. Pre-start clearance monitoring must take place 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity during periods of visibility sufficient for the lead PSO to determine that the shutdown zones are clear of marine mammals. Pile driving may commence only if, following 30 minutes of observation, it is determined by the lead PSO that the shutdown zones are clear of marine mammals.

*Shutdown Zones*

For all pile driving activity, the IBRP must implement shutdown zones with radial distances shown in table 6. The IBRP, construction supervisors and crews, PSOs, and relevant IBRP staff must prevent direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to prevent direct physical interaction.

If a marine mammal is observed entering or within the shutdown zone, all pile driving activities at that location must be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and has been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animal behavior must be monitored and documented. If work ceases for more than 30 minutes, the shutdown zones must be cleared again for 30 minutes prior to reinitiating pile driving.

TABLE 6—SHUTDOWN ZONES DURING PROJECT ACTIVITIES

| Activity | Pile type/size | Shutdown zone (m) | Monitoring zones (m) | |
|---|---|---|---|---|
| | | | Level A | Level B |
| Impact—Unattenuated (Single Hammer) | 24-in | 10 | 46 | 1,000 |
| | 48-in | | 184 | 5,412 |
| Impact—Attenuated (Single Hammer) | 24-in | 10 | 83 | 341 |
| | 48-in | | 328 | 1,848 |
| Impact—Attenuated (Two Hammers) | 24-in | 10 | 131 | 541 |
| | 48-in | | 521 | 2,929 |
| Vibratory (Single Hammer) | 24-in, 48-in, and sheet. | 10 | [a] | 18,593 (upstream) [b] 8,230 (downstream) [b] |
| Vibratory (Two Hammers) | 24-in, 48-in, and sheet. | | [a] | |

**Notes:** m = meter(s).
[a] While the results of the underwater noise modeling indicate Level A harassment isopleths exist for cumulative exposure to underwater noise during vibratory pile driving, take by Level A harassment is not anticipated, and no Level A harassment Monitoring Zone is proposed for vibratory pile driving.
[b] PSOs will monitor the Level B harassment zone to the extent possible based on positioning and environmental conditions.

*Soft Start*

The IBRP will use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity.

*Noise Attenuation System*

The IBRP will use a bubble curtain during impact pile driving in water depths greater than 0.67 m. The bubble curtain would be operated as necessary to achieve optimal performance. At a minimum, the bubble curtain will distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column, the lowest bubble ring will be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring will ensure 100 percent substrate contact. No parts of the ring or other objects would prevent full substrate contact. In addition, air flow to the bubblers would be balanced around the circumference of the pile.

A hydroacoustic monitoring plan will be implemented during impact pile driving to confirm the attenuation device is installed and functioning as designed. This monitoring program will require some unattenuated pile strikes to confirm the amount of attenuation provided by the system. An estimated number of unattenuated pile strikes are also factored in to account for periods when the bubble curtain may not be providing sufficient attenuation. IBRP estimates that up to 75 unattenuated strikes may be required for a period of approximately 10 minutes approximately 1 day per week. Testing will occur for up to approximately 30 days during the 5-year period covered under this LOA, and on approximately 40 days total over the course of the in-water construction period.

**Monitoring and Reporting**

In order to issue take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important

physical components of marine mammal habitat); and

- Mitigation and monitoring effectiveness.

IBRP will abide by all monitoring and reporting measures contained within this final rule and LOA, and a NMFS-approved Marine Mammal Monitoring and Mitigation Plan. This final rule incorporates all monitoring measures contained within the Proposed Rule, without change. We refer the reader to the Proposed Rule for details regarding those measures and provide a summary of those measures below.

In summary, IBRP will utilize PSOs at least 30 minutes prior to, during, and 30 minutes after all activities that may result in take of marine mammals. PSOs will be independent of the activity contractor (*e.g.,* employed by a subcontractor) and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO during an activity pursuant to a NMFS-issued ITA or Letter of Concurrence. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO.

PSOs should also have the following additional qualifications:

(a) The ability to conduct field observations and collect data according to assigned protocols;

(b) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(c) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(d) Sufficient writing skills to record required information 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; and

(e) The 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.

IBRP will also conduct hydroacoustic monitoring of both attenuated and unattenuated impact pile installation. Although hydroacoustic monitoring of vibratory pile driving was inadvertently included in the proposed rule, no hydroacoustic monitoring of vibratory driving is planned and none is required. Acoustic monitoring must consist of multiple hydrophones deployed at 10 m and in the far field with a direct, unobstructed path between the sound source and the hydrophones. System design and calibration must be appropriate for the expected sound levels to be recorded, with a frequency response between 20 hertz (Hz) and 20 kilohertz (kHz). Environmental data must also be collected, as well as information on the substrate composition, hammer model and size, hammer energy settings, and any other relevant information. Further details of the acoustic monitoring are discussed in the Proposed Rule and are not repeated here.

The reporting measures contained with the Proposed Rule are included in this final rule with two minor changes. First, references to reporting requirements for hydroacoustic monitoring of vibratory pile driving have been removed from the regulatory text. Secondly, in the regulatory text of the Proposed Rule, § 217.146(d)(4) omitted standard language requiring the reporting of the number of marine mammals detected within the harassment zones, by species. This standard language has been included in § 217.146(d)(4)(ix) of the regulatory text and section 6(b)(x) of the associated LOA.

The reports must contain dates and times of all marine mammal monitoring and the construction activities occurring during each daily observation period, the total duration of driving time for each pile (vibratory driving), and number of strikes for each pile (impact driving); environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly). Upon observation of a marine mammal, PSOs must record the name of the PSO who sighted the animal, observer location, and construction activity at time of sighting; identification of the animal to the lowest possible taxonomic level, PSO confidence in identification, and the composition of the group if there is a mix of species; distances and bearings of each marine mammal observed in relation to the pile being driven for each sighting; estimated number of animals by species and age class; closest point of approach and estimated time spent within the harassment zone. PSOs must also provide a description of any marine mammal behavioral observations, including an assessment of behavioral responses to the activity, the number of marine mammals detected within the harassment zones, by species, and detailed information about any implementation of any mitigation, a description of specific actions that ensued, and resulting changes in the behavior of the animal, if any. All PSO data must be submitted in an electronic format that can be queried such as a spreadsheet or database (*i.e.,* digital images of data sheets are not sufficient).

IBRP will submit interim monthly reports as well as a draft annual report within 90 calendar days of completion of marine mammal monitoring each year and a draft 5-year comprehensive summary to NMFS 90 days after the expiration of the regulations. Revised annual and 5-year reports must be prepared and submitted to NMFS within 30 days following receipt of any NMFS comments on the draft reports. Details on how monitoring reports will be submitted to NMFS and the information required in each report are detailed in the proposed rule and included in the associated LOA.

Acoustic monitoring report(s) must be submitted on the same schedule as visual monitoring reports (*i.e.,* within 90 days following the completion of construction). The acoustic monitoring report must contain the informational elements described in the acoustic monitoring plan and, at minimum, must include:

- Hydrophone equipment and methods: (1) recording device, sampling rate, calibration details, distance (m) from the pile where recordings were made; and (2) the depth of water and recording device(s);
- Location, identifier, orientation (*e.g.,* vertical, battered), material, and geometry (shape, diameter, thickness, length) of pile being driven, substrate type, method of driving during recordings (*e.g.,* hammer model and energy), and total pile driving duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used, its distance from the pile and hydrophone, and the duration of its use per pile; and
- For impact pile driving: (1) number of strikes per day and per pile and strike rate; (2) depth of substrate to penetrate; (3) decidecade (one-third octave) band spectra in tabular and figure formats computed on a per-pulse basis, including the arithmetic mean or median for all computed spectra; (4) pulse duration and median, mean, maximum, minimum, and number of samples (where relevant) of the following sound level metrics: (5) RMS SPL; (6) 24-hour sound exposure level ($SEL_{24}$), peak (PK) SPL, and $SEL_{ss}$.

If no comments are received from NMFS within 30 days after the submission of the draft report, the draft report would constitute the final report. If the IBRP received comments from

NMFS, a final report addressing NMFS' comments would be submitted within 30 days after receipt of comments. The estimated harassment and shutdown zones may be modified with NMFS' approval following NMFS' acceptance of an acoustic monitoring report.

As described in the Proposed Rule, in the event that personnel involved in IBRP's activities discover an injured or dead marine mammal, IBRP would report the incident to the Office of Protected Resources, NMFS (*PR.ITP.MonitoringReports@noaa.gov*), and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, IBRP would be required to immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with this final rule. IBRP would not resume their activities until notified by NMFS. The report must include the time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable), the species identification (if known) or description of the animal(s) involved, the condition of the animal(s) (including carcass condition if the animal is dead), and the observed behaviors of the animal(s), if alive. Additionally, the report should include photographs or video footage of the animal(s), if available, and the general circumstances under which the animal was discovered.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As described in the Proposed Rule, there are several key factors to assess whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect on the individuals, and the status of the species or stock.

As described in the Changes from Proposed to Final Rule section and Estimated Take section of this final rule, NMFS identified minor adjustments to the proxy source level assumptions and methodology that resulted in small decreases to the ensonified areas within the Level A harassment zones. However, there was no associated change to the proposed amount of take by Level A harassment for any species anticipated to occur incidental to the specified activities. Given these limited, minor adjustments, NMFS has determined that this new information does not change any of the preliminary analyses, conclusions, or determinations in the Proposed Rule. Therefore, the preliminary analyses, conclusions, and determinations included in the Proposed Rule for all three species and stocks remain the same for this final rule. A summary of the expected effects of the taking allowed for in this final rule, the primary factors considered, and those findings as provided in the Proposed Rule are described below.

In summary, exposures to elevated sound levels produced during IBRP's activities may cause behavioral disturbance of some individuals within the vicinity of the sound source and have the potential to cause a small amount of slight auditory injury. The amount of annual take authorized is less than 18 percent of all stocks. NMFS notes that behavioral responses (*e.g.,* increased swimming speeds, changing directions of travel and diving and surfacing behaviors, increased respiration rates, or decreased foraging (if such activity were occurring) of marine mammals to construction noises are expected to be mild, short term, and temporary. Marine mammals may not present any visual cues they are disturbed by activities, or they could become alert, avoid the area, leave the area, or have other mild responses that are not observable such as increased stress levels (*e.g.,* Rolland *et al.,* 2012; Bejder *et al.,* 2006; Rako *et al.,* 2013; Pirotta *et al.,* 2015; Pérez-Jorge *et al.,* 2016). They may also exhibit increased vocalization rates (*e.g.,* Dahlheim, 1987; Dahlheim and Castellote, 2016), louder vocalizations (*e.g.,* Frankel and Gabriele, 2017; Fournet *et al.,* 2018), alterations in the spectral features of vocalizations (*e.g.,* Castellote *et al.,* 2012), or a cessation of communication signals (*e.g.,* Tsujii *et al.,* 2018).

All three marine mammal species present in the region will only be present temporarily based on seasonal patterns or during transit between other habitats. Thus, individuals present will be exposed to only transient periods of noise-generating activity as they move up- or down-river past the project site. Most likely, individual animals will either be temporarily deterred from swimming past the construction activities and will pass by when no pile driving is occurring or will swim through the area more quickly. Takes may also occur during important foraging seasons, when anadromous fishes are migrating past the IBR Project and marine mammals follow. However, the IBR Project area represents a small portion of available foraging habitat and impacts on marine mammal feeding for all species are expected to be minimal. No marine mammal species or individuals are known or expected to be resident in the IBR Project area, and impacts are unlikely to be more than temporary and low-intensity.

The intensity of harassment events would be minimized through use of mitigation measures described herein, which were not quantitatively factored into the take estimates. As stated in the Mitigation section, the IBRP will implement shutdown zones (table 6). Take by Level A harassment will be authorized for all three marine mammal species to account for the potential that an animal could enter and remain unobserved within the estimated Level A harassment zone for a duration long enough to incur AUD INJ. Any take by Level A harassment is expected to arise from, at most, a small degree of AUD INJ because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of AUD INJ.

In summary, the following factors primarily support our negligible impact determinations for the affected stocks of California sea lions, Steller sea lions, and harbor seals:

- No takes by mortality or serious injury are anticipated or authorized;
- Any acoustic impacts to marine mammal habitat from pile driving are expected to be temporary and minimal;
- Take will not occur in places and/or times where take would be more likely to accrue impacts on reproduction or survival, such as within habitats critical to recruitment or survival (*e.g.,* rookery);
- The IBR Project area represents a very small portion of the available foraging area for all potentially impacted marine mammal species and does not contain any habitat of particular importance;
- Take will occur only within the Columbia River and North Portland Harbor, which is a limited, confined area of any given stock's home range;
- Monitoring reports from similar work have documented little to no observable effect on individuals of the same species impacted by the specified activities;
- The required mitigation measures (*i.e.,* soft starts, pre-clearance monitoring, shutdown zones, bubble curtains) are expected to be effective in reducing the effects of the specified activity by minimizing the numbers of marine mammals exposed to injurious levels of sound and by ensuring that any take by Level A harassment is, at most, a small degree of AUD INJ and of a lower degree that would not impact the fitness of any animals; and
- The intensity of anticipated takes by Level B harassment is low for all stocks consisting of, at worst, temporary modifications in behavior, and would not be of a duration or intensity expected to result in impacts on reproduction or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned specified activity would have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted maximum annual number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

As in the proposed rule, the maximum annual amount of take allowed under the final rule is less than one-third of the population abundance estimates for all stocks (table 5). The numbers of animals authorized to be taken are small relative to the relevant species or stock abundances even if each estimated take occurred to a new individual, and even if all take accrued to a single stock.

Given there is no substantive change to the small numbers analysis described in the proposed rule, it is herein incorporated by reference. Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Adaptive Management**

The regulations governing the take of marine mammals incidental to IBRP's proposed construction activities would contain an adaptive management component.

The reporting requirements associated with this final rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from IBRP regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation or monitoring measures could be modified if new data suggests that such modifications would have a reasonable likelihood more effectively achieving the goals of the mitigation and monitoring and if the measures are practicable.

The following are examples of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA.

**Endangered Species Act**

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure 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. To ensure ESA compliance with its issuance of ITAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS West Coast Regional Office.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

**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.,* promulgation of regulations and subsequent issuance of an LOA thereunder) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (ITAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 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 determined that the issuance of the incidental take regulations and LOA qualifies to be categorically excluded from further NEPA review.

**Promulgation**

As a result of these determinations, NMFS is promulgating these regulations that: (1) allow for take of three marine mammal species, comprising three stocks, by Level A and Level B harassment, incidental to construction activities associated with the IBR Project for a 5-year period from September 15, 2027, through September 14, 2032; and (2) prescribe mitigation, monitoring and reporting measures.

**Classification**

*Executive Order 12866*

The Office of Management and Budget determined that this final rule is not significant for purposes of Executive Order (E.O.) 12866.

*Executive Order 14192*

This final rule is not an E.O. 14192 regulatory action because this action is not significant under E.O. 12866.

*Regulatory Flexibility Act (RFA)*

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The IBRP is a bi-state governmental program focused on improving the transit corridor between Washington and Oregon. The IBRP is the sole entity that would be subject to the requirements of this final rule, and the IBRP is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA, because it is a department of the two state governments. Because of this certification, a final regulatory flexibility analysis is not required and none has been prepared.

*Paperwork Reduction Act (PRA)*

This final rule contains a collection-of-information requirement subject to the provisions of the PRA. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

**List of Subjects in 50 CFR Part 217**

Acoustics, Administrative practice and procedure, Construction, Marine mammals, Mitigation and monitoring requirements, Reporting requirements, Wildlife.

Dated: May 13, 2026.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set forth in the preamble, NMFS amends 50 CFR part 217 as follows:

## PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Add Subpart O, consisting of §§ 217.141 through 217.149, to read as follows:

**Subpart O—Taking Marine Mammals Incidental to the Interstate Bridge Replacement Project on Interstate 5 between Portland, OR, and Vancouver, WA**

Sec.

217.141 Specified activity and specified geographical region.
217.142 Effective dates.
217.143 Permissible methods of taking.
217.144 Prohibitions.
217.145 Mitigation requirements.
217.146 Requirements for monitoring and reporting.
217.147 Letters of Authorization.
217.148 Modifications of Letters of Authorization.
217.149 [Reserved]

## Subpart O—Taking Marine Mammals Incidental to the Interstate Bridge Replacement Project on Interstate 5 between Portland, OR, and Vancouver, WA

### § 217.141 Specified activity and specified geographical region.

(a) The incidental taking of marine mammals by the Interstate Bridge Replacement Program (IBRP) may be authorized in a letter of authorization (LOA) only if it occurs at or around the Interstate 5 bridges over the Columbia River and North Portland Harbor between Portland, OR, and Vancouver, WA, incidental to the specified activities outlined in paragraph (b) of this section. Requirements imposed on the IBRP in this subpart must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified activities are construction and demolition activities associated with the Interstate Bridge Replacement Project between Portland, OR, and Vancouver, WA.

### § 217.142 Effective dates.

Regulations in this subpart are effective from September 15, 2027, until September 14, 2032.

### § 217.143 Permissible methods of taking.

Under a LOA issued pursuant to § 216.106 of this chapter and this subpart, the IBRP and those persons it authorizes or funds to conduct activities on its behalf may incidentally, but not intentionally, take marine mammals within the specified geographical region by harassment associated with the specified activities provided they are in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

### § 217.144 Prohibitions.

(a) Except for the takings permitted in § 217.143 and authorized by a LOA issued under § 216.106 of this chapter and this subpart, it is unlawful for any person to do any of the following in connection with the specified activities:

(1) Violate or fail to comply with the terms, conditions, and requirements of this subpart or a LOA issued under this subpart;

(2) Take any marine mammal not specified in such LOA;

(3) Take any marine mammal specified in such LOA in any manner other than as specified;

(4) Take a marine mammal specified in such LOA after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(5) Take a marine mammal specified in such LOA after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

(b) [Reserved]

### § 217.145 Mitigation requirements.

(a) When conducting the specified activities identified in § 217.141(b), IBRP must implement the mitigation measures contained in this section and any LOA issued under § 216.106 of this chapter and this subpart. These mitigation measures include, but are not limited to:

(1) A copy of any issued LOA must be in the possession of the IBRP, its

designees, and work crew personnel operating under the authority of the issued LOA;

(2) The IBRP must ensure that construction supervisors and crews, the monitoring team and relevant IBRP staff are trained prior to the start of all pile driving so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work; and

(3) The IBRP, construction supervisors and crews, Protected Species Observers (PSOs), and relevant IBRP staff must prevent direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to prevent direct physical interaction;

(4) The IBRP must employ PSOs and establish monitoring locations pursuant to § 217.146 and as described in a NMFS-approved Marine Mammal Monitoring and Mitigation Plan;

(i) For all pile driving activities, land-based PSOs must be stationed at the best vantage points practicable to monitor for marine mammals and implement shutdown/delay procedures. A minimum of two locations must be used to monitor the harassment zones specified in any LOA issued under § 216.106 of this chapter to the maximum extent possible based on positioning and daily visibility conditions. PSOs must be able to implement shutdown or delay procedures when applicable through communication with the equipment operator;

(ii) [Reserved];

(5) Pre-start clearance monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity;

(i) Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones are clear of marine mammals;

(ii) Pile driving may commence only if, following 30 minutes of observation, it is determined by the lead PSO that the shutdown zones are clear of marine mammals;

(6) For all pile driving activity, the IBRP must implement shutdown zones with radial distances as identified in a LOA issued under § 216.106 of this chapter;

(i) If a marine mammal is observed entering or within the shutdown zone, all pile driving activities, including soft starts, at that location must be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and has been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal;

(ii) In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animal behavior must be monitored and documented;

(iii) If work ceases for more than 30 minutes, the shutdown zones must be cleared again for 30 minutes prior to reinitiating pile driving;

(7) The IBRP must use soft start techniques when impact pile driving. Soft start requires the IBRP to conduct three sets of strikes (three strikes per set) at reduced hammer energy with a 30-second waiting period between each set. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer;

(8) The IBRP must use bubble curtains for impact pile driving in waters deeper than 0.67 m, except when necessary for testing of bubble curtain effectiveness during hydroacoustic monitoring. The bubble curtain must be operated to achieve optimal performance. At a minimum, the bubble curtain must comply with the following:

(i) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column;

(ii) The lowest bubble ring must be in contact with the mudline and/or rock bottom for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline and/or rock bottom contact. No parts of the ring or other objects shall prevent full mudline and/or rock bottom contact;

(iii) Air flow to the bubblers must be balanced around the circumference of the pile;

(9) Pile driving activity must be halted upon observation of a species entering or within the harassment zone for either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met;

(b) [Reserved]

**§ 217.146 Requirements for monitoring and reporting.**

(a) The IBRP must submit a marine mammal monitoring plan to NMFS for approval at least 90 days before the start of construction and abide by the approved plan.

(b) The IBRP must submit a hydroacoustic monitoring plan to NMFS for approval at least 60 days before the start of impact pile driving and abide by the approved plan.

(c) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

(1) PSOs must be independent of the activity contractor (*e.g.,* employed by a subcontractor) and have no other assigned tasks during monitoring duties;

(2) PSOs must be approved by NMFS prior to beginning work on the specified activities;

(3) PSOs must be trained in marine mammal identification and behavior;

(i) A designated project lead PSO must be on site when more than two PSOs are on duty. The project lead PSO must have prior experience performing the duties of a PSO during in-water construction activities pursuant to a NMFS-issued ITA or letter of concurrence;

(ii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

(d) The IBRP must submit a draft annual summary monitoring report on all marine mammal monitoring conducted during each construction season which includes final electronic data sheets in a searchable format within 90 calendar days after the completion of each construction season or 60 days prior to a requested date of issuance of any future incidental take authorization for projects at the same location, whichever comes first. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 days of the end of year 5 of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring. If no comments are received from NMFS within 30 days of receipt of the draft report, the report may be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt. At a minimum, the reports must contain:

(1) Dates and times (begin and end) of all marine mammal monitoring;

(2) Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed, by what method (*i.e.,* impact or vibratory), the total duration of driving time for each pile (vibratory driving), and number of strikes for each pile (impact driving);

(3) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), Beaufort sea state, and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance (if less than the harassment zone distance);

(4) Upon observation of a marine mammal, the following information must be collected:

(i) Name of the PSO who sighted the animal, observer location, and activity at time of sighting;

(ii) Time of sighting;

(iii) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

(iv) Distances and bearings of each marine mammal observed in relation to the pile being driven for each sighting (if pile driving was occurring at time of sighting);

(v) Estimated number of animals (min/max/best);

(vi) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);

(vii) Animal's closest point of approach and estimated time spent within the harassment zone;

(viii) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(ix) Number of marine mammals detected within the harassment zones, by species;

(x) Detailed information about any implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in the behavior of the animal, if any; and

(xi) All PSO data in an electronic format that can be queried such as a spreadsheet or database (*i.e.,* digital images of data sheets are not sufficient).

(e) Acoustic monitoring reports must be submitted on the same schedule as visual monitoring reports (*i.e.,* within 90 days following the completion of construction). The acoustic monitoring report must contain the informational elements described in the acoustic monitoring plan and, at minimum, must include:

(1) Hydrophone equipment and methods: recording device, sampling rate, calibration details, distance (m) from the pile where recordings were made; and the depth of water and recording device(s);

(2) Location, identifier, orientation (*e.g.,* vertical, battered), material, and geometry (shape, diameter, thickness, length) of pile being driven, substrate type, method of driving during recordings (*e.g.,* hammer model and energy), and total pile driving duration;

(3) Whether a sound attenuation device is used and, if so, a detailed description of the device used, its distance from the pile and hydrophone, and the duration of its use per pile;

(4) For impact pile driving: number of strikes per day and per pile and strike rate; depth of substrate to penetrate; decidecade (one-third octave) band spectra in tabular and figure formats computed on a per-pulse basis, including the arithmetic mean or median for all computed spectra; and pulse duration and median, mean, maximum, minimum, and number of samples (where relevant) of the following sound level metrics: RMS SPL; $SEL_{24}$; peak (PK) SPL; and $SEL_{ss}$.

(f) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IBRP must report the incident to NMFS Office of Protected Resources (OPR) and to the West Coast Regional Stranding Coordinator no later than 24 hours after the initial observation. If the death or injury was caused by the specified activity, the IBRP must immediately cease the specified activities described in § 217.141(b) until NMFS OPR is able to review the circumstances of the incident. The IBRP must not resume their activities until notified by NMFS. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

**§ 217.147 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, the IBRP must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the effective dates of this subpart.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the IBRP must apply for and obtain a modification of the LOA as described in § 217.148.

(d) The LOA must set forth the following information:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA must be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(f) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

**§ 217.148 Modifications of Letters of Authorization.**

(a) A LOA issued under §§ 216.106 of this chapter and 217.147 for the specified activities may be modified upon request by the IBRP, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart; and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA were implemented.

(b) For LOA modification by the IBRP that includes changes to the specified activity or the mitigation, monitoring, or reporting measures that do not change the findings made for the regulations in this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change and solicit public comment before issuing the LOA.

(c) A LOA issued under § 216.106 of this chapter and § 217.147 for the specified activity may be modified by NMFS under the following circumstances:

(1) NMFS may modify the existing mitigation, monitoring, or reporting measures, after consulting with the IBRP regarding the practicability of the modifications, if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include, but are not limited to:

(A) Results from the IBRP's monitoring;

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment;

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in a LOA issued pursuant to §§ 216.106 of this chapter and 217.147, a LOA may be modified without prior notice or opportunity for public comment. Notification will be published in the **Federal Register** within 30 days of the action.

**§ 217.149 [Reserved]**

[FR Doc. 2026–09884 Filed 5–15–26; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 91, No. 95
Monday, May 18, 2026

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 71

**[Docket No. FAA–2026–4027; Airspace Docket No. 26–AGL–8]**

**RIN 2120–AA66**

## Establishment of Class E Airspace; Geneva, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at University Hospitals Geneva Medical Center Heliport, Geneva, OH. The FAA is proposing this action to support new instrument procedures and instrument flight rule (IFR) operations.

**DATES:** Comments must be received on or before July 2, 2026.

**ADDRESSES:** Send comments identified by FAA Docket No. FAA–2026–4027 and Airspace Docket No. 26–AGL–8 using any of the following methods:

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

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

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

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

*Docket:* Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

**FOR FURTHER INFORMATION CONTACT:** Raul Garza Jr, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, OH 76177; telephone (817) 222–5874.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at University Hospitals Geneva Medical Center Heliport, Geneva, OH, to support IFR operations at this heliport.

### Comments Invited

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

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

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

### Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operation). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, OH 76177.

### Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September

15, 2025. These updates would be published subsequently in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

**The Proposal**

The FAA is proposing an amendment to 14 CFR part 71 that would establish Class E airspace extending upward from 700 feet above the surface to within a 9-mile radius of University Hospitals Geneva Medical Center Heliport, Geneva, OH.

This action is the result of instrument procedures being developed for this heliport to support IFR operations.

**Regulatory Notices and Analyses**

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Order 2100.6B, ''Policies and Procedures for Rulemakings'' (March 10, 2025); 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 1050.1G, ''FAA National Environmental Policy Act Implementing 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 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AGL OH E5 Geneva, OH [Establish]**

University Hospitals Geneva Medical Center Heliport, OH
(Lat 41°47′55″ N, long 80°57′41″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of University Hospitals Geneva Medical Center Heliport.

* * * * *

Issued in Fort Worth, Texas, on May 18, 2026.

**Jerry J. Creecy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2026–09942 Filed 5–15–26; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–105064–25]**

**RIN 1545–BR47**

## Electronic Furnishing of Payee Statements Regarding Digital Asset Sales by Brokers; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking; notice of hearing.

**SUMMARY:** This document provides a notice of public hearing on the notice of proposed rules for electronic furnishing of payee statements by brokers with respect to digital asset sales.

**DATES:** The public hearing on these proposed rules has been scheduled for Wednesday, July 8, 2026, at 10:00 a.m. Eastern Time (ET). The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by May 28, 2026. If no outlines are received by May 28, 2026, the public hearing will be cancelled.

**ADDRESSES:** The public hearing will be conducted by telephone only. Send paper submissions to CC:PA:01:PR (REG–105064–25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday to CC:PA:01:PR (REG–105064–25), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–105064–25).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed rules, Roseann Cutrone at (202) 317–5436, (not a toll-free number); concerning submissions of requests to testify and/or to attend the hearing, contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by email at *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG–105064–25) that was published in the **Federal Register** on Friday, March 6, 2026 (91 FR 10983).

The rules of 26 CFR 601.601(a)(3) apply to the public hearing. Individuals who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by May 28, 2026. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge via the Federal eRulemaking Portal (*www.regulations.gov*) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by May 28, 2026, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–105064–25 and the language TESTIFY Telephonically. For

example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–105064–25. Submit an outline of testimony as prescribed in the **ADDRESSES** paragraph of this document.

Individuals who want to attend the public hearing by telephone without testifying must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–105064–25 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–105064–25. Requests to attend the public hearing must be received by July 6, 2026, 5:00 p.m. ET. All individuals who timely request to attend the public hearing will receive the telephone number and access code.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by July 1, 2026.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

**Oluwafunmilayo A. Taylor,**

*Section Chief,Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2026–09941 Filed 5–15–26; 8:45 am]

**BILLING CODE 4831–GV–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 13

**[NPS–DENA–NPS0042811; PPAKDENAS0, PPMPSPD1Z.YM0000]**

**RIN 1024–AF11**

## Denali National Park and Preserve; Vehicle Use

**AGENCY:** National Park Service, Interior

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) proposes to amend special regulations for Denali National Park and Preserve to clarify the number of vehicles that can travel on the restricted section (miles 15–90) of the Denali Park Road in accordance with a Vehicle Management Plan that the NPS has been implementing since 2012. The rule would clarify that no more than 160 vehicles may travel on the restricted section of the road per 24-hour period during the visitor season (also referred to as the ''annual allocation season''), defined in the park's General Management Plan as beginning on the Saturday before Memorial Day and ending on the second Thursday after Labor Day. This limit allows the NPS to meet growing visitor demand while maintaining a high-quality experience for visitors.

**DATES:** Comments must be received by 11:59 p.m. ET on July 17, 2026.

**ADDRESSES:** You may submit comments by any of the following methods:

(1) *Electronically:*

• Go to the **Federal Register** *Website: https://www.federalregister.gov.* In the search box, enter 1024–AF11, the regulation identifier number (RIN) for this rulemaking. Click on the green ''Submit a Public Comment'' button at the top of the document and follow the instructions for submitting comments; or

• *Go to the Federal eRulemaking Portal: https://www.regulations.gov.* In the Search box, enter 1024–AF11, the RIN for this rulemaking. On the resulting page, select the Dockets tab and then click on the title of the rule. Next, click the ''Open for Comments'' box, then click the blue ''Comment'' box and follow the instructions for submitting comments.

(2) *By Hard Copy:*

• *Mail to:* Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, AK 99755.

*Document Availability:* The Denali Park Road Vehicle Management Plan and Environmental Impact Statement and related Record of Decision provide information and context for this proposed rule and are available online at *https://parkplanning.nps.gov/dena* by clicking the link titled ''Denali Park Road Vehicle Management Plan'' and then the link titled ''Document List.''

*Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words ''National Park Service'' or ''NPS'' and must include the docket number or RIN (1024–AF11) for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

*Docket:* For access to the docket to view the proposed rule and comments received, go to *https://www.regulations.gov* and search for ''1024–AF11.'' Be sure to check the Dockets Tab, Documents Tab, and Comment Tab for possible results.

**FOR FURTHER INFORMATION CONTACT:** Brooke Merrell, Superintendent, Denali National Park and Preserve; (907) 683–958; *brooke_merrell@nps.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on *Regulations.gov* in the docket for this rulemaking.

**SUPPLEMENTARY INFORMATION:**

### Denali Park Road and Vehicle Management Plan

In 1917, Congress established Mount McKinley National Park as a ''game refuge'' with the intent that it be ''set apart as a public park for the benefit and enjoyment of the people'' (39 Stat. 938). In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA, Pub. L. 96–487), which enlarged and renamed the park Denali National Park and Preserve. A general purpose of all ANILCA lands is to preserve them for the benefit, use, education and inspiration of present and future generations. 16 U.S.C. 3101(a). The Denali Park Road (''park road'') serves both of these purposes. Built over 16 years (1922–1938), the historic 92-mile park road is an important means of access to the park and is one of the best places in the world for the public to observe large northern mammals in their natural habitat. Visitors traveling the park road often observe Dall's sheep, caribou, wolves, grizzly bears, moose, and foxes. Nowhere else in America can visitors observe such concentrations of these large species of wildlife in such an accessible natural setting. Visitors traveling the road also have many opportunities to observe smaller mammals and birds, some of which are rarely seen elsewhere in North America. Alaska Range features, such as glacially carved mountains, ''the mountain,'' and the open views of dynamic alpine landscapes, also are a source of visitor enjoyment and inspiration. The park road facilitates wilderness recreational opportunities and supports freedom of

discovery, a sense of adventure, and a connection to nature.

The NPS's ability to balance the protection of park resources while offering quality visitor experiences is exemplified in the management of the park road. Road crews use graders and haul gravel to maintain it, rangers patrol it, and commercial services staff manage the transportation contract for it, so visitors can ride buses to view wildlife and access the park's wilderness. In 2012, planning staff, with public input, worked to create the Denali Park Road Vehicle Management Plan and Environmental Impact Statement (VMP), which established measurable indicators and standards for visitor experience and resource protection. These include crowding standards for the number of vehicles at wildlife stops, in a viewscape, and at a rest area; the spacing of vehicles to ensure time for sheep crossings; restrictions to night-time traffic volumes; and restrictions to large (construction-related) vehicle traffic. On September 27, 2012, the Regional Director, Alaska signed a Record of Decision (ROD) selecting the preferred alternative in the VMP for implementation. One standard in the preferred alternative limits the maximum level of vehicle use on the restricted section (miles 15–90) of the park road to 160 vehicles per 24-hour period in the visitor season, defined in the park's General Management Plan (GMP) as the season beginning on the Saturday before Memorial Day and ending on the second Thursday after Labor Day. This standard allows the NPS to meet growing visitor demand while maintaining a high-quality experience. The NPS has been managing vehicle use on the park road consistent with the VMP since 2012. Resources staff monitor this and other indicators in the VMP to ensure the road is managed according to the plan.

**Proposed Rule**

This rule would update the park's special regulations to reflect NPS management of the park road in accordance with the VMP. The current version of the applicable special regulations state that the NPS will issue no more than 10,512 motor vehicle permits for travel on the restricted section of the park road during the visitor season that was defined in the GMP. This regulatory text would be replaced with a statement that no more than 160 vehicles may travel on the restricted section of the road per 24-hour period during the visitor season. The rule also would make a minor change to the regulatory text by deleting text that departs from the visitor season, as it was defined in the GMP, by ending the season on September 15 if that comes before the second Thursday after Labor Day. The rule would clarify that the season always ends on the second Thursday after Labor Day, providing additional opportunities for recreation and access by lengthening the season in some years. The rule also would clarify that any vehicle traveling on the park road counts toward the vehicle limit, not just vehicles operating under a permit. The VMP evaluated impacts from all motor vehicle use on the road, permitted or not. Some vehicles that use the road do not have a permit, such as tour buses that operate under concession contracts and vehicles used by the NPS for administrative purposes.

NPS requests comments on potential alternatives and potential economic impacts of this proposed rule if it were to be finalized.

**Compliance With Other Laws, Executive Orders, and Department Policy**

Regulatory Planning and Review (Executive Orders 12866 and 14192)

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is an Executive Order 14192 deregulatory action.

*Regulatory Flexibility Act*

This proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No small entities would be directly regulated by this rule, which would update outdated regulations to reflect the NPS's management of the park road since 2012 in accordance with the VMP. This action is not expected to have adverse economic effects on any sector, including small entities. For these reasons, the NPS certifies that this rule will not have a significant economic impact on a substantial number of small entities; therefore, a regulatory flexibility analysis is not required.

*Congressional Review Act*

This proposed rule is not a major rule under 5 U.S.C. 804(2). This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess whether a rule would impose a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year. As of 2025, that threshold is approximately $206 million (2024 dollars). This regulation will not result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.''

*Takings (Executive Order 12630)*

This proposed rule would not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

*Federalism (Executive Order 13132)*

Under the criteria in section 1 of Executive Order 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule would only affect use of federally administered lands and waters. It would have no direct effects on other areas. A federalism summary impact statement is not required.

*Civil Justice Reform (Executive Order 12988)*

This proposed rule complies with the requirements of Executive Order 12988. This proposed rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Consultation With Alaska Native Tribes and Alaska Native Corporations (Executive Order 13175 and Department Policy)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. NPS staff communicated with local tribal

groups regarding the VMP. The planning alternatives were developed with consideration that project actions would avoid or minimally disturb resources or values important to affiliated Alaska Native Tribes. The planning alternatives did not entail new construction or ground disturbance and are not anticipated to impede access to places of traditional religious, ceremonial, or other customary activities. NPS has evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department's consultation policy and has determined this rule will have no substantial direct effect on Alaska Native Tribes or Alaska Native Corporation lands, water areas, or resources. However, any consultation and communication with Alaska Native Tribes and Alaska Native Corporations is welcome and will be considered by the NPS throughout the rulemaking process.

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

This proposed rule contains no new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). The NPS may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.)*

The NPS prepared an environmental impact statement as part of the VMP in compliance with NEPA. This proposed rule merely conforms the regulatory text to the ROD as it has been implemented for over a decade, which identifies the limits for vehicle use that would be stated in the rule. Copies of these documents are available online at *https://parkplanning.nps.gov/dena* by clicking the link titled ''Denali Park Road Vehicle Management Plan,'' then the link titled ''Document List.''

*Effects on the Energy Supply (Executive Order 13211)*

This proposed rule is not a significant energy action under the definition in Executive Order 13211; this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and this proposed rule has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. A Statement of Energy Effects in not required.

**List of Subjects in 36 CFR Part 13**

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as set forth below:

## PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

■ 1. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 3101 *et seq.;* 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Pub. L. 104–333, Sec. 1035, 110 Stat. 4240, November 12, 1996.

■ 2. Revise § 13.930 to read as follows:

**§ 13.930 Do I need a permit to operate a motor vehicle on the Denali Park road west of Savage River?**

Yes, you must obtain a permit or other form of written authorization from the superintendent to operate a motor vehicle on the restricted section of the Denali Park road during the visitor season. The restricted section begins at the west end of the Savage River Bridge (mile 14.8) and continues to the former Mt. McKinley National Park boundary north of Wonder Lake (mile 87.9). The visitor season begins on the Saturday of Memorial Day weekend and ends on the second Thursday following Labor Day. Each permit allows one vehicle one entry onto the restricted portion of the Denali Park road. Other forms of written authorization may have different terms and conditions than permits.

■ 3. Revise § 13.932 to read as follows:

**§ 13.932 How many motor vehicles may travel on the Denali Park road?**

No more than 160 motor vehicles may travel on the restricted section of the Denali Park road per 24-hour period during the visitor season.

**Kevin J. Lilly,**

*Principal Deputy Assistant Secretary, Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2026–09876 Filed 5–14–26; 11:15 am]

**BILLING CODE 4312–52–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 85, 86, and 1066

**[EPA–HQ–OAR–2025–3297; FRL–13030–01–OAR]**

**RIN 2060–AW96**

## Revision of Tier 4 Criteria Pollutant Standards, Part 1: Amendments to Phase-In Schedule for Light-Duty and Medium-Duty Vehicles

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is reconsidering the Tier 4 criteria pollutant standards for new motor vehicles promulgated within the final rule entitled ''Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles.'' This reconsideration will occur in two separate, but coordinated, rulemakings. In this Part 1 rulemaking, the EPA is proposing to amend the phase-in schedule for the Tier 4 criteria pollutant standards for certain vehicles to address changing circumstances and feasibility concerns. These amendments, if finalized, would extend the Tier 3 standards for certain vehicles to model years (MYs) 2027 and 2028 such that the Tier 4 standards for these vehicles would phase in starting with MY 2029. The EPA is also proposing other changes to the test protocols used to evaluate emissions performance for certification and related regulatory issues. Potential amendments to the Tier 4 standards and other program elements will be proposed separately in a future Part 2 rulemaking.

**DATES:**

*Comments.* Comments must be received on or before July 6, 2026, at 11:59 p.m. Eastern Time. Comments on the information collection provisions submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) are best assured of consideration by OMB if OMB receives a copy of your comments on or before July 6, 2026.

*Public Hearing.* The EPA plans to hold a public hearing for this proposal on June 3 and 4, 2026. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OAR– 2025–3297, by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments. Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(4), a plain language summary of the rule is also available on the Federal eRulemaking Portal.

• *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2025–3297 in the subject line of the message.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR– 2025–3297, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand/Courier Delivery:* 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). Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For information about this proposed rule, contact Dr. John J. Kasab, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number (734) 214–4559; and email address: *kasab.john@epa.gov.* Individuals who are deaf or hard of hearing, as well as individuals who have speech or communication disabilities, may use a relay service. To learn more about how to make an accessible telephone call to any of the numbers shown in this document, visit the web page for the relay service of the Federal Communications Commission.

**SUPPLEMENTARY INFORMATION:**

## A. Public Participation

*Written Comments.* Comments must be received on or before July 6, 2026, at 11:59 p.m. Eastern Time. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2025–3297. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2025–3297, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to the Agency's public docket.

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 Confidential Business Information (CBI) or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa- dockets.*

*Submitting Confidential Business Information.* Do not submit information containing CBI to the EPA through *https://www.regulations.gov.* Clearly mark the part or all the information that you claim to be CBI. For CBI on any digital storage media that you mail to the EPA, note the docket ID, 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 the Public Participation section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly so that it does not contain CBI and note the docket ID. 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 the Code of Federal Regulations (CFR), Title 40, part 2.

Our preferred method to receive CBI is electronic transmission 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 person listed in the **FOR FURTHER INFORMATION CONTACT** section. If sending CBI information through the postal service, please send it to the person listed in the **FOR FURTHER INFORMATION CONTACT** section and add ''Attention Docket ID No. EPA–HQ–OAR–2025–3297.'' The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

*Public Hearing.* The EPA will hold a public hearing on this proposal on June 3 and 4, 2026. If there is sufficient interest, an additional day of hearings will be held on the subsequent day. Information on the public hearing is available at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/revision-tier-4-phase-schedule-light-duty-and-medium.* Please also refer to this website for any updates regarding the hearings. The EPA does not intend to publish additional documents in the **Federal Register** announcing updates.

Please sign up for a speaking slot by emailing *EPA-LD-MobileSource-Hearings@epa.gov.* Note that each speaker will get three (3) minutes to speak.

## B. Does this action apply to me?

Entities potentially affected by this proposed rule include light-duty vehicle manufacturers, independent commercial importers, alternative fuel converters, and manufacturers and converters of medium-duty vehicles (*i.e.,* vehicles between 8,501 pounds and 14,000 pounds gross vehicle weight rating (GVWR)). Potentially affected categories and entities include those shown in Table 1.

TABLE 1—POTENTIALLY AFFECTED CATEGORIES AND ENTITIES

| Category | NAICS codes[a] | Examples of potentially affected entities |
|---|---|---|
| Industry | 336111<br>336112 | Motor Vehicle Manufacturers. |
| Industry | 811111<br>811112<br>88898<br>423110 | Commercial Importers of Vehicles and Vehicle Components. |
| Industry | 335312<br>811198 | Alternative Fuel Vehicle Converters. |

TABLE 1—POTENTIALLY AFFECTED CATEGORIES AND ENTITIES—Continued

| Category | NAICS codes[a] | Examples of potentially affected entities |
|---|---|---|
| Industry | 333618<br>336120<br>336211<br>336312 | On-highway medium-duty engine & vehicle (8,501–14,000 pounds GVWR) manufacturers. |

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

This list is not intended to be exhaustive but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### C. Document Information

*Preamble acronyms and abbreviations.* Throughout this document the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms as follows:

ABT Averaging, banking, and trading
ACC II Advanced Clean Cars II
APA Administrative Procedure Act
AV Annualized value
BEV Battery electric vehicle
BPT Benefit per ton
CAA Clean Air Act
CAFE Corporate Average Fuel Economy
CBI Confidential Business Information
CFR Code of Federal Regulations
CO Carbon monoxide
CRA Congressional Review Act
CY Calendar year
DRIA Draft Regulatory Impact Analysis
E.O. Executive Order
EPA U.S. Environmental Protection Agency
EV Electric vehicle, a.k.a., battery electric vehicle
FR **Federal Register**
FUL Full useful life
GCWR Gross combination weight rating
GHG Greenhouse gas
GPF Gasoline particulate filter
GVWR Gross vehicle weight rating
HCHO Formaldehyde
HEV Hybrid electric vehicle
ICE Internal combustion engine
LDV Light-duty vehicle, a.k.a. passenger car
LDT Light-duty truck
LMDV Light- and medium-duty vehicle
MDPV Medium-duty passenger vehicle
MDV Medium-duty vehicle
MOVES Motor Vehicle Emissions Simulator model
MY Model year
NAAQS National Ambient Air Quality Standards
NMOG Non-methane organic gases
$NO_X$ Nitrogen oxides, a.k.a. oxides of nitrogen
NPRM Notice of proposed rulemaking
NTTAA National Technology Transfer and Advancement Act
OBBB One Big Beautiful Bill Act
OBD On-board diagnostics
OMB Office of Management and Budget
PHEV Plug-in hybrid electric vehicle
PM Particulate matter
PRA Paperwork Reduction Act
PV Present value
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SFTP Supplemental Federal Test Procedure
TWC Three-way catalytic converter
UMRA Unfunded Mandates Reform Act
U.S. United States of America
U.S.C. United States Code
VOC Volatile organic compounds

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## I. Executive Summary

The EPA is proposing to revise the criteria pollutant emission standards applicable to MYs 2027 and 2028 light-duty vehicles (LDVs), light-duty trucks (LDTs), medium-duty passenger vehicles (MDPVs), and medium-duty vehicles (MDVs) (collectively, ''light- and medium-duty vehicles'') pursuant to Clean Air Act (CAA) section 202(a). If finalized as proposed, the criteria pollutant emission standards established for MYs 2025 and beyond in the 2014 Tier 3 Rule [1] would apply to MYs 2027 and 2028, and the criteria pollutant emission standards established in the 2024 Tier 4 Rule [2] would be delayed until MY 2029.[3]

Under CAA section 202(a), the EPA promulgates standards for the emission of air pollutants from new motor vehicles which, in the Administrator's judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.[4] The standards can take effect only ''after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate

[1] *See* ''Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards,'' 79 FR 23414 (Apr. 28, 2014) (''2014 Tier 3 Rule'').

[2] *See* ''Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles,'' 89 FR 27842 (Apr. 18, 2024) (''LMDV Multipollutant Rule'').

[3] In this proposed rule, ''criteria pollutants'' refers generally to criteria pollutants and their precursors, including tailpipe non-methane organic gases (NMOG), oxides of nitrogen ($NO_X$), particulate matter (PM), and carbon monoxide (CO), as well as evaporative and refueling hydrocarbons.

[4] 42 U.S.C. 7521(a)(1).

consideration to the cost of compliance within such period.'' [5] Thus, in establishing or revising standards under CAA section 202(a), the EPA also must consider issues of technological feasibility, the cost of compliance, and lead time, among other relevant considerations.

In this action, the EPA proposes to extend the Tier 3 standards applicable to MYs 2026 and beyond light- and medium-duty vehicles to MYs 2027 and 2028, thereby delaying the initial applicability of Tier 4 standards, to address recent developments and information before the Agency suggesting serious technical and feasibility concerns with compliance in the near term. Given the short time available for compliance with respect to MYs 2027 and 2028, the EPA believes that changes to the substance of the Tier 4 standards themselves would not be a feasible or appropriate way to address the technical and feasibility concerns described in this preamble and is limiting this proposal to extending the existing Tier 3 standards for MYs 2025 and beyond, which are familiar to regulated parties, to MYs 2027 and 2028. Potential changes to the Tier 4 standards will be addressed in a future rulemaking. The EPA seeks comment on all aspects of this proposed rule and looks forward to engagement with interested stakeholders as part of the Agency's regulatory development process.

### *A. Background for This Proposed Rule*

On April 28, 2014, the EPA published criteria pollutant emission standards for light- and medium-duty vehicles pursuant to CAA section 202(a). These standards set emission limitations for criteria pollutants beginning in MY 2017 that increased in stringency on an annual basis and concluded with the most stringent Tier 3 standards applicable to MYs 2025 and later vehicles. The Tier 3 standards required, as a general matter, a 70–80 percent reduction in criteria pollutant emissions for MYs 2025 and beyond LD vehicles as compared to MY 2017 vehicles.[6]

On April 18, 2024, the EPA published multipollutant emissions standards for light- and medium-duty vehicles pursuant to CAA section 202(a). The LMDV Multipollutant Rule established new, more stringent vehicle emissions standards for both criteria pollutant and greenhouse gas (GHG) emissions for MY 2027 through MY 2032 and beyond. The EPA refers to those criteria pollutant standards and program elements as the Tier 4 standards or the Tier 4 program. The non-methane organic gases and oxides of nitrogen ($NMOG+NO_X$) standards for light- and medium-duty vehicles were established based on a projected high market share of battery electric vehicles (BEVs), as the expected high BEV volumes would participate in the emissions averaging for $NMOG+NO_X$, thus enabling a manufacturer to meet the Tier 4 $NMOG+NO_X$ standards as they decreased to the final fleet-averaged values in MY 2032 or 2033.[7]

### *B. Summary of This Part 1 Proposed Rule*

In this Part 1 rulemaking, the EPA is proposing to delay the phase-in of the Tier 4 criteria pollutant standards promulgated in the LMDV Multipollutant Rule for light- and medium-duty vehicles to address changed circumstances and feasibility concerns. Specifically, this action would extend the Tier 3 program through MYs 2027 and 2028 for both light- and medium-duty vehicles by proposing to replace the mandatory Tier 4 standards for light- and medium-duty vehicles up to 6,000 pounds GVWR and proposing to remove the optional Tier 4 standards for light- and medium-duty vehicles over 6,000 pounds GVWR. The EPA is also proposing to delay to MY 2029 changes to the test protocols used to evaluate emissions performance for certification. In the future Part 2 rulemaking, the EPA will comprehensively reconsider the Tier 4 program for light- and medium-duty vehicles, which may include, for example, changes to the Tier 4 emission standards, lead time and phase-in schedule, and test procedures.

### *C. Summary of the Basis and Justification for This Proposal*

In this Part 1 rulemaking, the EPA is proposing to extend the Tier 3 standards for two additional MYs based on the Agency's consideration of the statutory factors in CAA section 202(a)(2), which requires that new or revised standards ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' [8] The EPA is extending the Tier 3 standards and thus delaying the Tier 4 standards primarily due to concerns with lead time, that is, the time ''necessary to permit the development and application of the requisite technology.'' The Tier 4 standards were predicated on projected high BEV market penetration. In the case of the $NMOG+NO_X$ declining fleet average standard, BEVs are averaged into the fleet at zero grams per mile, thus reducing the fleet average $NMOG+NO_X$ standard of any manufacturer that produces and sells BEVs. The higher the sales of BEVs for a given MY, the lower the manufacturer's fleet average $NMOG+NO_X$ standard performance. In the case of PM standards, BEVs would not require any added PM equipment as their PM tailpipe emissions are zero grams per mile. Given that the Tier 4 p.m. standards are phased in at the rate of 20 percent in MY 2027 and 40 percent in MY 2028, high BEV sales would mean that many manufacturers would require fewer, and potentially no, additional PM controls on their conventional gasoline vehicles to comply with the phase-in requirements. Collectively, this meant that manufacturers did not plan on the need to reduce emissions from non-BEV vehicles for MYs 2027 and 2028 to any significant degree. Manufacturers correspondingly built their product mix and compliance strategies on this assumption, which reflected the EPA's predictive judgments at the time about trends relevant to the feasibility of the Tier 4 standards.

Since the promulgation of the Tier 4 standards in April 2024, significant changes in the automotive marketplace, regulations, and Federal and State laws have substantially impacted manufacturers' future product plans for light- and medium-duty vehicles, particularly the development, production, and sales of BEVs. Recent legislation, including the June 2025 Congressional Review Act (CRA) resolution voiding the EPA's preemption waiver for California's Advanced Clean Cars II (ACC II) standards [9] and the One Big Beautiful Bill Act (OBBB) [10] enacted in July 2025,

[5] 42 U.S.C. 7521(a)(2).

[6] *See* 79 FR 23417 (Apr. 28, 2014).

[7] On Feb. 18, 2026, the EPA published a final rule that rescinded the GHG emission standards contained in the LMDV Multipollutant Rule but did not reopen or amend the criteria pollutant emission standards. *See* ''Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act,'' 91 FR 7686 (Feb. 18, 2026) (''EF/GHG Final Rule''). Note that any comments related to the EF/GHG Final Rule are considered out of scope for this proposal.

[8] 42 U.S.C. 7521(a)(2).

[9] *See* ''Providing congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to 'California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision,' '' Public Law 119–16, June 12, 2025, 139 Stat. 66.

[10] *See* ''An act to provide for reconciliation pursuant to title II of H. Con. Res. 14.'' (''One Big Beautiful Bill Act,'' or OBBB), Pubic Law 119–21,

contributed to a change in consumer demand and production choices and has impacted near-term projections of BEV market share from what the EPA considered when developing the Tier 4 standards in the LMDV Multipollutant Rule. In addition, domestic and global macroeconomic factors that are expected to impact vehicle purchase decisions have changed since the EPA issued the LMDV Multipollutant Rule, both in terms of timing and in terms of types of vehicles consumers are likely to purchase.

In light of these changes, the EPA now projects that the share of new light-duty BEVs sold in the market will be significantly lower in MYs 2027 and 2028 than the Agency previously estimated in the LMDV Multipollutant Rule.[11] These revised projections are supported by recent announcements and developments in the industry as detailed in section II of this preamble. The EPA expects that every manufacturer that sells a mix of conventional and electric vehicles has been significantly impacted by these changes. Manufacturers who were planning to rely on BEVs for Tier 4 standards compliance will be faced with fewer BEV sales than previously expected and have a limited time to alter their product plans for MYs 2027 and 2028. Given that zero emission BEVs significantly assist any fleet average and can eliminate the need for additional emission controls on non-BEV vehicles, manufacturers would need to rely on unplanned modifications to large numbers of non-BEV vehicles to meet the Tier 4 standards. Thus, given the significant disruption in manufacturer product planning, the EPA proposes finding that more time is ''necessary to permit the . . . application of the requisite technology'' into new, compliant vehicles.[12]

Manufacturers are now faced with a vastly different compliance landscape wherein they need to rely on emission reductions from non-BEV vehicles, rather than increased BEV sales. As a result, EPA is reconsidering the Tier 4 standards through a two-part rulemaking. This Part 1 proposal is in recognition that the impacts of the past two years on the automotive industry are significant enough that the EPA believes the start of the Tier 4 program should be delayed by two MYs. The EPA proposes a two-year delay based on industry practices that indicate a year to 18 months would be necessary to adjust production plans, and the industry has not had sufficient time to respond to the enormous changes in the BEV landscape, and companies' ability to comply with Tier 4 for MYs 2027 and 2028 are in jeopardy. The EPA is therefore proposing to extend the Tier 3 program by two additional MYs. In parallel, but with a longer timeline, the EPA will develop the Tier 4 reconsideration Part 2 rulemaking. In the future Part 2 rulemaking, the EPA will comprehensively reconsider the Tier 4 program for light- and medium-duty vehicles, which may include, for example, changes to the Tier 4 emission standards, lead time and phase-in schedule, and test procedures. This proposed Part 1 rulemaking, if finalized, would allow manufacturers to continue meeting the Tier 3 standards for two more years while the EPA develops the Part 2 rule, which may amend the Tier 4 program for later MYs. Vehicle manufacturers are already in compliance with the Tier 3 program, so extending the Tier 3 requirements should be technically feasible and minimally disruptive to their current plans. Aligning other provisions beyond standards, such as test procedures, with Tier 3 requirements allows manufacturers to continue with the well-known Tier 3 procedures while they develop non-BEV products to comply with the updated Tier 4 procedures.

## II. Proposed Amendments to Light- and Medium-Duty Vehicle Tier 4 Phase-In Schedules for Model Years 2027 and 2028

### *A. Introduction and Background*

On April 28, 2014, the EPA promulgated standards under CAA section 202(a) for criteria pollutant emissions from light-duty and medium-duty vehicles in its 2014 Tier 3 Rule.[13] The EPA subsequently published the LMDV Multipollutant Rule on April 18, 2024, which introduced, among other provisions, the Tier 4 criteria pollutant standards for NMOG+$NO_X$, PM, CO, and formaldehyde (HCHO). The Tier 4 standards also include changes to the test cycles used to evaluate emissions performance for certification and other items, such as high-altitude standards for NMOG+$NO_X$.

The Tier 4 standards are currently scheduled to go into effect in MY 2027, starting with light-duty program vehicles (*i.e.,* LDVs, LDTs, and MDPVs) that are up to 6,000 pounds GVWR. CAA section 202(a)(3)(C) states that revised standards for ''heavy-duty'' vehicles, defined as those vehicles over 6,000 pounds GVWR, be subject to three MYs of stability and four MYs of lead time.[14] In following with these CAA requirements, the standards for light-duty program vehicles up to 6,000 pounds GVWR follow a declining fleet average standard for NMOG+$NO_X$ that decreases from the Tier 3 fleet average of 30 milligrams per mile (mg/mile) in MY 2026 to 15 mg/mile by MY 2032, a 50 percent reduction in NMOG+$NO_X$ standards.[15] Manufacturers may choose to have their light-duty program vehicles over 6,000 pounds GVWR follow either the default, single-step phase-in in MY 2030 or follow an optional early phase-in schedule that aligns with that of light-duty program vehicles up to 6,000 pounds GVWR.[16]

For MDVs, the EPA finalized Tier 4 NMOG+$NO_X$ standards that step down the fleet average level to 75 mg/mile starting in MY 2031, representing a 58 percent reduction from the Tier 3 standard of 178 mg/mile for Class 2b vehicles and a 70 percent reduction from the Tier 3 standard of 247 mg/mile for Class 3 vehicles.[17] MDVs may follow either the default, single-step phase-in in MY 2031 or an optional early phase-in schedule.[18]

The NMOG+$NO_X$ standards for light- and medium-duty vehicles were

July 4, 2025, 139 Stat. 72. Specifically, OBBB ends incentives such as the 30D tax credits for purchasing BEVs earlier than originally scheduled. The EPA considered these incentives in developing the LMDV Multipollutant Rule. Other incentives that would have facilitated BEV adoption were also ended early by the OBBB.

[11] *See* U.S. Environmental Protection Agency. (2026). ''Battery Electric Vehicle Projected Market Share Analysis.'' EPA–HQ–OAR–2025–3297.

[12] 42 U.S.C. 7521(a)(2).

[13] *See* ''Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards,'' 79 FR 23414 (Apr. 28, 2014) (''2014 Tier 3 Rule'').

[14] While the EPA applies several regulatory classes (LDV, LDT, MDPV, MDV) in the structure of its Tier 3 and Tier 4 programs, LDVs and MDVs have different phase-in and lead-time provisions under the CAA based on their GVWR. Per CAA section 202(b)(3)(C), a vehicle with a GVWR over 6,000 pounds is considered a ''heavy duty vehicle,'' and per CAA section 202(a)(3)(C) standards promulgated for these vehicles ''shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.'' Vehicles up to 6,000 pounds GVWR are not subject to lead time or stability constraints. *See* 40 CFR 86.1811–17 (for Tier 3) and 40 CFR 86.1811–27 (for Tier 4). 40 CFR 86.1803–01 provides the definitions that classify these vehicles necessary to apply the weight-based rules.

[15] *See* 2014 Tier 3 Rule and Table 39 of LMDV Multipollutant Rule at 89 FR 27935. Note that the default option for heavier LDVs of 6,001–8,500 pounds reduces the fleet average NMOG+$NO_X$ standard from 30 mg/mile in MY 2029 to 15 mg/mile in MY 2030.

[16] *See* Table 39, LMDV Multipollutant Rule at 89 FR 27935 (Apr. 18, 2024).

[17] *See* Table 42 of LMDV Multipollutant Rule at 89 FR 27937 (Apr. 18, 2024).

[18] *See* Tables 41 and 42, LMDV Multipollutant Rule at 89 FR 27937 (Apr. 18, 2024).

established based on a projected high market share of BEVs, as the expected high BEV volumes would participate in the emissions averaging for $NMOG+NO_X$. This BEV share would enable a firm to meet the Tier 4 $NMOG+NO_X$ standards. The EPA also finalized a cold ambient temperature (−7 °C) $NMOG+NO_X$ standard for all light- and medium-duty vehicles and eliminated the Supplemental Federal Test Procedure (SFTP) to reduce emissions over a broad range of operating conditions.

For all light- and medium-duty vehicles, the EPA also finalized a PM standard of 0.5 mg/mile and a requirement that the standard be met across three test cycles, including a cold temperature test (−7 °C Federal Test Procedure (FTP)–75) and a high-speed highway driving test (US06). This standard supplanted the existing PM standard of 3 mg/mile established in the 2014 Tier 3 Rule for light-duty program vehicles and higher PM standards for MDVs. The revised PM standards are projected to result in the broad adoption of gasoline particulate filters (GPF) on all gasoline vehicles.

In the LMDV Multipollutant Rule, the EPA also finalized in-use standards for MDVs with high gross combination weight rating (GCWR), changes to MDV refueling emissions requirements for incomplete vehicles, and several other $NMOG+NO_X$ provisions. The EPA also finalized changes to the CO and HCHO standards for light- and medium-duty vehicles, including at −7 °C.

These schedules for light- and medium-duty vehicles are summarized in Table 2, where each value represents the minimum fraction of vehicles that must be certified to the Tier 4 standards.[19] If the value is less than 100 percent, the remaining new vehicles may be certified as interim Tier 4 vehicles. An interim Tier 4 vehicle is a vehicle that is produced during the phase-in years and does not meet the Tier 4 standards, but rather meets the Tier 3 standards.

TABLE 2—TIER 4 LIGHT-DUTY AND MEDIUM-DUTY VEHICLE CRITERIA POLLUTANT PHASE-IN SCHEDULES

| Model year | Vehicle GVWR ≤6000 lb (%) | Vehicle GVWR 6001–8500 lb and MDPV | | MDV (GVWR 8501–14000 lb) | |
|---|---|---|---|---|---|
| | | Default (%) | Early option (%) | Default (%) | Early option (%) |
| 2027 | 20 | 0 | 20 | 0 | 20 |
| 2028 | 40 | 0 | 40 | 0 | 40 |
| 2029 | 60 | 0 | 60 | 0 | 60 |
| 2030 | 100 | 100 | 100 | 0 | 80 |
| 2031 | 100 | 100 | 100 | 100 | 100 |

MDV refers to medium-duty vehicle, which is a combination of both Class 2b and 3 vehicles as defined in 40 CFR 86.1803–01.

The Tier 4 standards include per-vehicle standards for PM, CO, and HCHO and a fleet average standard for $NMOG+NO_X$. The Tier 3 and Tier 4 p.m. standards are shown in Table 3, while the Tier 4 CO and HCHO standards are shown in Table 4.[20] $NMOG+NO_X$ standards are shown later in this section.

TABLE 3—TIER 3 AND TIER 4 LIGHT-DUTY AND MEDIUM-DUTY VEHICLE PM STANDARDS

| Test cycle | LDV, LDT, MDPV PM standards (mg/mi) | | MDV (Class 2b and 3) PM standards (mg/mi) | |
|---|---|---|---|---|
| | Tier 3 | Tier 4 | Tier 3 | Tier 4 |
| 25 °C FTP | 3 | 0.5 | 8 for Class 2b<br>10 for Class 3 | 0.5 |
| US06 | 6 | 0.5 | 10 for Class 2b on SFTP<br>7 for Class 3 on SFTP | 0.5 |
| −7 °C FTP | Not applicable | 0.5 | Not applicable | 0.5 |

TABLE 4—TIER 4 LIGHT-DUTY AND MEDIUM-DUTY VEHICLE CO AND HCHO EMISSION STANDARDS

| Per-vehicle emission standards | LDV, LDT, MDPV | MDV |
|---|---|---|
| CO std. for 25 °C FTP, HFET, SC03 (g/mile) | 1.7 | 3.2 |
| CO std. for US06 (g/mile) | 9.6 | 25 |
| CO std. for −7 °C FTP (g/mile) | 10.0 | 10.0 |
| HCHO std. for 25 °C FTP (mg/mile) | 4 | 6 |

In addition to the differences between Tier 3 and Tier 4 per-vehicle criteria pollutant standards shown in Table 3, there are differences in certification requirements. These differences are summarized in Table 5.

[19] *See* Tables 33 and 35, LMDV Multipollutant Rule at 89 FR 27930 and 27932 (Apr. 18, 2024), respectively.

[20] *See* Tables 43, 44, 45, and 46, LMDV Multipollutant Rule at 89 FR 27939, 27939, 27947, and 27948 (Apr. 18, 2024), respectively.

TABLE 5—COMPARISON OF SELECTED TIER 3 AND TIER 4 REQUIREMENTS

| Item | Tier 3 (Interim Tier 4) | Tier 4 |
|---|---|---|
| Main test cycle [a] | 25 °C FTP–75 | 25 °C FTP–75. |
| Supplemental FTP [a] | Weighted average of FTP–75, SC03, and US06. For Class 3 MDV use FTP–75, SC03, and LA–92. | Separate US06 and −7 °C FTP–75 measurements for NMOG+$NO_X$; US06, for CO and PM; Use US06 for Class 3 MDV. |
| PM standards | Measured on 25 °C FTP–75 and US06 | Measured on −7 °C FTP–75, 25 °C FTP–75, and US06. |
| Additional tests | | Early drive-away and mid-temperature engine starts. High-power cold start for PHEV.[a] |
| NMOG+$NO_X$ bin structure | Bins 0, 20, 30, 50, 70, 125, 160 | Bins 0, 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70. |
| Additional MDV bins | 150, 170, 200, 230, 250, 270, 340, 400, 570 .. | 75, 85, 100, 125, 150, 170. |
| High altitude NMOG+$NO_X$ requirements (1,620 m). | Relaxed NMOG+$NO_X$ standard at high altitude, *e.g.,* 50 mg/mi for Bin 30. | Same NMOG+$NO_X$ result required at high altitude as at low altitude. |

[a] The 25 °C FTP–75, −7 °C FTP –75, LA–92, SC03, and US06 drive cycles are all defined in Appendix I of 40 CFR part 86. Plug-in Hybrid Electric Vehicle (PHEV).

The Tier 4 light-duty program vehicle phase-in schedules of sales-weighted fleet average NMOG+$NO_X$ standards are shown in Table 6 with the Tier 3 standard in MY 2026 included for reference.[21] The sales-weighted fleet average NMOG+$NO_X$ standards for MDVs are shown in Table 7.[22] Note that the PM, CO, and HCHO standards are per-vehicle standards subject to the phase-in schedules shown in Table 2 whereas the NMOG+$NO_X$ standards represent fleet averages and follow the phase-in schedules shown in Tables 6 and 7.

TABLE 6—TIER 4 LDV, LDT, AND MDPV FLEET AVERAGE NMOG+$NO_X$ STANDARDS

| Model year | LDV, LDT1–2 (GVWR ≤6,000 lb) NMOG+$NO_X$ (mg/mi.) | LDT3–4 (GVWR 6,001–8,500 lb) and MDPV NMOG+$NO_X$ (mg/mi.) | |
|---|---|---|---|
| | Default | Default | Early option |
| 2026 [a] | [a] 30 | [a] 30 | [a] 30 |
| 2027 | 25 | 30 | 25 |
| 2028 | 23 | 30 | 23 |
| 2029 | 21 | 30 | 21 |
| 2030 | 19 | 15 | 19 |
| 2031 | 17 | 15 | 17 |
| 2032 and later | 15 | 15 | 15 |

[a] Tier 3 standards provided for reference.

TABLE 7—TIER 4 MDV FLEET AVERAGE NMOG+$NO_X$ STANDARDS

| Model year | Class 2b NMOG+$NO_X$ (mg/mi) | | Class 3 NMOG+$NO_X$ (mg/mi) | |
|---|---|---|---|---|
| | Default | Early option | Default | Early option |
| 2026 [a] | [a] 178 | [a] 178 | [a] 247 | [a] 247 |
| 2027 | 178 | 175 | 247 | 175 |
| 2028 | 178 | 160 | 247 | 160 |
| 2029 | 178 | 140 | 247 | 140 |
| 2030 | 178 | 120 | 247 | 120 |
| 2031 [b] | 75 | 100 | 75 | 100 |
| 2032 [b] | 75 | 80 | 75 | 80 |
| 2033 and later [b] | 75 | 75 | 75 | 75 |

[a] Tier 3 FTP fleet average standards provided for reference.
[b] MDV with a GCWR greater than 22,000 pounds must also comply with additional moving average window (MAW) in-use testing requirements.

In addition to changing the numeric standards as shown in Tables 3, 4, 6, and 7, the EPA also expanded the Tier 4 testing requirements to ensure robust emissions control over a broad range of operating conditions, such as at cold ambient temperatures or high altitudes.

The EPA expected that vehicle manufacturers would meet the fleet average standards for NMOG+$NO_X$ and per-vehicle standards for PM, CO, and HCHO through a combination of technologies that included a significantly increased adoption of BEVs, which certify as emitting zero

[21] *See* Table 39, LMDV Multipollutant Rule at 89 FR 27935 (Apr. 18, 2024).

[22] *See* Tables 41 and 42, LMDV Multipollutant Rule at 89 FR 27937 (Apr. 18, 2024).

mg/mile of all tailpipe emissions, and better emissions control technologies for internal combustion engine (ICE) vehicles, hybrid electric vehicles (HEVs), and plug-in hybrid electric vehicles (PHEVs). Further discussion of these technologies can be found in the LMDV Multipollutant Rule's Regulatory Impact Analysis (''LMDV RIA'') and in Chapter 2 of the 2023 proposed LMDV Multipollutant Rule's Draft RIA (''LMDV DRIA'').[23]

*B. Why is the EPA proposing these amendments?*

As discussed in this proposal, recent changes in policy, regulations, Federal and State law, and other factors have significantly changed projections of BEV market share in the coming MYs. Due to the significant change in the BEV landscape, the EPA is reconsidering the Tier 4 light- and medium-duty vehicle program in two separate but coordinated rulemakings, the Part 1 rule and the Part 2 rule. In this Part 1 rule proposal, the EPA is proposing to extend the Tier 3 program by two MYs (MYs 2027 and 2028). The EPA provides in this section II.B details regarding the basis for this Part 1 rule proposal. In the future Part 2 rule, the EPA will comprehensively reconsider the Tier 4 program for light- and medium-duty vehicles, which may include, for example, changes to the Tier 4 emission standards, lead time and phase-in schedule, and test procedures.

1. Changes in Federal and State Policies and Laws Related to Electric Vehicles and Electric Vehicle Infrastructure Development

The conditions upon which the EPA based the analysis of BEV adoption rates in the LMDV Multipollutant Rule have changed significantly due to several factors, including Federal and State policies and laws related to electric vehicles and electric vehicle infrastructure development and the Agency's understanding of consumer interest in BEVs.

In May 2025, Congress passed legislation disapproving the EPA's preemption waiver for California's ACC II standards; President Trump signed this legislation into law in June 2025.[24] Because CAA section 209(a) bars States and localities from adopting or attempting to enforce non-Federal emission standards for new motor vehicles absent a valid preemption waiver, this legislation effectively blocks California's mandate to phase out ICE vehicle sales by 2035. Twelve other States that previously adopted ACC II pursuant to CAA section 177 can no longer enforce it. The result has been a significant change in projected demand for BEVs and ICE vehicles resulting from the absence of this significant regulatory influence.

On July 4, 2025, President Trump signed the OBBB, which significantly changed tax incentives for BEVs.[25] Specifically, the OBBB ended incentives such as the 30D tax credits for purchasing BEVs earlier than originally scheduled. Other incentives, such as the 25E Previously-Owned Clean Vehicle Credit and the 45W Commercial Clean Vehicle Credit, that were predicted to facilitate BEV adoption were also ended early by the OBBB. The EPA considered and relied on these incentives to estimate BEV market share in developing the LMDV Multipollutant Rule. These actions are projected to significantly reduce new BEV sales for future MYs, including MYs 2027 and 2028, as described in the following paragraph.

Collectively, these changes are expected to significantly affect the ability of manufacturers to comply with the Tier 4 standards. In the LMDV Multipollutant Rule, the central analysis case projections for BEV market share for all light-duty program vehicles in MYs 2027 and 2028 were 26 and 31 percent, respectively, and for vehicles up to 6,000 pounds, 28 and 33 percent, respectively.[26] By contrast, for this proposal, the EPA projects the overall BEV market share values are eight percent in MY 2027 and 12 percent in MY 2028.[27] These values are consistent with recent projections from Bloomberg New Energy Finance, J.D. Power, Auto Pacific, and Ford Motor Company, as discussed in section III.A of this preamble. The 8 and 12 percent BEV market shares in MYs 2027 and 2028, respectively, are relevant to Tier 4 compliance because BEVs certify with zero mg/mile emissions. Nevertheless, each manufacturer would need to apply Tier 4 compliance technology to a portion of their MYs 2027 and 2028 ICE vehicles to meet the Tier 4 program phase-in requirements under current projections. Specifically, 12 percent of vehicles up to 6,000 pounds would need to have ICE Tier 4 compliance technology in MY 2027 to reach a total of 20 percent final Tier 4 compliant vehicles, and 28 percent in MY 2028 to reach 40 percent final Tier 4 compliant vehicles.

The EPA believes that manufacturers that based their compliance strategies with the Tier 4 standards in whole or in part on plans for increased development and sales of BEVs now need to reconfigure their compliance plans, which can entail changes in future product development, vehicle sales mix, vehicle technology, and vehicle marketing. A two-year extension of the Tier 3 program is needed to ensure the industry can comply with the EPA's emission standards.

2. Impact of Policy Changes on Compliance With Tier 4 Standards

As discussed above, in the LMDV Multipollutant Rule, the EPA projected significant adoption of BEVs in future MYs, including MYs 2027 and 2028. The EPA projected that the increase in BEVs in future MYs would contribute to automakers' ability to meet Tier 4 standards. The EPA Tier 4 standards for NMOG+$NO_X$ emissions from light- and medium-duty vehicles use sales-weighted fleet averages. This regulatory approach recognizes that manufacturers may use a mixture of ICE vehicles (including HEVs and PHEVs), and BEVs to meet the standards. The EPA projected that the increase in BEVs in future MYs would contribute to automakers' ability to meet the NMOG+$NO_X$ standards. Each BEV counts as a zero for emissions in the NMOG+$NO_X$ fleet average standard. Therefore, the BEV market share affects how many ICE, HEV, and PHEV vehicles need technology improvement to further reduce NMOG+$NO_X$ emissions. The EPA projected, and many manufacturers assumed, that manufacturers would be able to comply with this fleet average standard primarily with BEV sales. BEV market share also affects how vehicles manufacturers meet the per-vehicle standards for other pollutants. For example, since BEVs have zero tailpipe PM emissions, any BEV sold would

[23] *See* Chapter 3.2.5 at 3–52 of U.S. Environmental Protection Agency, *Regulatory Impact Analysis: Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles,* (March 2024), available at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1019VPM.pdf.* (''LMDV RIA''); and Chapter 2 of U.S. Environmental Protection Agency, *Draft Regulatory Impact Analysis: Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles,* (April 2023), available at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P10175J2.pdf.* (''LMDV DRIA'').

[24] *See* ''Providing congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to 'California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision,' '' Public Law 119–16, 139 Stat. 66 (June 12, 2025); EF/GHG Final Rule.

[25] *See* OBBB.

[26] *See* Table 3 of LMDV Multipollutant Rule at 27856 and Tables 12–64 and 12–65 of the LMDV RIA at 12–35 and 12–36, respectively.

[27] *See* U.S. Environmental Protection Agency. (2026). ''Battery Electric Vehicle Projected Market Share Analysis.'' EPA–HQ–OAR–2025–3297.

count toward the per-vehicle phase-in requirement for PM, essentially meaning manufacturers would have to install fewer GPFs on gasoline ICE vehicles to reduce PM to the Tier 4 standard. In other words, if the phase-in schedule required 20 percent compliance with Tier 4 per-vehicle standards in MY 2027, and the EPA projected a BEV market share of 26 percent for light-duty program vehicles for that same MY, a manufacturer might have heavily or even completely relied on BEVs to meet that standard. Whereas if BEVs make up a much smaller market share, it would follow that the same manufacturer might not be able to achieve compliance in the same manner, and may need to invest in additional compliance technologies for ICE vehicles on which it did not initially plan.

BEV market share also affects how manufacturers meet the per-vehicle standards for other pollutants. Since BEVs have zero tailpipe PM emissions, any BEV sold would count toward the per-vehicle phase-in requirement for PM, essentially meaning manufacturers would have to install fewer GPFs on gasoline ICE vehicles to reduce PM to the Tier 4 standard.

3. Automaker Response to Changes in the BEV Landscape

Many major automakers are adjusting their BEV development and production strategies based on policy, legislative, regulatory, and marketplace changes that have impacted consumer demand. This level of change creates significant challenges for manufacturers not only for their compliance strategies, but also basic business decisions such as vehicle mix, plant construction, battery development, finance, and marketing strategies. Many manufacturers have slowed their BEV expansion plans and shifted focus toward ICE vehicles (including HEVs). The following summary is meant to describe changes some manufacturers have announced to their product plans that lend support for this proposal to extend the Tier 3 standards for MYs 2027 and 2028.[28]

In June 2025, General Motors (GM) announced a $4 billion investment in engine and vehicle production in three U.S. facilities in Michigan, Kansas, and Tennessee as it moves to boost production of ICE vehicles in response to slowing BEV demand.[29] In October 2025 GM announced that it took a $1.6 billion impairment charge to align its BEV manufacturing capacity with consumer demand.[30] In January 2026, GM announced a further ''$6 billion charge to unwind some electric-vehicle investments.'' [31]

Ford Motor Company (Ford) has also reduced spending on BEVs and scaled back previously announced production plans for existing BEVs and future BEV launches. Ford cancelled plans for a three-row electric sport utility vehicle (SUV) and delayed the launch of major platforms such as the F–150 Lightning successor and a new E-Transit van until 2028.[32] Ford announced a strategic pivot to hybrids citing customer demand. In September 2025, Ford stated that the U.S. BEV market will be ''way smaller than we thought,'' projecting that the BEV market will be cut in half after the current incentives expire. Ford also stated that it will plan more affordable, smaller BEVs to compete with Tesla and BYD.[33] Ford's adjustments include battery manufacturing capacity and in October 2025, Ford scaled back a major lithium supply deal, reflecting the industry's more cautious outlook on BEV growth.[34] Furthermore, in December 2025, Ford announced a $19.5 billion write-down in its investments in BEVs.[35]

Stellantis, which includes the Chrysler, Jeep, and RAM nameplates, is also shifting away from BEVs.[36] Stellantis is instead adopting hybrid technology and emphasizing flexible vehicle platforms that can accommodate ICE, hybrid, and electric powertrains. As part of this shift in product, Stellantis announced that it is reviving the Hemi V8 engine for Jeep models and is cancelling the all-electric Ram 1500 REV pickup in lieu of a range-extended hybrid version.[37] On January 9, 2026, Stellantis announced it was scrapping its PHEV vehicle lineup citing waning customer demand.[38] Stellantis also announced on February 6, 2026, that it was taking a $26.5 billion charge against its BEV investments.[39]

Honda also announced the slowdown of BEV developments in the past year, reducing its BEV spending by 30 percent and pausing a $10.7 billion Canadian BEV factory conversion for two years, citing slower-than-anticipated BEV market expansion.[40] Honda discontinued the Acura ZDX BEV [41] and cancelled plans to launch its new ''0 Series'' BEVs, the 0 Series SUV, the 0 Series Saloon, and the Acura RSX, which would have been built starting in 2026, citing ''Recent changes in the business environment.'' [42] Honda is focusing on hybrids with the rollout of 13 new hybrid models [43] by 2031 in addition to their current hybrid lineup and ICE vehicles. Volkswagen is adjusting production plans and has halted production at some German BEV plants in response to weaker-than-anticipated demand. In September 2025, the Volkswagen Group's chief executive officer said manufacturers were experiencing ''massive changes'' with ''a

[28] Note that the EPA has not relied on any CBI in this summary.

[29] *See* Hall, K. and Shepardson, D. (2025). ''GM to invest $4 billion in three US facilities as it ramps up gas-powered vehicles.'' *Reuters: https://www.reuters.com/business/autos-transportation/general-motors-investing-3-us-facilities-production-gas-electric-vehicles-2025-06-10/.*

[30] *See* Staff. (2025). ''GM announces $1.6B charge on dwindling EV adoption,'' *The Business Journal (Youngstown): https://businessjournaldaily.com/gm-announces-1-6b-charge-on-dwindling-ev-adoption/.*

[31] Staff. (2026). GM to take $6 billion writedown on EV pullback. *Reuters: https://www.reuters.com/business/autos-transportation/gm-take-6-billion-writedown-ev-pullback-2026-01-08/.*

[32] *See* Tucker, S. (2024). Ford shuffles EV plans: Canceling, delaying big ones. *Kelley Blue Book: https://www.kbb.com/car-news/ford-shuffles-ev-plans-canceling-delaying-big-ones/.*

[33] *See* Wayland, M. (2025). Ford CEO expects EV sales to be cut in half after end of tax credits. *CNBC: https://www.cnbc.com/2025/09/30/ford-ceo-jim-farley-ev-incentives.html.*

[34] *See* Bloomberg. (2025). Ford Delays Lithium Supply Deal as EV Struggles Continue, *https://www.supplychainbrain.com/articles/42643-ford-delays-lithium-supply-deal-as-ev-struggles-continue.*

[35] *See* Colias, M. (2025). Ford's $19.5 billion EV writedown: Five things to know. *Reuters; https://www.reuters.com/business/autos-transportation/fords-195-billion-ev-writedown-five-things-know-2025-12-16/.*

[36] *See* Reuters. (2025). Stellantis to scrap target of 100% EVs by 2030, says Europe chief, *https://www.reuters.com/business/autos-transportation/stellantis-scrap-target-100-evs-by-2030-says-europe-chief-2025-09-08/.*

[37] *See* Walz, E. (2025). Stellantis cancels electric RAM pickup amid slowing EV demand. *WardsAuto: https://www.wardsauto.com/news/archive-auto-stellantis-cancels-ram-1500-bev-electric-pickup-rev-extended-range/760779.*

[38] *See* Wayland, M. (2026). Stellantis scraps Jeep, Chrysler plug-in hybrid vehicles amid EV slowdown, recall. *https://www.cnbc.com/2026/01/09/stellantis-scraps-jeep-chrysler-phevs-amid-ev-slowdown-recall.html.*

[39] *See* Revell, E. (2026). Stellantis takes massive $26B hit after moving away from EVs. *Fox Business; https://www.foxbusiness.com/markets/stellantis-takes-massive-26b-hit-after-moving-away-from-evs.*

[40] *See* Friedman, G. (2025). Honda reveals delay of $15-billion Canada investment part of shift in EV strategy. *Financial Post; https://financialpost.com/commodities/energy/electric-vehicles/honda-cutting-ev-investment-delaying-canadian-plans.*

[41] *See* Banner, J. (2025). Acura Just Canceled the ZDX EV, but the Brand's Electric Story Isn't Over. *MotorTrend; https://www.motortrend.com/news/acura-just-canceled-the-acura-zdx-ev.*

[42] *See* Honda. (2026). Honda Cancels 0 Series EVs, Acura RSX Just Months Before Production. *https://www.roadandtrack.com/news/a70722811/honda-cancels-0-series-acura-rsx-electric-vehicles/.*

[43] *See* Honda. (2025). *https://automobiles.honda.com/;* and Daniel Leussink. (2025). Japan's Honda to scale back on electric vehicles, focus on hybrids. *Reuters; https://www.reuters.com/business/autos-transportation/japans-honda-scale-back-electric-vehicles-concentrate-hybrids-2025-05-20/.*

clear drop in demand for battery-electric cars.[44]

Hyundai announced a significant increase in hybrid models from the five models available now to over 18 hybrid models by 2030.[45] Hyundai halted production of the Genesis Electrified GV70 BEV in Alabama to shift focus toward more popular and profitable hybrid SUVs like the Tucson. Hyundai recently announced significant changes in production plans in the U.S. and globally.[46]

The changes to BEV product plans summarized above are likely to significantly impact manufacturers' ability to comply with the Tier 4 standards. Vehicle manufacturers have the option to demonstrate compliance with the phase-in requirements using a mix of ICE vehicles, HEVs, PHEVs, and BEVs. Manufacturers planning to rely on BEV sales for their Tier 4 compliance plans have likely seen those plans change significantly in just the past year.

As discussed in the LMDV Multipollutant Rule, many manufacturers publicly reported significant projected near and long-term growth in BEVs and PHEVs in 2023 and 2024. In response to these manufacturer announcements and investments in these technologies and supporting infrastructure made by Congress, numerous third-parties, as well as the EPA, also projected significant growth of BEV and PHEV adoption, which the Agency considered and relied upon when developing and finalizing the LMDV Multipollutant Rule.[47] The EPA is revisiting these projections and the Tier 4 program in response to the many changes in Federal and State policies, Federal legislation, and Federal and State regulatory requirements that have occurred since the LMDV Multipollutant Rule was finalized in April 2024, as well as the actual consumer interest in purchasing BEVs. As discussed earlier, this Part 1 rule proposes to extend the Tier 3 program by two additional MYs due to feasibility concerns. In the future Part 2 rule, EPA will comprehensively reconsider the Tier 4 program for light- and medium-duty vehicles, which may include, for example, changes to the Tier 4 emission standards, lead time and phase-in schedule, and test procedures.

### *C. Automotive Vehicle Development Cycle Lead Time Considerations*

Typical automobile development cycles run approximately four to five years, starting with initial concepts and continuing through vehicle prototypes, production tooling, and large-volume industrialization across a company's product lines. The time needed to conceive, create, and deliver a new vehicle to market can be two and a half years or more.[48] Changes in existing vehicle platforms can vary from one year for a mid-cycle refresh to more than two years for a full-scale vehicle redesign. In addition, vehicle manufacturers often comply with incremental changes in EPA emission standards in a ''surgical'' manner, with only marginal headroom built into production capacity to cover sales fluctuations.

Manufacturers may respond to the changing conditions in several ways, with each option having a different lead time. Examples include changing the price of their BEVs—those not canceled or delayed—to compensate for lost purchasing and leasing tax incentives, restricting production of some ICE vehicles that do not support Tier 4 compliance, or developing additional ICE vehicles with the requisite technology to support Tier 4 compliance. The first two options—changing pricing and restricting ICE vehicle products—still may not result in a company being able to demonstrate compliance with the MYs 2027 and 2028 Tier 4 standards. Furthermore, they may have potentially significant near-term financial impacts on manufacturers and potentially negatively impact consumers through reduced choices of vehicle models. For these reasons, the EPA does not believe these two options are feasible for all manufacturers. The third option, developing additional improved ICE vehicles on short notice to meet the current Tier 4 phase-in requirements for MYs 2027 and 2028, is likely infeasible because there is not sufficient lead time for firms to make such changes.

### *D. Expected Manufacturer Response With Lower BEV Projections*

In light of the change in the BEV landscape, the EPA now expects manufacturers would consider improvements to ICE vehicle technologies as a means to comply with the Tier 4 criteria pollutant program. This could include technology plans that require improvements in gasoline ICE vehicle exhaust aftertreatment systems, engine controls, and monitoring systems in several significant ways–approaches which require a change in companies' technology development plans which requires lead time. These improved systems include better three-way catalytic converters (TWCs) to reduce $NMOG+NO_X$ emissions; the addition of GPFs to reduce PM emissions; and related electrical systems, software, and calibrations required to operate the modified and added hardware. In addition, new components and systems, such as GPFs, must be integrated into the vehicle exhaust aftertreatment system and may require changes to vehicle design and packaging, as well as changes to manufacturing production lines to install these components. Vehicle onboard diagnostics (OBD) that support the Tier 4 standards will also require additional development and calibration, with the OBD associated with the implementation of GPFs potentially representing a new requirement for manufacturers. Exhaust and aftertreatment components, such as catalysts, sensors, and GPFs, that are required to support more stringent standards are typically produced by automotive suppliers, with their own set of planning and production requirements and associated lead times. Finally, vehicle manufacturers are also expected to improve their emissions test capabilities to ensure continued accurate measurement of PM emissions and the addition of cold ambient temperature PM testing. These actions normally require several years to accomplish.

Given the policy, legislative, regulatory, and marketplace changes which have occurred, the start of MY 2027, and the upcoming start of MY 2028, the EPA does not believe the automotive industry and supplier base have adequate lead time to revise their product plans to develop and industrialize the requisite ICE vehicle technology to support the near-term Tier 4 phase-in. The EPA believes that many

[44] *See* O'Carroll, L. (2025). VW to pause production at two plants as electric vehicle sales stall. *The Guardian; https://www.theguardian.com/business/2025/sep/26/vw-to-pause-production-at-two-plants-as-electric-vehicle-sales-stall.*

[45] *See* Hyundai Motor Company. (2025). Hyundai Motor Company Unveils Bold 2030 Vision and Product Roadmap at 2025 CEO Investor Day, *https://www.hyundai.com/worldwide/en/newsroom/detail/hyundai-motor-company-unveils-bold-2030-vision-and-product-roadmap-at-2025-ceo-investor-day-0000001018;* and Hyundai Motor Company. (2025). Hybrid Vehicles | Hybrid Model Lineup | Hyundai USA, *https://www.hyundaiusa.com/us/en/electrified/hybrids.*

[46] *See* Johnson, P. (2025). Hyundai halts production of another luxury EV. *Electrek: https://electrek.co/2025/08/19/hyundai-halts-production-of-another-luxury-ev/.*

[47] *See* ''Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles,'' 88 FR 29184 (May 5, 2023), Sections I.A.ii and I.A.iii at 29187–29196; and LMDV Multipollutant Rule, Sections I.A.2 and I.A.3 at 27845–27853.

[48] *See* Center for Automotive Research. (2007). How Automakers Plan Their Products, *https://www.cargroup.org/wp-content/uploads/2017/02/HOW-AUTOMAKERS-PLAN-THEIR-PRODUCTS.pdf.*

manufacturers planned on high BEV sales to comply with the Tier 4 requirements and did not plan for the alternative, which is implementing changes, as described above, to large portions of their ICE product line. Manufacturers would need to revise plans, source suppliers, and make necessary changes to assembly lines to implement the updates needed in their ICE vehicles—but there is insufficient time to complete those steps for MYs 2027 and 2028. The EPA proposes that, at minimum, a two-year extension of the Tier 3 program is needed to ensure companies can comply with the Agency's emission standards. While some companies have certified Tier 4 vehicles for MY 2027, the product mix and sales volume for MY 2027 are unknown and thus the impacts on NMOG+$NO_X$ fleet averages are unknown. No manufacturers have yet certified MY 2028 products. Based on the previous discussion on manufacturer product cycle development, the EPA proposes an initial two-year extension of the Tier 3 program in this Part 1 Tier 4 reconsideration rule. The EPA will continue to evaluate manufacturers' progress and the comments the Agency receives in response to this proposal to determine whether an additional extension of Tier 3 may become necessary (*e.g.,* an extension to MY 2029). The issues the EPA discusses above with respect to the significant changes in the BEV landscape since the Agency issued the Tier 4 final rule in April 2024 extend beyond MYs 2027 and 2028. In the future Part 2 rule, the EPA will comprehensively reconsider the Tier 4 program for light- and medium-duty vehicles for future MYs beyond those addressed in this Part 1 rule. Changes to the Tier 4 program may include changes to elements such as the Tier 4 emission standards, lead time and phase-in schedule, and test procedures.

The recent changes in policy, regulations, Federal law, and near-term BEV market share projections have disrupted vehicle manufacturers' near-term product plans. BEVs were a major factor contributing to Tier 4 program compliance, both for the per-vehicle standards such as PM and for NMOG+$NO_X$ fleet averaging standard. A lower projected BEV market share makes compliance with the Tier 4 standards challenging and perhaps unachievable. Therefore, the EPA is reconsidering the Tier 4 program. In this Part 1 rule proposal, the EPA is proposing to extend the Tier 3 standards through MYs 2027 and 2028 for light- and medium-duty vehicles due to feasibility concerns. This proposal is consistent with the EPA's responsibilities and authority under CAA sections 202(a) and (b). The EPA carefully considered the statutory factors, including technological feasibility, cost, and lead time for manufacturers to comply with the standards.[49] The two-year extension of the Tier 3 standards would result in a very small foregone reduction in emissions of criteria pollutants and air toxics and will represent significant cost savings for vehicle manufacturers in MYs 2027 and 2028 as discussed in section III.B of this preamble and Chapter 1 of the DRIA for this proposed rule.[50] Notably, the Tier 3 standards themselves represent a significant reduction in criteria pollutant emissions, and the MY 2025 and later standards that the Agency is proposing to extend to MYs 2027 and 2028 are the most stringent of the Tier 3 standards.

*E. What is the EPA proposing to change?*

The EPA is proposing to extend the existing Tier 3 standards for light- and medium-duty vehicles through MYs 2027 and 2028. This proposed change, which is summarized in Tables 8 and 9, extends Tier 3 requirements to MYs 2027 and 2028 and then, in MY 2029, resumes the phase-in schedule for the Tier 4 requirements described in section II.A of this preamble, including the per-vehicle PM, CO, and HCHO standards. Tables 8 and 9 show the fraction of vehicles that will need to meet the Tier 3 or final Tier 4 standards. For example, ''0% Tier 4'' means that there is no minimum fraction of vehicles in a MY that must comply with all aspects of the Tier 4 program; rather, all vehicles sold can partially comply as interim Tier 4 vehicles. Likewise, ''60% Tier 4'' means that 60 percent of the vehicles sold must be certified to final Tier 4 standards and the remainder may be interim or final Tier 4. Additionally, the proposed early schedules for heavier light- and medium-duty vehicles (*see* Tables 8 and 9, respectively) are intended to maintain alignment with the proposed phase-in schedule for vehicles up to 6,000 pounds GVWR. The reasons for this proposal are described in detail in section II.B of this preamble.

TABLE 8—PROPOSED AMENDED TIER 4 LIGHT-DUTY PROGRAM VEHICLE CRITERIA POLLUTANT PHASE-IN SCHEDULES

| Model year | Vehicle GVWR ≤ 6000 lb | | Vehicle GVWR 6001–8500 lb and MDPV | | | |
|---|---|---|---|---|---|---|
| | Current | Proposed | Current default | Current early | Proposed default | Proposed early |
| 2027 | 20% Tier 4 | 100% Tier 3 | 0% Tier 4 | 20% Tier 4 | 100% Tier 3 | 100% Tier 3. |
| 2028 | 40% Tier 4 | 100% Tier 3 | 0% Tier 4 | 40% Tier 4 | 100% Tier 3 | 100% Tier 3. |
| 2029[a] | 60% Tier 4 | 60% Tier 4 | 0% Tier 4 | 60% Tier 4 | 0% Tier 4 | 60% Tier 4. |
| 2030 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4. |
| 2031 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4. |

[a] Vehicles not yet meeting all Tier 4 requirements will certify as Interim Tier 4 vehicles using the Tier 3 standards.

TABLE 9—PROPOSED AMENDED TIER 4 MEDIUM-DUTY VEHICLE CRITERIA POLLUTANT PHASE-IN SCHEDULES

| Model year | MDV[a] (GVWR 8501–14000 lb) | | | |
|---|---|---|---|---|
| | Current Default | Current Early | Proposed Default | Proposed Early |
| 2027 | 0% Tier 4 | 20% Tier 4 | 100% Tier 3 | 100% Tier 3. |
| 2028 | 0% Tier 4 | 40% Tier 4 | 100% Tier 3 | 100% Tier 3. |
| 2029[b] | 0% Tier 4 | 60% Tier 4 | 0% Tier 4 | 60% Tier 4. |

[49] 42 U.S.C. 7521(a).

[50] U.S. Environmental Protection Agency, *Revision of Tier 4 Phase-In Schedule for Light-Duty and Medium-Duty Vehicles: Draft Regulatory Impact Analysis* (Apr. 2026) EPA Technical Report EPA–420–D–26–001 (''DRIA'').

TABLE 9—PROPOSED AMENDED TIER 4 MEDIUM-DUTY VEHICLE CRITERIA POLLUTANT PHASE-IN SCHEDULES—Continued

| Model year | MDV[a] (GVWR 8501–14000 lb) | | | |
|---|---|---|---|---|
| | Current Default | Current Early | Proposed Default | Proposed Early |
| 2030 | 0% Tier 4 | 80% Tier 4 | 0% Tier 4 | 80% Tier 4. |
| 2031 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4 | 100% Tier 4. |

[a] MDV refers to medium-duty vehicle, which is a combination of both Class 2b and 3 vehicles as defined in 40 CFR 86.1803–01.
[b] Vehicles not yet meeting all Tier 4 requirements will certify as Interim Tier 4 vehicles using the Tier 3 standards.

This proposed action would also extend the Tier 3 NMOG+$NO_X$ fleet average standards for light-duty program vehicles up to 6,000 pounds GVWR through MYs 2027 and 2028. Then, in MY 2029, the Tier 4 sales-weighted fleet average standards schedule for NMOG+$NO_X$ would resume, as shown in Table 10. All other elements of the Tier 4 program, such as the changes in required drive cycles for certification and the NMOG+$NO_X$ altitude standards, are also proposed to be delayed to MY 2029.

TABLE 10—PROPOSED LIGHT-DUTY PROGRAM VEHICLE FLEET AVERAGE NMOG+$NO_X$ STANDARDS

| Model year | LDV, LDT1–2 (GVWR ≤6000 lb) NMOG+$NO_X$ (mg/mi.) | LDT3–4 (GVWR 6001–8500 lb) and MDPV NMOG+$NO_X$ (mg/mi.) | |
|---|---|---|---|
| | Proposed | Default | Proposed early |
| 2026[a] | [a] 30 | [a] 30 | [a] 30 |
| 2027 | 30 | 30 | 30 |
| 2028 | 30 | 30 | 30 |
| 2029 | 21 | 30 | 21 |
| 2030 | 19 | 15 | 19 |
| 2031 | 17 | 15 | 17 |
| 2032 and later | 15 | 15 | 15 |

[a]Tier 3 standards provided for reference.

The LMDV Multipollutant Rule central analysis case projections for BEV market share in MYs 2027 and 2028 were 26 and 31 percent, respectively, across all light-duty program vehicles.[51] For this proposed action, the EPA projects the BEV market share to be eight and 12 percent in MYs 2027 and 2028, respectively.[52] This projection means that BEVs will have a market share in MY 2027 that is 18 percentage points lower than previously estimated in the LMDV Multipollutant Rule, and in MY 2028, 19 percentage points lower. Likewise, the BEV share of MDVs is projected to be reduced to one percent from three and four percent in MYs 2027 and 2028, respectively. BEVs have a significant impact on manufacturers' compliance because of their zero mg/mile certification values. The changes in regulatory and market conditions described in section II.B of this preamble are expected to result in lower projected BEV market share and disrupt manufacturers' compliance strategies. This proposed action would provide manufacturers with additional lead time to comply in recognition of the issues described in section II.C of this preamble.

In addition, the EPA is proposing some clarifications to the regulatory language regarding requirements in 40 CFR parts 85, 86, and 1066. For example, the EPA is proposing to revise 40 CFR 1066.801(c)(1)(i) and 40 CFR 1066.815(a)–(c) to clarify that a manufacturer may use the hot-running portion of the urban dynamometer driving schedule (UDDS) from the cold-start UDDS or the hot-start UDDS in the FTP composite emission calculations in 40 CFR 1066.820(b) and (c)(1), if the manufacturer chooses to run a full hot-start UDDS for the purposes of measuring PM with a non-hybrid ICE vehicle consistent with 40 CFR 1066.815(b)(5). This option is available for non-hybrid ICE vehicles when testing on the FTP at either 25 °C or −7 °C ambient temperature conditions. In addition, HEVs may use the full hot-start UDDS or only the first 505 sections thereof for the purposes of measuring PM from HEVs on the FTP at −7 °C ambient temperature. Note that this clarification does not substantively alter testing obligations.

### *F. The EPA's Clean Air Act Authority for This Proposal*

The EPA's statutory authority for this proposed action is found in CAA section 202(a)(1)-(2).[53] CAA section 202(a)(1) requires the Administrator to ''prescribe (and from time to time revise) . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgement cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare,'' and CAA section 202(a)(2) requires the Administrator to determine the necessary time ''to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period'' before such standard or revision shall go into effect.

In this proposed action, the EPA is amending the phase-in schedule for the Tier 4 standards for MYs 2027 and 2028 by extending the Tier 3 standards, consistent with the authority granted to the Agency by CAA section 202. CAA section 202 directs the EPA to give appropriate consideration to the cost and lead time necessary to allow for the

[51] *See* Table 3 of LMDV Multipollutant Rule at 89 FR 27856.

[52] *See* U.S. Environmental Protection Agency. (2026). ''Battery Electric Vehicle Projected Market Share Analysis.'' EPA–HQ–OAR–2025–3297.

[53] 42 U.S.C. 7521(a)(1)–(2).

development and application of such technology required for compliance with the standards. In determining the level of the standards, CAA section 202(a) does not specify how much weight to apply to each factor. Thus, the EPA may determine an appropriate balance between stringency, technology considerations, cost, and lead time.[54] Unless provided otherwise by statute, an agency may revise or rescind prior actions so long as it acknowledges the change in position, provides a reasonable explanation for the new position, and considers legitimate reliance interests in the prior position.[55]

*G. Reliance Interests*

The EPA understands that companies have previously planned for the MY 2027 start date for Tier 4 criteria pollutant standards, especially with respect to the PM standards, and some have already expended resources, including through research and development, complying with the MYs 2027 and 2028 standards. As stated above, significant changes have occurred due to Federal and State policy changes, as well as consumer preferences, and companies have responded by modifying their product lines. The EPA acknowledges that this proposal would, if finalized, change the Agency's previous assessments in the 2024 Tier 4 Rule with respect to the feasibility or the Tier 4 implementation schedule and the appropriateness of concluding the Tier 3 program on the timetable then envisioned. However, as explained throughout this preamble, the EPA believes this change in position is necessary and supported by intervening developments that impact the analyses and assumptions used in the 2024 Tier 4 Rule and manufacturers' initial compliance planning in response thereto.

The EPA believes that the revisions proposed in this action relieve obligations in a manner that promotes compliance and costs savings without undermining existing investments in compliance. Specifically, the EPA seeks comment on whether regulated parties have any significant reliance interests with respect to MYs 2027 and 2028 Tier 4 criteria pollutant standards only, as GHG standards or post-MY 2029 impacts are outside the scope of this rule. The EPA is aware that manufacturers, importers, and sellers have already expended resources complying with Tier 4 criteria pollutant standards for MYs 2027 and 2028, because many compliance costs are incurred as part of research and development and during manufacturing. However, given the statutory obligation to consider these lead time concerns in light of the dramatically changed landscape discussed throughout this notice, the EPA does not believe reliance interests in the timing of the Tier 4 standards, if any exist at this point, outweigh the need to reconsider the Tier 4 program as proposed here.

Nevertheless, the EPA seeks comment on whether regulated parties have any significant reliance interests with respect to MYs 2027 and 2028 Tier 4 criteria pollutant standards that are not already considered in this rulemaking that should be considered, and on how such interests should be considered. Note that MY 2029 impacts are beyond the scope of this rule except where explicitly noted, and that former GHG standards are not at issue in this proposal.

The EPA further understands that other interested parties may have relied on the MY 2027 start date for Tier 4 criteria pollutant standards for independent purposes, including compliance with relevant National Ambient Air Quality Standards (NAAQS) and related planning obligations, among others. For example, the EPA understands that, by resulting in marginally increased emissions, the proposed rule could conceivably have implications for State departments of transportation and metropolitan planning organizations that factored prior emission pollution projections into their planning processes for the purposes of, among other things, obtaining of Federal transportation funding. The EPA believes that the relatively small nature of the foregone emissions reductions involved in this proposed revision, coupled with the relatively short amount of time that has passed since promulgation of the 2024 Tier 4 Rule, means that such interests do not supersede the Agency's obligation to ensure that standards are feasible and appropriately reflect technical and market realities. Moreover, the EPA notes that mobile-source standards are just one consideration among many involved in planning to attain the NAAQS and related obligations. Nevertheless, the EPA seeks comment on such reliance interests and how such interests should be taken into account in any final action on this proposal.

The EPA seeks comment on the nature and extent of any other reliance interests that may arise from this proposed action and is committed to assessing any such interests, determining whether they are significant, and weighing such interests against competing rationales, as required by law.[56]

## III. What are the projected impacts of this proposed rule?

In this section of the preamble, the EPA presents a summary of the findings that are presented in detail in the DRIA for this proposed rule. This includes a description of the approach the EPA used to evaluate the impacts of this proposed rule on compliance costs, emissions, air quality, and human health. The EPA also presents a summary of the proposed action's projected impacts on the costs of compliance, which for this proposal is a cost savings for the automotive manufacturers.

*A. What approach did the EPA use in analyzing this proposal?*

Projecting BEV market share is an important component of the EPA's cost and emissions impact analysis. The EPA recognizes that manufacturers could use BEVs to meet the existing Tier 4 standards for MYs 2027 and 2028 to the extent practicable, with the remaining compliance obligations coming from emissions improvements to ICE vehicles. The EPA projects the expected level of BEV market share to be eight percent in MY 2027 and 12 percent in MY 2028. It is also consistent with sales figures over the last two to three years.[57] Third-party BEV market share projections in MYs 2027 and 2028 are dynamic and show a wide range of potential adoption. Bloomberg New Energy Finance originally forecast in

[54] *See Sierra Club* v. *EPA,* 325 F.3d 374, 378 (D.C. Cir. 2003) (even where a provision is technology-forcing, the provision ''does not resolve how the Administrator should weigh all [the statutory] factors''); *Nat'l Petrochemical and Refiners Ass'n* v. *EPA,* 287 F.3d 1130, 1135 (D.C. Cir. 2002) (EPA decisions, under CAA provision authorizing technology-forcing standards, based on complex scientific or technical analysis are accorded particularly great deference); *see also Husqvarna AB* v. *EPA,* 254 F. 3d 195, 200. (D.C. Cir. 2001) (great discretion to balance statutory factors in considering level of technology-based standard, and statutory requirement ''to [give appropriate] consideration to the cost of applying . . . technology'' does not mandate a specific method of cost analysis); *Hercules Inc.* v. *EPA,* 598 F. 2d 91, 106 (D.C. Cir. 1978) (''In reviewing a numerical standard we must ask whether the agency's numbers are within a zone of reasonableness, not whether its numbers are precisely right.'').

[55] *See FDA* v. *Wages & White Lion Invs., L.L.C.,* 604 U.S. 542 (2025); *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983); *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8 (D.C. Cir. 2017) (''Agencies obviously have broad discretion to reconsider regulations at any time'').

[56] *See, e.g., DHS* v. *Regents of Univ. of Cal.,* 591 U.S. 1, 33 (2020).

[57] Alliance for Automotive Innovation. (2025). Reading the Meter.'' *https://www.autosinnovate.org/posts/papers-reports/ReadingtheMeter9-5-2025.pdf.*

2024 that 48 percent of passenger sales in the U.S. would be BEVs in 2030 but in 2025 revised that down to 27 percent.[58] In February 2025, J.D. Power projected BEV sales of 15.2 and 18.3 percent, respectively in 2027 and 2028.[59] According to AutoPacific's most recent forecast, BEV market share in the U.S. is expected to remain at eight percent in 2026, the same as it was in 2025. This represents a decrease from AutoPacific's 2024 estimate, when it predicted market share would reach 15 percent in 2026.[60] According to CNN reporting, while 10 percent of all cars sold in the U.S. in the third quarter of 2025 were electric, Ford Chief Executive Officer Jim Farley said in September 2025 that he expects BEV sales to fall from seven percent of the U.S. market in 2025 to five percent in 2026.[61] GM Chief Financial Officer Paul Jacobson said that his company also expects that ''EV demand is going to drop off pretty precipitously.'' [62] The EPA believes the estimates of eight and 12 percent BEV market share are consistent with these other projections and are therefore a reasonable basis for estimating the costs and emissions impacts associated with this proposed action.

The EPA evaluated a no-action case and an action case for this proposal. The EPA's no-action case assumes that the Tier 4 phase-in stays as introduced in the LMDV Multipollutant Rule. The action case is the proposed extension of Tier 3 requirements for MYs 2027 and 2028 as described in section II.C of this preamble.

The current Tier 3 program requires that manufacturers meet a 30 mg/mile $NMOG+NO_X$ fleet average standard. Vehicle manufacturers are complying with the current Tier 3 program using a variety of technologies, including BEVs. In the LMDV Multipollutant Rule, the EPA projected that manufacturers could adopt a variety of technologies to comply with the Tier 4 program, and, when evaluated in combination with the GHG standards established in the LMDV Multipollutant Rule and other factors in that analysis, projected that the sales of additional BEVs would be the most cost-effective means of meeting the multipollutant standards. In consideration of the changing BEV landscape discussed in section II.B of this preamble, the EPA modeled compliance with the Tier 3 and Tier 4 programs using ICE emission control technologies as needed to project compliance after accounting for a more realistic share of BEVs into the fleet average. The EPA recognizes that this is one of numerous pathways to compliance—for example, manufacturers could instead rely on more or fewer BEVs than assumed here—and consequently there is some uncertainty in the projected changes in costs.

There are likely to be sources of uncertainty in any complex analysis using estimated parameters and inputs from numerous models and assumptions. These uncertainties may impact both the baseline and the post-rule analysis, thus possibly affecting the estimated incremental impacts of the proposed rulemaking. In this analysis, the EPA considered several sources of uncertainty, both quantitatively and qualitatively, related to the costs and benefits of this action. More information on uncertainty related to costs, including estimates of BEV market share and variations in catalyst precious metal loading in TWCs, can be found in section III.B of this preamble and Chapter 1 of the DRIA for this proposed rule. More information on uncertainty related to benefits, including the quantification of health and welfare effects, can be found in section III.E of this preamble and Chapter 3 of the DRIA for this proposed rule.

*B. What are the projected changes in costs?*

The EPA's cost analysis considers the incremental changes in costs to manufacturers associated with $NMOG+NO_X$ and PM controls on vehicles sold in MYs 2027 and 2028. These costs are calculated on an industry-wide basis. This proposal would extend by two years the existing Tier 3 program for vehicles less than 6,000 pounds GVWR. As a result of the proposed changes discussed in section II.B of this preamble, this proposal would lead to cost savings for the action case compared to the costs projected for the no-action case.

The full analysis is presented in Chapter 1 of the DRIA that accompanies this preamble. In this proposal, the EPA estimates cost savings from changing $NMOG+NO_X$ control technology and PM control technology for MYs 2027 and 2028. The per-vehicle savings are calculated separately for the $NMOG+NO_X$ control technology and PM control technology because they are applied to different numbers of vehicles in each MY. The per-vehicle savings for $NMOG+NO_X$ control technology are estimated to be about $59 with a three percent discount rate and $56 with a seven percent discount rate. These savings are projected to apply to 9.38 million vehicles in 2027 and 8.97 million vehicles in 2028. The per-vehicle savings for PM control technology are estimated to be about $171 with a three percent discount rate and $162 with a seven percent discount rate. These savings are projected to apply to 1.22 million vehicles in 2027 and 2.85 million vehicles in 2028.

In total, for the central action case the EPA estimates compliance cost savings of $1.77 billion using a three percent discount rate and $1.66 billion using a seven percent discount rate (2024 dollars), as summarized in Table 11. The details of this analysis are presented in Chapter 1 of the DRIA for this proposed rule. The DRIA includes a discussion of uncertainties in the cost analysis, including estimates of BEV market share and variations in catalyst precious metal loading, and also includes sensitivity analysis.[63]

TABLE 11—ESTIMATED EMISSIONS CONTROL SYSTEM COST SAVINGS

[millions 2024$]

| Calendar year | Cost savings | |
|---|---|---|
| | 3% Discount rate | 7% Discount rate |
| 2027 | $670 | $640 |
| 2028 | 1,100 | 1,020 |

[58] McKerracher, C. et al. (2025). Electric Vehicle Outlook 2025. *BloombergNEF: https://about.bnef.com/insights/clean-transport/electric-vehicle-outlook/.*

[59] J.D. Power. (2025). 2025 to be reset year for EV sales, *https://www.jdpower.com/business/resources/e-vision-intelligence-report-january-2025.*

[60] Gearino, D. (2025). ''What's Ahead for the US Electric Vehicle Industry After Hitting a Massive Speed Bump?'' *https://insideclimatenews.org/news/09102025/inside-clean-energy-us-ev-industry-future/.*

[61] Isidore, C. (2025). ''The future for EVs in America looks grim. But the auto industry isn't giving up.'' *https://www.cnn.com/2025/10/06/business/automakers-ev-plans.*

[62] *Id.*

[63] *See* also section III.A of this preamble.

TABLE 11—ESTIMATED EMISSIONS CONTROL SYSTEM COST SAVINGS—Continued

[millions 2024$]

| Calendar year | Cost savings | |
|---|---|---|
| | 3% Discount rate | 7% Discount rate |
| Present Value | 1,770 | 1,660 |

*Note:* The EPA notes there are uncertainties associated with these cost savings projections. *See* section III.A of this preamble and Chapter 1 of the DRIA for this proposed rule for a discussion of uncertainties.

The EPA acknowledges that there are many ways that manufacturers could comply with the NMOG+$NO_X$ standards, including using the Tier 4 Averaging, Banking, and Trading (ABT) provisions. Due to the myriad potential permutations attached to the ABT program, the EPA is presenting here only one cost case. However, the NMOG+$NO_X$ standards allow ABT, which has the potential to reduce compliance costs for a given manufacturer by spreading the introduction of new technologies over multiple MYs.

The EPA also understands that, as discussed above, due to the inability for some companies to comply with the MYs 2027 and 2028 standards, the Agency expects there is likely to be significant additional costs related to noncompliance with the regulations stemming primarily from product planning disruptions such as manufacturing volume constraints and revised marketing campaigns. However, the EPA did not attempt to monetize those impacts.

Additionally, the EPA believes that, under the current MYs 2027 and 2028 standards, there is the potential that companies would no longer be able to provide certain vehicle models, which would result in customers being required to purchase alternative models which may compromise their ideal choice. The EPA requests comment on the economic impacts of potential noncompliance with MYs 2027 and 2028 standards and companies being forced to remove some vehicle models from the market.

### C. What are the projected changes in emissions?

The emissions impacts of this proposed rule were estimated using a regulatory version of the EPA's Motor Vehicle Emission Simulator (MOVES5). All emission inventories were modeled using the MOVES national domain, which includes all 50 states and the District of Columbia but no U.S. territories. Details on emissions modeling and inventory results, including sensitivity analyses, are presented in Chapter 2 of the DRIA for this proposed rule.

For this proposal, both the action and no-action cases that the EPA analyzed project that BEVs will make up eight and 12 percent of sales of light-duty program vehicles up to 6,000 pounds GVWR in MYs 2027 and 2028, respectively. Changes in emissions between these two cases are expected to come from changes to emissions control technologies on ICE vehicles.

The main effects of this proposal on emissions relative to the Tier 4 baseline in the future could be small increases in volatile organic compounds (VOC), $NO_X$, PM, and toxics emissions. The small increases in VOC, $NO_X$, and gaseous air toxics result from holding the NMOG+$NO_X$ fleet average standard at the 30 mg/mile Tier 3 standard for two additional MYs. The small increases in PM result from MYs 2027 and 2028 vehicles not being required to meet the Tier 4 per-vehicle PM standards. Table 12 presents the modeled changes in the national onroad emissions inventory for $NO_X$, PM, VOC, and HCHO for calendar years (CYs) 2027, 2028, 2035, 2045, and 2055, including percent changes in those years. Positive values for emissions changes reflect emissions increases. The estimated impact of the proposed rule on VOC is equal to or less than a 0.1 percent increase in the total onroad vehicle emissions in the years presented. Increases in $NO_X$ are equal to or less than 0.2 percent, while onroad $PM_{2.5}$ emissions increases range between 0.2 and 1.6 percent for the years presented. The DRIA includes additional detail on these projected changes, as well as projected changes in emissions for several air toxics emissions.

Similar to the cost savings estimates, the extent that manufacturers use ABT in their compliance strategies could have emissions implications. For example, an original equipment manufacturer (OEM) overcomplying with the standards in MY 2027 could reduce emissions in CY 2027 and subsequently increase emissions in later years as the OEM uses the banked credits.

TABLE 12—ANNUAL INCREASES IN NATIONAL ONROAD EMISSIONS FROM THIS PROPOSAL FOR SELECT CALENDAR YEARS

| Pollutant[64] | CY 2027 | | CY 2028 | | CY 2035 | | CY 2045 | | CY 2055 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | U.S. tons | Percent onroad | U.S. tons | Percent onroad | U.S. tons | Percent onroad | U.S. tons | Percent onroad | U.S. tons | Percent onroad |
| Nitrogen Oxides ($NO_X$) | 389 | <0.1 | 976 | 0.1 | 1031 | 0.2 | 482 | 0.1 | 106 | <0.1 |
| Particulate Matter[65] ($PM_{2.5}$) | 51 | 0.2 | 145 | 0.5 | 167 | 1.1 | 102 | 1.6 | 27 | 0.7 |
| Volatile Organic Compounds (VOC) | 353 | <0.1 | 859 | 0.1 | 878 | 0.1 | 405 | 0.1 | 92 | <0.1 |
| Formaldehyde | 4 | 0.1 | 9 | 0.2 | 10 | 0.3 | 5 | 0.2 | 1 | <0.1 |

[64] Sulfur dioxide ($SO_2$) and CO emissions do not change with this proposed rule.

[65] $PM_{2.5}$ changes only come from tailpipe emissions. Brake wear and tire wear emissions are not changing with this proposed rule.

### D. What are the projected changes in air quality?

Section III.C of this preamble presents projections of the emissions changes due to this proposed rule. For this proposal, the EPA did not conduct air quality modeling to determine how these emissions increases could change the ambient concentrations of air pollutants. Making predictions about air quality based solely on emissions changes is extremely difficult because the atmospheric chemistry related to ambient concentrations of PM, ozone, and air toxics is very complex, and the emissions changes are spatially variable. Nevertheless, considering the air quality modeling conducted for recent vehicle rules and the relatively small projected increase in total onroad emissions from this proposal, overall, the EPA expects relatively small changes in ambient concentrations of air pollutants from this proposal.[66]

### E. What are the projected changes in human health and welfare?

Air pollutants emitted from motor vehicles impact public health, welfare, and the environment. Motor vehicle emissions contribute to ozone, $PM_{2.5,}$ and air toxics, which are linked to premature death and other serious health impacts, including respiratory illness, cardiovascular problems, and cancer. This air pollution affects people nationwide, especially those who live or work near transportation corridors. Detailed information on the health and welfare effects associated with exposure to pollutants impacted by this proposed rule can be found in sections II.B–D of the LMDV Multipollutant Rule's preamble and Chapter 6 of the LMDV RIA.[67]

The EPA sometimes performs air quality modeling to conduct a full assessment of the $PM_{2.5}$-related and ozone-related human health benefits of the Agency's regulatory actions. As discussed in section III.D of this preamble, the EPA did not conduct air quality modeling for this proposal.

The EPA is obligated to present the Agency's best scientific understanding and the implications of that science when developing policies and regulations. However, historically, the EPA's analytical practices may not have presented the full range of uncertainties and associated confidence level regarding the potential benefit estimates from reduction in exposure to $PM_{2.5}$ and ozone. In addition, the science regarding the exposure, health effects from exposure, and valuation of reduction in health effects are evolving with better data and methods, especially at low concentrations of PM and ozone. The EPA's use of benefit per ton (BPT) monetized values introduces additional uncertainty. Although developed as a screening tool when full-form photochemical modeling was not feasible, the BPT approach reduces complex spatial and atmospheric relationships and may be more suited to model emissions that are geographically more uniform and the pollutant species are better mixed, thereby adding uncertainty associated with those estimates. Some of the sources of uncertainties include the set of assumptions used in projecting the health impact of reducing PM. These projections are based on a series of models that take into account emissions changes, the resulting distributions of changes in ambient air quality, the estimated reductions in health effects from changes in exposure, and the composition of the population that will benefit from the reduced exposure. Each component includes assumptions, each with varying degrees of uncertainty.

In addition, the EPA historically provided point estimates rather than just ranges of emission-related effects or only quantifying emissions when monetizing proved to be too uncertain. Therefore, to address these concerns, the EPA is refraining from providing primary estimates resulting from changes in $PM_{2.5}$ and ozone exposure resulting from changes in direct $PM_{2.5}$, $NO_X$, and VOC emissions but will continue to quantify the emissions until the Agency is confident enough in the modeling to robustly monetize those impacts.

A more robust description of the potential health and welfare disbenefits associated with emissions increases due to the proposal is contained in Chapter 2.3 of the DRIA for this proposed rule.

## IV. Request for Comment

The EPA is soliciting comment on key aspects of the proposed rule, although the Agency is not limiting comment to these identified areas. To facilitate comment on those portions of the rule, the EPA has indexed each comment solicitation with a unique identifier below (*e.g.,* ''C–1,'' ''C–2'') to provide a consistent framework for effective and efficient provision of comments. Accordingly, the EPA asks that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. The EPA asks that commenters include the identifier either in a heading or within the text of each comment to make clear which comment solicitation is being addressed. Specifically, the EPA is soliciting comment on the following aspects:

C–1. The EPA requests comment on all aspects of this proposed rule, including all elements of this preamble, the proposed regulatory changes, and the DRIA (including projected impacts), that are not otherwise enumerated below.

C–2. The Tier 3 NMOG+$NO_X$ program includes several specific emission bins from which manufacturers must choose when certifying each vehicle family, for example, Bins 20, 30, and 50. All vehicles within a given Bin must have NMOG+$NO_X$ emissions below the Bin value, so a Bin 50 vehicle family must all be at or below 50 mg/mile. In the Tier 4 program, the EPA created several additional NMOG+$NO_X$ Bins with smaller increments between the Bins. For example, the EPA added Bins 25, 35, 40, and 45. The EPA requests comment on if the Agency should add to the Tier 3 program the additional NMOG+$NO_X$ Bins available in the Tier 4 program for MYs 2027 and 2028. Doing so could provide additional flexibility to vehicle manufacturers for demonstrating compliance with the NMOG+$NO_X$ fleet average standard.

C–3. The EPA requests comments on the use of the ABT program for NMOG+$NO_X$ emissions in MYs 2027 and 2028 and how the use of the ABT program may affect the cost analysis presented here and in the DRIA.

C–4. The EPA requests comments on whether the Tier 3 program should be extended for three MYs, through MY 2029, instead of two MYs.

C–5. The EPA knows that manufacturers have already started certifying vehicles to the interim and final Tier 4 standards. The EPA requests comment on the treatment of MYs 2027 or 2028 vehicles certified to the final Tier 4 standards once the Tier 4 phase-in schedule is revised. The EPA is presenting the following initial framework for this issue:

- Certificates of conformity issued for interim or final Tier 4 vehicles will remain valid throughout their full useful life (FUL). Thus, a manufacturer may keep selling a Tier 4 vehicle under its Tier 4 certificate of conformity.
- The Tier 4 NMOG+$NO_X$ sales-weighted values will be combined with the Tier 3 NMOG+$NO_X$ sales-weighted values from the same MY.

C–6. The EPA requests comment on any modifications of the Federal OBD requirements needed to support this action for MYs 2027 and 2028 vehicles.

[66] *See* LMDV Multipollutant Rule and ''Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards,'' 88 FR 4296–4718 (Jan. 24, 2023).

[67] *See* LMDV Multipollutant Rule and LMDV RIA.

C–7. The EPA requests comment on the economic impacts of potential noncompliance with MYs 2027 and 2028 standards, including costs associated with revised product plans and sunk development costs, to adjust the economic analysis.

C–8. The EPA requests comment on the challenges associated with integrating GPFs on light- and medium-duty vehicles in MYs 2027 or 2028, especially regarding what has changed that renders the extensive public record insufficient to justify manufacturers installing this technology.

C–9. The EPA requests comment on the projected MYs 2027 and 2028 BEV sales estimates used for assessing the cost and emissions impacts of this proposal, as detailed in the Draft RIA.

C–10. The EPA requests comment on whether regulated parties have any significant reliance interests with respect to MYs 2027 and 2028 Tier 4 criteria pollutant standards.

In this action, the EPA is not requesting comment on any provisions of the Tier 4 program for MYs 2029 and later.

## V. Statutory and Executive Order Reviews

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

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

This action is an economically significant regulatory action as defined under section 3(f)(1) of Executive Order 12866. Accordingly, it was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, Revision of Tier 4 Phase-In Schedule for Light-Duty and Medium-Duty Vehicles: Draft Regulatory Impact Analysis (April 2026) EPA Technical Report EPA–420–D–26–001 (''DRIA'') is available in the docket, Docket ID No. EPA–HQ–OAR– 2025–3297. This analysis is described further in section III.B of this preamble. The estimated cost savings presented in Table 13 include the effects of several sources of uncertainty associated with the estimates of costs, such as estimates of BEV market share and variations in catalyst loading in TWCs, which are discussed in Chapter 1 of the DRIA.

TABLE 13—ESTIMATED COST SAVINGS

[Millions, 2024$]

| Calendar year | Cost savings (millions, 2024$) |
|---|---|
| 2027 | $690 |
| 2028 | 1,170 |
| Present Value (3% discount rate) | 1,770 |
| Present Value (7% discount rate) | 1,660 |

**Note:** The EPA notes there are uncertainties associated with these cost savings projections. See section III.A. of this preamble and Chapter 1 of the DRIA for a discussion of uncertainties in the cost savings projections.

### *B. Executive Order 14192: Unleashing Prosperity Through Deregulation*

This action is expected to be an Executive Order 14192 deregulatory action.

### *C. Paperwork Reduction Act (PRA)*

This proposed action does not impose any new information collection burden under the PRA. This proposed action does not change existing information collection requirements.

### *D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden on the small entities subject to the rule. The regulated entities that are subject to the regulations we are proposing to delay in this proposed rule are vehicle manufacturers and importers. The EPA is certifying that this proposed action would not have a significant economic impact on a substantial number of small entities because the proposed action would relieve regulatory burden on all entities, including all small entities, subject to the current rules. The EPA does not anticipate that there would be any significant adverse economic impact on directly regulated small entities as a result of these revisions. The EPA has therefore concluded that this proposed action would, if finalized, relieve regulatory burden for all directly regulated small entities.

### *E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of $100 million (adjusted annually for inflation) or more (in 1995 dollars)] as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

### *F. 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.

### *G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed action does not have Tribal implications as specified in Executive Order 13175. This proposed action would extend the EPA Tier 3 criteria pollutant standards by two years and amend the phase-in schedule for the Tier 4 criteria pollutant standards. If finalized, it would not have substantial direct effects on Tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed action.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is subject to Executive Order 13045 because it is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866, and the EPA believes that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Furthermore, EPA's Policy on Children's Health also applies to this action.[68]

Children are not expected to experience greater ambient concentrations of air pollutants than the general population. Children are more susceptible than adults to air pollution and children tend to spend increased time outdoors. Children make up a substantial fraction of the U.S. population and often have unique factors that contribute to their increased risk of experiencing a health effect from exposures to ambient air pollutants because of their continuous growth and development. Children are more susceptible than adults to many air pollutants because they have (1) a developing respiratory system, (2) increased ventilation rates relative to body mass compared with adults, (3) an increased proportion of oral breathing, particularly in boys, relative to adults, and (4) behaviors that increase chances for exposure. Even before birth, the developing fetus may be exposed to air pollutants through the mother that affect development when the mother is exposed. A qualitative description of the human health and welfare effects related to emissions changes associated with this proposal is provided in Chapter 2 of the DRIA for this proposed rule.

*I. 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.

[68] *See* U.S. Environmental Protection Agency. (2026). 2026 Policy on Children's Health: *https://www.epa.gov/system/files/documents/2021-10/2021-policy-on-childrens-health.pdf.*

*J. National Technology Transfer and Advancement Act (NTTAA)*

This action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, the EPA identified no such standards. Therefore, the EPA has decided to use EPA standards. The following standards appear in the amendatory text of this document: California's 2013 OBD–II and California's 2022 OBD–II. No changes are proposed to this IBR material. California's 2013 OBD–II is referenced in the amendatory text of this document and has already been approved for § 86.1806–17. California's 2022 OBD–II was previously approved for § 86.1806–27, but § 86.1806–27 is proposed to be redesignated as § 86.1806–29.

## VI. Statutory Authority and List of Subjects

Statutory authority for this proposed rule is found at 42 U.S.C. 7401–7675, especially 42 U.S.C. 7521.

**List of Subjects**

*40 CFR Part 85*

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

*40 CFR Part 86*

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

*40 CFR Part 1066*

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

**Lee Zeldin,**

*Administrator.*

For the reasons stated in the preamble, the U.S. Environmental Protection Agency proposes to amend parts 85, 86, and 1066 of title 40, chapter I, of *The Code of Federal Regulations* as follows:

## PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

■ 1. The authority citation for part 85 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 2. Amend § 85.1515 by revising paragraphs (c)(2)(xi) and (c)(6) to read as follows:

**§ 85.1515 Emission standards and test procedures applicable to imported nonconforming motor vehicles and motor vehicle engines.**

* * * * *

(c) * * *

(2) * * *

(xi) Nonconforming vehicles subject to the provisions of 40 CFR part 86, subpart S, originally manufactured in OP years 2032 and later must meet the Tier 4 exhaust emission standards in 40 CFR 86.1811–29, the Tier 3 evaporative emission standards in 86.1813–17, and the refueling emission standards in 40 CFR 86.1813–17(b) and have an OBD system meeting the requirements of 40 CFR 86.1806–29. In cases where the standard allows or requires demonstrating compliance using emission credits, each vehicle imported under this paragraph (c) is subject to the specified fleet average standard.

* * * * *

(6) An ICI may comply with the cold temperature PM standard in 40 CFR 86.1811–29(c) based on an engineering evaluation.

* * * * *

■ 3. Amend § 85.2103 by revising paragraph (d)(1)(v) to read as follows:

**§ 85.2103 Emission warranty.**

* * * * *

(d) * * *

(1) * * *

(v) Batteries serving as a Rechargeable Energy Storage System for electric vehicles and plug-in hybrid electric vehicles, along with all components needed to charge the system, store energy, and transmit power to move the vehicle. This paragraph (d)(1)(v) is optional before model year 2027 for LDV, LDT1, and LDT2. This paragraph (d)(1)(v) is optional for LDT3, LDT4, MDPV, and MDVs until they are first certified to Tier 4 NMOG+NOx bin standards under 40 CFR 86.1811–27(b), not later than model year 2031.

* * * * *

## PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 4. The authority citation for part 86 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 5. Amend § 86.1803–01 by revising the definitions for ''Light-duty program vehicle'', ''Light-duty truck'', ''Medium-duty passenger vehicle'', ''Medium-duty vehicle'', and ''Tier 4'' to read as follows:

**§ 86.1803–01 Definitions.**

* * * * *

*Light-duty program vehicle* means any medium-duty passenger vehicle and any vehicle subject to standards under this subpart that is not a heavy-duty vehicle.

*Light-duty truck* has one of the following meanings:

(1) Except as specified in paragraph (2) of this definition, light-duty truck means any motor vehicle that is not a heavy-duty vehicle, but is:

(i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(iii) Available with special features enabling off-street or off-highway operation and use.

(2) Starting in model year 2029, light-duty truck has the meaning given for ''Light truck'' in 40 CFR 600.002. Vehicles that qualify as emergency vehicles for any reason under § 86.1803–01 are light-duty trucks if they are derived from light-duty trucks.

* * * * *

*Medium-duty passenger vehicle* (MDPV) has one of the following meanings:

(1) Except as specified in paragraph (2) of this definition, Medium-duty passenger vehicle means any heavy-duty vehicle (as defined in this subpart) with a gross vehicle weight rating (GVWR) of less than 10,000 pounds that is designed primarily for the transportation of persons. The MDPV definition does not include any vehicle which:

(i) Is an ''incomplete vehicle'' as defined in this subpart; or

(ii) Has a seating capacity of more than 12 persons; or

(iii) Is designed for more than 9 persons in seating rearward of the driver's seat; or

(iv) Is equipped with an open cargo area (for example, a pick-up truck box or bed) of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition.

(2) Starting with model year 2029, or earlier at the manufacturer's discretion, Medium-duty passenger vehicle means any heavy-duty vehicle subject to standards under this subpart that is designed primarily for the transportation of persons, with seating rearward of the driver, except that the MDPV definition does not include any vehicle that has any of the following characteristics:

(i) Is an ''incomplete vehicle'' as defined in this subpart.

(ii) Has a seating capacity of more than 12 persons.

(iii) Is designed for more than 9 persons in seating rearward of the driver's seat.

(iv) Is equipped with an open cargo area (for example, a pick-up truck box or bed) with an interior length of 72.0 inches or more for vehicles above 9,500 pounds GVWR with a work factor above 4,500 pounds. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition. For purposes of this definition, measure the cargo area's interior length from front to back at floor level with all gates and doors closed.

(v) Is equipped with an open cargo area with an interior length of 94.0 inches or more for vehicles at or below 9,500 pounds GVWR and for all vehicles with a work factor at or below 4,500 pounds.

(vi) Is a van in a configuration with greater cargo-carrying volume than passenger-carrying volume at the point of first retail sale. Determine cargo-carrying volume accounting for any installed second-row seating, even if the manufacturer has not described that as an available feature.

*Medium-duty vehicle* means any heavy-duty vehicle subject to standards under this subpart, excluding medium-duty passenger vehicles.

* * * * *

*Tier 4* means relating to the Tier 4 emission standards described in § 86.1811–29. Note that a Tier 4 vehicle continues to be subject to Tier 3 evaporative emission standards.

* * * * *

■ 6. Amend § 86.1805–17 by revising paragraph (d) to read as follows:

**§ 86.1805–17 Useful life.**

* * * * *

(d) *Criteria pollutants.* The useful life provisions of this paragraph (d) apply for all emission standards not covered by paragraph (b) or (c) of this section. This paragraph (d) applies for the cold temperature emission standards in § 86.1811–29(c). Except as specified in paragraph (f) of this section and in §§ 86.1811–17, 86.1813–17, and 86.1816–18, the useful life for LDT2, HLDT, MDPV, and HDV is 15 years or 150,000 miles. The useful life for LDV and LDT1 is 10 years or 120,000 miles. Manufacturers may optionally certify LDV and LDT1 to a useful life of 15 years or 150,000 miles, in which case the longer useful life would apply for all the standards and requirements covered by this paragraph (d).

* * * * *

■ 7. Amend § 86.1806–17 by revising the introductory text and paragraph (a) introductory text to read as follows:

**§ 86.1806–17 Onboard diagnostics.**

Model year 2017 and later vehicles must have onboard diagnostic (OBD) systems as described in this section. OBD systems must generally detect malfunctions in the emission control system, store trouble codes corresponding to detected malfunctions, and alert operators appropriately.

(a) Vehicles must comply with the 2013 OBD requirements adopted for California as described in this paragraph (a). California's 2013 OBD–II requirements are part of Title 13, § 1968.2 of the California Code of Regulations, approved on July 31, 2013 (incorporated by reference in § 86.1). We may approve your request to certify an OBD system meeting some or all provisions from a later version of California's OBD requirements if you demonstrate that the provisions from the later version comply with the intent of this section. The following clarifications and exceptions apply for vehicles certified under this subpart:

* * * * *

■ 8. Redesignate § 86.1806–27 as § 86.1806–29 and amend the redesignated section by revising the introductory text and paragraph (g)(1) to read as follows:

**§ 86.1806–29 Onboard diagnostics.**

Model year 2029 and later vehicles must have onboard diagnostic (OBD) systems as described in this section. OBD systems must generally detect malfunctions in the emission control system, store trouble codes corresponding to detected malfunctions, and alert operators appropriately. Vehicles may optionally comply with the requirements of this section instead of the requirements of § 86.1806–17 before model year 2029.

(a) Vehicles must comply with the 2022 OBD requirements adopted for California as described in this paragraph (a). California's 2022 OBD–II requirements are part of Title 13, section 1968.2 of the California Code of Regulations, operative November 30, 2022 (incorporated by reference, see § 86.1). We may approve your request to certify an OBD system meeting a complete later version of California's OBD requirements if you demonstrate that it complies with the intent of this section. The following clarifications and exceptions apply for vehicles certified under this subpart:

(g) * * *

(1) Manufacturers may delay complying with all the requirements of

this section, and instead meet all the requirements that apply under § 86.1806–17 for LDT3, LDT4, MDPV, and MDVs any vehicles above 6,000 pounds GVWR that are not yet subject to all the Tier 4 standards in § 86.1811–29.

* * * * *

■ 9. Amend § 86.1811–17 by revising paragraph (h)(1) to read as follows:

**§ 86.1811–17 Exhaust emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.**

* * * * *

(h) *Small-volume manufacturers.* Small-volume manufacturers may use the following Tier 3 phase-in provisions:

(1) Instead of the fleet-average FTP standards for NMOG+NOx specified in this section, small-volume manufacturers may meet alternate fleet-average standards of 0.125 g/mile through model year 2021, and 0.051 g/mile for model years 2022 through 2028. The following additional provisions apply for vehicles certified under this paragraph (h)(1):

(i) Vehicles are subject to exhaust emission standards over the useful life as specified in § 86.1805–12 through model year 2021, and as specified in this section starting in model year 2022.

(ii) Gasoline-fueled vehicles may use the E0 test fuel specified in § 86.113–04 for vehicles certified to bins higher than Bin 70 through model year 2021.

(iii) Vehicles certified under this paragraph (h)(1) may generate emission credits and they may use banked or traded emission credits relative to the alternate fleet-average FTP standard for NMOG+NOx only in model years 2022 through 2028.

(iv) Vehicles are subject to all the other requirements specified in this section.

* * * * *

■ 10. Redesignate § 86.1811–27 as § 86.1811–29 and amend the redesignated section by revising paragraphs (a) introductory text, (b)(2), (b)(4)(ii), (b)(5)(ii), (b)(6), and (f) to read as follows:

**§ 86.1811–29 Criteria exhaust emission standards.**

(a) *Applicability and general provisions.* The criteria exhaust emission standards of this section apply for both light-duty program vehicles and medium-duty vehicles, starting with model year 2029.

* * * * *

(b) *Exhaust emission standards for 25 and 35°C testing.* Exhaust emissions may not exceed standards over several driving cycles as follows:

* * * * *

(2) Fully phased-in standards apply as specified in the following table:

TABLE 1—TO PARAGRAPH (b)(2)—FULLY PHASED-IN TIER 4 CRITERIA EXHAUST EMISSION STANDARDS[a]

| | NMOG+NOx (mg/mile)[b] | PM (mg/mile)[c] | CO (g/mile)[d] | Formaldehyde (mg/mile)[e] |
|---|---|---|---|---|
| Light-duty program vehicles | 15 | 0.5 | 1.7 | 4 |
| Medium-duty vehicles | 75 | 0.5 | 3.2 | 6 |

[a] Paragraphs (b)(6) and (f) of this section describe how these standards phase in for model year 2029 and later vehicles.
[b] The NMOG+NOx standards apply on a fleet-average basis using discrete bin standards as described in paragraphs (b)(4) and (6) of this section.
[c] PM standards do not apply for the SC03, HFET, and ACC II driving cycles specified in paragraphs (b)(1)(ii)(C) through (G) of this section.
[d] Alternative CO standards of 9.6 and 25 g/mile apply for the US06 driving cycle for light-duty program vehicles and medium-duty vehicles, respectively. CO standards do not apply for the ACC II driving cycles specified in paragraph (b)(1)(ii)(E) through (G) of this section.
[e] Formaldehyde standards apply only for the FTP driving cycle.

* * * * *

(4) * * *

(ii) Select one of the identified values from table 2 of this section for demonstrating that your fleet average emission level for light-duty program vehicles complies with the fleet average NMOG+$NO_X$ emission standard. These FEL values define emission bins that also determine corresponding emission standards for NMOG+$NO_X$ emission standards for ACC II driving cycles, as follows:

TABLE 2 TO PARAGRAPH (b)(4)(ii)—TIER 4 NMOG+$NO_X$ BIN STANDARDS FOR LIGHT-DUTY PROGRAM VEHICLES

[mg/mile]

| FEL name | FTP, US06, SC03, HFET | ACC II—Mid-temperature intermediate soak (3–12 hours) | ACC II—Mid-temperature intermediate soak (40 minutes)[a] | ACC II—Mid-temperature intermediate soak (10 minutes) | ACC II—Early driveaway[b] | ACC II—High-power PHEV engine starts[b c] |
|---|---|---|---|---|---|---|
| Bin 70 | 70 | 70 | 54 | 35 | 82 | 200 |
| Bin 65 | 65 | 65 | 50 | 33 | 77 | 188 |
| Bin 60 | 60 | 60 | 46 | 30 | 72 | 175 |
| Bin 55 | 55 | 55 | 42 | 28 | 67 | 163 |
| Bin 50 | 50 | 50 | 38 | 25 | 62 | 150 |
| Bin 45 | 45 | 45 | 35 | 23 | 57 | 138 |
| Bin 40 | 40 | 40 | 31 | 20 | 52 | 125 |
| Bin 35 | 35 | 35 | 27 | 18 | 47 | 113 |
| Bin 30 | 30 | 30 | 23 | 15 | 42 | 100 |
| Bin 25 | 25 | 25 | 19 | 13 | 37 | 84 |
| Bin 20 | 20 | 20 | 15 | 10 | 32 | 67 |
| Bin 15 | 15 | 15 | 12 | 8 | 27 | 51 |
| Bin 10 | 10 | 10 | 8 | 5 | 22 | 34 |
| Bin 5 | 5 | 5 | 4 | 3 | 17 | 17 |

TABLE 2 TO PARAGRAPH (b)(4)(ii)—TIER 4 NMOG+$NO_X$ BIN STANDARDS FOR LIGHT-DUTY PROGRAM VEHICLES—Continued

[mg/mile]

| FEL name | FTP, US06, SC03, HFET | ACC II—Mid-temperature intermediate soak (3–12 hours) | ACC II—Mid-temperature intermediate soak (40 minutes) [a] | ACC II—Mid-temperature intermediate soak (10 minutes) | ACC II—Early driveaway [b] | ACC II—High-power PHEV engine starts [b c] |
|---|---|---|---|---|---|---|
| Bin 0 | 0 | | | | | |

[a] Calculate the bin standard for a soak time between 10 and 40 minutes based on a linear interpolation between the corresponding bin values for a 10-minute soak and a 40-minute soak. Similarly, calculate the bin standard for a soak time between 40 minutes and 3 hours based on a linear interpolation between the corresponding bin values for a 40-minute soak and a 3-hour soak.

[b] Qualifying vehicles are exempt from standards for early driveaway and high-power PHEV engine starts as described in paragraph (b)(5) of this section.

[c] Alternative standards apply for high-power PHEV engine starts for model year 2029 as described in paragraph (b)(6)(v) of this section.

* * * * *

(5) * * *

(ii) Vehicles are exempt from the ACC II bin standards for high-power PHEV engine starts if their all-electric range on the cold-start US06 driving cycles is at or above 10 miles for model year 2029, and at or above 40 miles for model year 2030 and later.

(6) The Tier 4 standards phase in over several years, as follows:

(i) *LDV, LDT1, and LDT2.* Include all LDV, LDT1, and LDT2 in the calculation to comply with the Tier 4 fleet average NMOG+$NO_X$ standard for 25 °C testing in paragraph (b)(2) of this section. You must meet other Tier 4 requirements with 60 and 100 percent of your projected nationwide production volumes in model years 2029 and 2030, respectively. A vehicle counts toward meeting the phase-in percentage if it meets all the requirements described in this paragraph (b) and in paragraph (c) of this section. Fleet average NMOG+$NO_X$ standards apply as follows for model year 2029 through 2032 light-duty program vehicles:

TABLE 3 TO PARAGRAPH (b)(6)(i)—DECLINING FLEET AVERAGE NMOG+$NO_X$ STANDARDS FOR LDV, LDT1, AND LDT2

| Model year | Fleet average NMOG+$NO_X$ standard (mg/mile) |
|---|---|
| 2029 | 21 |
| 2030 | 19 |
| 2031 | 17 |
| 2032 | 15 |

(ii) *Default phase-in for LDT3, LDT4, MDPV, and MDV.* The default approach for phasing in the Tier 4 standards for LDT3, LDT4, MDPV, and MDV is for all those vehicles to meet the fully phased in Tier 4 standards of this section starting in model year 2030 for LDT3, LDT4, and MDPV and in model year 2031 for MDV. Manufacturers using this default phase-in for medium-duty vehicles may not use credits generated from earlier model years for demonstrating compliance with the Tier 4 NMOG+$NO_X$ standards under this paragraph (b).

(iii) *Alternative early phase-in for LDT3, LDT4, MDPV, and MDV.* Manufacturers may use the following alternative early phase-in provisions to transition to the Tier 4 exhaust emission standards on an earlier schedule for LDT3, LDT4, MDPV, and MDV:

(A) If you select the alternative early phase-in for LDT3, LDT4, and MDPV, you must demonstrate that you meet the phase-in requirements in paragraph (b)(6)(i) of this section based on all your light-duty program vehicles.

(B) If you select the alternative early phase-in for medium-duty vehicles, include all medium-duty vehicles in the calculation to comply with the Tier 4 fleet average NMOG+$NO_X$ standard starting in model year 2029. You must meet other Tier 4 requirements with 60, 80, and 100 percent of a manufacturer's projected nationwide production volumes in model years 2029 through 2031, respectively. A vehicle counts toward meeting the phase-in percentage if it meets all the requirements described in this paragraph (b) and in paragraph (c) of this section. Medium-duty vehicles complying with the alternative early phase-in are subject to the following fleet average NMOG+$NO_X$ standards for model years 2029 through 2033:

TABLE 4 TO PARAGRAPH (b)(6)(iii)(B)—DECLINING FLEET AVERAGE NMOG+$NO_X$ STANDARDS FOR MEDIUM-DUTY VEHICLES

| Model year | Fleet average NMOG+$NO_X$ standard (mg/mile) |
|---|---|
| 2029 | 140 |

TABLE 4 TO PARAGRAPH (b)(6)(iii)(B)—DECLINING FLEET AVERAGE NMOG+$NO_X$ STANDARDS FOR MEDIUM-DUTY VEHICLES—Continued

| Model year | Fleet average NMOG+$NO_X$ standard (mg/mile) |
|---|---|
| 2030 | 120 |
| 2031 | 100 |
| 2032 | 80 |
| 2033 | 75 |

(C) If you select the alternative early phase-in but are unable to meet all the requirements that apply in model year 2029 for light-duty program vehicles and either model year 2029 or 2030 for medium-duty vehicles, you may switch to the default phase-in. Switching to the default phase-in does not affect certification or compliance obligations for model years before you switch to the default phase-in.

(iv) *Interim Tier 4 vehicles.* Vehicles not meeting all the requirements of this section during the phase-in are considered ''interim Tier 4 vehicles''. Interim Tier 4 vehicles are subject to all the requirements of this subpart that apply for Tier 3 vehicles except for the fleet average FTP standard for NMOG+$NO_X$ emissions in §§ 86.1811–17 and 86.1816–18. Note that Interim Tier 4 vehicles also remain subject to the fleet average SFTP and HD–SFTP standards for NMOG+$NO_X$ emissions in §§ 86.1811–17 and 86.1816–18, respectively. Interim Tier 4 vehicles may certify to the 25 °C fleet average NMOG+$NO_X$ standard under this section using all available Tier 3 bins under §§ 86.1811–17 and 86.1816–18. Interim Tier 4 vehicles are subject to the whole collection of Tier 3 bin standards, and they are not subject to any of the Tier 4 bin standards specified in this section. Note that manufacturers complying with the default phase-in

specified in paragraph (b)(6)(ii) of this section for Interim Tier 4 LDT3, LDT4, and MDPV will need to meet a Tier 3 fleet average NMOG+$NO_X$ standard in model year 2029, while in that same year LDV, LDT1, and LDT2 will need to meet a Tier 4 fleet average NMOG+$NO_X$ standard. Note that emission credits from those Tier 3 and Tier 4 light-duty program vehicles remain in the same averaging set.

(v) *Phase-in for high-power PHEV engine starts.* The following bin standards apply for high-power PHEV engine starts in model year 2029 instead of the analogous standards specified in paragraph (b)(4)(ii) of this section:

TABLE 5 TO PARAGRAPH (b)(6)(v)—MODEL YEAR 2029 BIN STANDARDS FOR HIGH-POWER PHEV ENGINE STARTS

| FEL name | ACC II—High-power PHEV engine starts (mg/mile) |
|---|---|
| Bin 70 | 320 |
| Bin 65 | 300 |
| Bin 60 | 280 |
| Bin 55 | 260 |
| Bin 50 | 240 |
| Bin 45 | 220 |
| Bin 40 | 200 |
| Bin 35 | 175 |
| Bin 30 | 150 |
| Bin 25 | 125 |
| Bin 20 | 100 |
| Bin 15 | 75 |
| Bin 10 | 50 |
| Bin 5 | 25 |

(vi) *MDPV.* Any vehicle that becomes an MDPV as a result of the revised definition in § 86.1803–01 starting in model year 2029 may remain subject to the heavy-duty Tier 3 standards in § 86.1816–18 under the default phase-in specified in paragraph (b)(6)(ii) of this section for model years 2029 and 2030.

(vii) *Recordkeeping.* Keep records as needed to show that you meet the requirements specified in this paragraph (b) for phasing in standards and for complying with declining fleet average standards.

* * * * *

(f) *Small-volume manufacturers.* Small-volume manufacturers may use the following phase-in provisions for light-duty program vehicles:

(1) Instead of the 25°C fleet average NMOG+NOx standards specified in this section, small-volume manufacturers may meet alternate fleet average standards of 30 mg/mile for model years 2029 through 2031. The 15 mg/mile standard applies starting in model year 2032.

(2) Instead of the phase-in specified in paragraph (b)(6)(i) of this section for all requirements other than the 25°C fleet average NMOG+NOx standards, small-volume manufacturers may comply with all those other requirements starting in model year 2032.

■ 11. Amend § 86.1816–18 by revising paragraphs (a) introductory text and (b)(14) introductory text to read as follows:

**§ 86.1816–18 Emission standards for heavy-duty vehicles.**

(a) *Applicability and general provisions.* This section describes Tier 3 exhaust emission standards for complete heavy-duty vehicles. These standards are optional for incomplete heavy-duty vehicles and for heavy-duty vehicles above 14,000 pounds GVWR as described in § 86.1801–03. See § 86.1813–17 for evaporative and refueling emission standards. This section starts to apply in model year 2018, except that the provisions may apply to vehicles before model year 2018 as specified in paragraph (b)(11) of this section. This section applies for model year 2029 and later vehicles only as specified in § 86.1811–29. Separate requirements apply for MDPV as specified in § 86.1811–17. See subpart A of this part for requirements that apply for incomplete heavy-duty vehicles and for heavy-duty engines certified independent of the chassis. The following general provisions apply:

* * * * *

(b) * * *

(14) Starting in model year 2029, you may certify vehicles using the following transitional Tier 4 bins as part of the compliance demonstration for meeting the Tier 4 declining fleet average NMOG+NOx standard in § 86.1811–29(b)(6):

* * * * *

■ 12. Amend § 86.1823–08 by revising paragraph (f)(1)(iv) introductory text to read as follows:

**§ 86.1823–08 Durability demonstration procedures for exhaust emissions.**

* * * * *

(f) * * *

(1) * * *

(iv) For Tier 4 vehicles, the DF calculated by these procedures may be used for determining compliance with all the standards identified in § 86.1811–29. At the manufacturer's option and using procedures approved by the Administrator, manufacturers may calculate a separate DF for the following standards and driving schedules:

* * * * *

■ 13. Amend § 86.1827–01 by revising paragraph (a)(5) to read as follows:

**§ 86.1827–01 Test group determination.**

* * * * *

(a) * * *

(5) Subject to the same criteria emission standards, or FEL in the case of cold temperature NMHC or NMOG+NOx standards, except that a manufacturer may request to group vehicles into the same test group as vehicles subject to more stringent standards, so long as all the vehicles within the test group are certified to the most stringent standards applicable to any vehicle within that test group. For example, manufacturers may include medium-duty vehicles at or below 22,000 pounds GCWR in the same test group with medium-duty vehicles above 22,000 pounds GCWR, but all vehicles included in the test group are then subject to the off-cycle emission standards and testing requirements described in § 86.1811–29(e). Light-duty trucks and light-duty vehicles may be included in the same test group if all vehicles in the test group are subject to the same criteria exhaust emission standards.

* * * * *

■ 14. Amend § 86.1829–15 by revising paragraphs (b)(2) and (3), (d)(1) introductory text, and (d)(8) and removing paragraph (d)(9). The revisions read as follows:

**§ 86.1829–15 Durability and emission testing requirements; waivers.**

* * * * *

(b) * * *

(2) Test vehicles as follows using the test procedures in 40 CFR part 1066 to demonstrate compliance with cold temperature exhaust emission standards:

(i) For Tier 3 and Interim Tier 4 vehicles, test one EDV in each durability group.

(ii) For Tier 4 final vehicles, test one EDV in each test group.

(3) Test one EDV in each test group to the discrete mid-temperature intermediate soak standard for a 40-minute soak as identified in § 86.1811–29.

* * * * *

(d) * * *

(1) For vehicles subject to the Tier 3 p.m. standards in § 86.1811–17 (not the Tier 4 p.m. standards in § 86.1811–29), a manufacturer may provide a statement in the application for certification that vehicles comply with applicable PM standards instead of submitting PM test data for a certain number of vehicles. However, each manufacturer must test

vehicles from a minimum number of durability groups as follows:

* * * * *

(8) Manufacturers may provide a statement in the application for certification that medium-duty vehicles above 22,000 pounds GCWR comply with the off-cycle emission standards in § 86.1811–29(e) for all normal operation and use when tested as specified. Describe in the application for certification under § 86.1844–01(d)(8) any relevant testing, engineering analysis, or other information in sufficient detail to support the statement. We may direct you to include emission measurements representing typical engine in-use operation at a range of ambient conditions. For example, we may specify certain transient and steady-state engine operation that is typical for your vehicles. Also describe the procedure you used to determine a reference $CO_2$ emission rate, $e_{CO2FTPFCL}$, under § 86.1845–04(h)(6).

(9) [Reserved]

* * * * *

■ 15. Amend § 86.1838–01 by revising paragraph (b)(1)(i)(A) to read as follows:

**§ 86.1838–01 Small-volume manufacturer certification procedures.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) At or below 5,000 units for the Tier 3 standards described in §§ 86.1811–17, 86.1813–17, and 86.1816–18 and the Tier 4 standards described in § 86.1811–29. This volume threshold applies for phasing in the Tier 3 and Tier 4 standards and for determining the corresponding deterioration factors.

* * * * *

■ 16. Amend § 86.1844–01 by revising paragraph (d)(11)(iv) to read as follows:

**§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.**

* * * * *

(d) * * *

(11) * * *

(iv) For Tier 4 vehicles with spark-ignition engines, describe how AECDs comply with the requirements of § 86.1811–29(d).

* * * * *

■ 17. Amend § 86.1845–04 by revising paragraph (h) introductory text to read as follows:

**§ 86.1845–04 Manufacturer in-use verification testing requirements.**

* * * * *

(h) *Off-cycle testing for high-GCWR medium-duty vehicles.* Medium-duty vehicles that are subject to off-cycle standards under § 86.1811–29(e) are subject to in-use testing requirements described in 40 CFR part 1036, subpart E, and 40 CFR 1036.530, with the following exceptions and clarifications:

* * * * *

■ 18. Amend § 86.1860–17 by revising paragraph (a) to read as follows:

**§ 86.1860–17 How to comply with the Tier 3 and Tier 4 fleet average standards.**

(a) You must show that you meet the applicable Tier 3 fleet average NMOG+$NO_X$ standards from §§ 86.1811–17 and 86.1816–18, the Tier 3 fleet average evaporative emission standards from § 86.1813–17, and the Tier 4 fleet average NMOG+$NO_X$ standards from § 86.1811–29 as described in this section. Note that separate fleet average calculations are required for Tier 3 FTP and SFTP exhaust emission standards under § 86.1811–17.

* * * * *

■ 19. Amend § 86.1861–17 by revising paragraphs (b)(5) and (b)(6) introductory text to read as follows:

**§ 86.1861–17 How do the NMOG+$NO_X$ and evaporative emission credit programs work?**

* * * * *

(b) * * *

(5) Tier 3 credits for NMOG+$NO_X$ may be used to demonstrate compliance with Tier 4 standards without adjustment, except as specified in § 86.1811–29(b)(6)(ii).

(6) A manufacturer may generate NMOG+$NO_X$ credits from model year 2029 through 2032 electric vehicles that qualify as MDPV and use those credits for certifying medium-duty vehicles, as follows:

* * * * *

■ 20. Amend § 86.1862–04 by revising paragraph (a)(1) to read as follows:

**§ 86.1862–04 Maintenance of records and submittal of information relevant to compliance with fleet average standards.**

(a) * * *

(1) Tier 4 criteria exhaust emission standards, including cold temperature NMOG+$NO_X$ standards, in § 86.1811–29.

* * * * *

## PART 1066—VEHICLE–TESTING PROCEDURES

■ 21. The authority citation for part 1066 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**§ 1066.801 Applicability and general provisions.**

* * * * *

(c) * * *

(1) * * *

(i) The FTP consists of one Urban Dynamometer Driving Schedule (UDDS) as specified in paragraph (a) of appendix I to 40 CFR part 86, followed by a 10-minute soak with the engine off and repeat driving through the first 505 seconds of the UDDS. Note that the UDDS represents about 7.5 miles of driving in an urban area. Engine startup (with all accessories turned off), operation over the initial UDDS, and engine shutdown make a complete cold-start test. The hot-start test consists of the first 505 seconds of the UDDS following the 10-minute soak and a hot-running portion of the UDDS after the first 505 seconds. The first 505 seconds of the UDDS is considered the transient portion; the remainder of the UDDS is considered the stabilized (or hot-stabilized) portion. The hot-stabilized portion for the hot-start test is generally measured during the cold-start test; however, in certain cases, the hot-start test may involve a second full UDDS following the 10-minute soak, rather than repeating only the first 505 seconds as described in § 1066.815. These FTP provisions and sampling options apply equally for cold temperature testing as described in paragraph (c)(6) of this section.

* * * * *

■ 22. Amend § 1066.815 by revising paragraphs (a) through (c) to read as follows:

**§ 1066.815 Exhaust emission test procedures for FTP testing.**

(a) *General.* The FTP exhaust emission test sequence for −7 °C and 25 °C testing consists of a cold-start test and a hot-start test as described in § 1066.801. Except as specified, the same procedures apply for gaseous emission measurements you use to calculate fuel economy.

(b) *PM sampling options.* Collect PM using any of the procedures specified in paragraphs (b)(1) through (5) of this section and use the corresponding equation in § 1066.820 to calculate FTP composite emissions, except that you must use the procedures specified in paragraph (b)(7) of this section for HEV testing at 25 °C. Testing must meet the requirements related to filter face velocity as described in § 1066.110(b)(2)(iii)(C), except as specified in paragraphs (b)(5) and (6) of this section. For procedures involving flow weighting, set the filter face velocity to a weighting target of 1.0 to meet the requirements of § 1066.110(b)(2)(iii)(C). Allow filter face velocity to decrease as a percentage of the weighting factor if the weighting

factor is less than 1.0 and do not change the nominal CVS flowrates or secondary dilution ratios between FTP or UDDS test intervals. Use the appropriate equations in § 1066.610 to show that you meet the dilution factor requirements of § 1066.110(b)(2)(iii)(B). If you collect PM using the procedures specified in paragraph (b)(5) or (6) of this section, the residence time requirements in 40 CFR 1065.140(e)(3) apply, except that you may exceed an overall residence time of 5.5 s for sample flow rates below the highest expected sample flow rate.

(1) You may collect a separate PM sample for transient and stabilized portions of the cold-start UDDS and the hot-start UDDS with three bags. Use the stabilized portion of the cold-start test (bag 2) in place of the stabilized portion of the hot-start test (bag 4).

(2) You may collect a separate PM sample for transient and stabilized portions of the cold-start UDDS and the hot-start UDDS with four bags.

(3) You may collect PM on one filter over the cold-start UDDS and on a separate filter over the hot-start UDDS.

(4) You may collect PM on one filter over the cold-start UDDS (bag 1 and bag 2) and on a separate filter over the 867 seconds of the stabilized portion of the cold-start UDDS and the first 505 seconds of the hot-start UDDS (bag 2 and bag 3). Note that this option involves duplicate measurements during the stabilized portion of the cold-start UDDS.

(5) You may collect PM on a single filter over the cold-start UDDS and the first 505 seconds of the hot-start UDDS using one of the following methods:

(i) Adjust your sampling system flow rate over the filter to weight the filter face velocity over the three intervals of the FTP based on weighting targets of 0.43 for bag 1, 1.0 for bag 2, and 0.57 for bag 3.

(ii) Maintain a constant sampling system flow rate over the filter for all three intervals of the FTP by increasing overall dilution ratios for bag 1 and bag 3. To do this, reduce the sample flow rate from the exhaust (or diluted exhaust) such that the value is reduced to 43% and 57%, respectively, of the bag 2 values. For constant-volume samplers, this requires that you decrease the dilute exhaust sampling rate from the CVS and compensate for that by increasing the amount of secondary dilution air.

(6) You may collect PM on a single filter over the cold-start UDDS and the full hot-start UDDS using one of the following methods:

(i) Adjust your sampling system flow rate over the filter to weight the filter face velocity based on weighting targets of 0.75 for the cold-start UDDS and 1.0 for the hot-start UDDS.

(ii) Maintain a constant sampling system flow rate over the filter for both the cold-start and hot-start UDDS by increasing the overall dilution ratio for the cold-start UDDS. To do this, reduce the sample flow rate from the exhaust (or diluted exhaust) such that the value is reduced to 75% of the hot-start UDDS value. For constant-volume samplers, this requires that you decrease the dilute exhaust sampling rate from the CVS and compensate for that by increasing the amount of secondary dilution air.

(7) For HEV testing at 25 °C, you must operate the vehicle and collect PM over a full cold-start UDDS and a full hot-start UDDS. You may use any of the methods described for four-bag sampling in paragraphs (b)(2) through (6) of this section.

(c) *Gaseous sampling options.* Collect gaseous samples using one of the following procedures:

(1) Except as specified in paragraph (c)(2) of this section, you must collect separate gaseous samples for transient and stabilized portions of the cold-start UDDS (bag 1 and bag 2) and for the transient portion of the hot-start UDDS (bag 3). Do not collect a sample for the stabilized portion of the hot-start test (bag 4), even if testing includes vehicle operation over a full hot-start UDDS. Exceptions for certain circumstances apply as follows:

(2) For HEV testing at 25 °C, you must operate the vehicle over a full cold-start UDDS and a full hot-start UDDS. Collect gaseous samples separately or together for the transient and stabilized portions of each UDDS (bag 1 and bag 2 together or separately, and bag 3 and bag 4 together or separately). Collect gaseous samples as described in paragraph (c)(1) of this section for HEV testing at −7 °C.

* * * * *

■ 23. Amend § 1066.830 by revising paragraph (b) to read as follows:

**§ 1066.820 Composite calculations for FTP exhaust emissions.**

* * * * *

(b) Calculate the final composite gaseous test results as a mass-weighted value, $e_{[\text{emission}]\text{-FTPcomp}}$, in grams per mile using the following equation:

$$e_{[\text{emission}]\text{-FTPcomp}} = 0.43 \cdot \left(\frac{m_{\text{c}}}{D_{\text{ct}} + D_{\text{cs}}}\right) + 0.57 \cdot \left(\frac{m_{\text{h}}}{D_{\text{ht}} + D_{\text{hs}}}\right)$$

Eq. 1066.820-1

Where:

$m_{\text{c}}$ = the combined mass emissions determined from the cold-start UDDS test interval (generally known as bag 1 and bag 2), in grams.

$D_{\text{ct}}$ = the measured driving distance from the transient portion of the cold-start test (bag 1), in miles.

$D_{\text{cs}}$ = the measured driving distance from the stabilized portion of the cold-start test (bag 2), in miles.

$m_{\text{h}}$ = the combined mass emissions determined from the hot-start UDDS test interval in grams. This is the hot-stabilized portion from either the first or second UDDS (bag 2, unless § 1066.815(c) requires you to measure bag 4), in addition to the hot transient portion (bag 3).

$D_{\text{ht}}$ = the measured driving distance from the transient portion of the hot-start test (bag 3), in miles.

$D_{\text{hs}}$ = the measured driving distance from the stabilized portion of the hot-start test (bag 4), in miles. Set $D_{\text{hs}} = D_{\text{cs}}$ for testing where the hot-stabilized portion of the UDDS is not used for emission sampling.

* * * * *

■ 24. Amend § 1066.830 by revising the introductory text to read as follows:

**§ 1066.830 Supplemental Federal Test Procedures; overview.**

Sections 1066.831 and 1066.835 describe the detailed procedures for the Supplemental Federal Test Procedure (SFTP). This testing applies for Tier 3 vehicles subject to the SFTP standards in 40 CFR 86.1811–17 or 86.1816–18. The SFTP test procedure consists of FTP testing and two additional test elements—a sequence of vehicle operation with more aggressive driving and a sequence of vehicle operation that accounts for the impact of the vehicle's air conditioner. Tier 4 vehicles subject to 40 CFR 86.1811–29 must meet

standards for each individual driving cycle.

* * * * *

[FR Doc. 2026–09905 Filed 5–15–26; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 423

**[EPA–HQ–OW–2009–0819; FRL–8794.2–01–OW]**

**RIN 2040–AG41**

## Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category—Unmanaged Combustion Residual Leachate

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or Agency) is proposing a Clean Water Act (CWA) regulation to revise the technology-based effluent limitations guidelines and standards (ELGs) promulgated in the 2024 ''Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category'' (2024 ELG). This proposed regulation for the steam electric power generating point source category applies to unmanaged combustion residual leachate (CRL) at existing sources and is estimated to reduce costs by $446 to $1,090 million dollars annually at a 3 percent discount rate.

**DATES:** Comments must be received on or before June 17, 2026.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OW–2009–0819, by any of the following methods:

*Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

*Email: ow-docket@epa.gov.* Include Docket ID No. EPA–HQ–OW–2009–0819 in the subject line of the message.

*Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Water, Office of Science and Technology, Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

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*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 personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Dr. Paul Shriner, Engineering and Analysis Division Office of Water (Mail Code 4303T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–566–1076; email address: *shriner.paul@epa.gov.* Information about the Steam Electric Effluent Limitations Guidelines and Standards (ELGs) is available online *at https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines.*

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## I. Executive Summary

The EPA is proposing this rule to update requirements that apply to wastewater discharges from steam electric power plants, particularly coal-fired power plants. In 2024, the EPA finalized revisions to the technology-based effluent limitations guidelines and standards (ELGs) for the steam electric power generating point source category that imposed stringent requirements on certain wastewaters from these plants, requiring the facilities not to discharge any pollutants or imposing non-zero numerical limitations on pollutants from certain types of industrial wastewaters (89 FR 40198, May 9, 2024) (hereinafter the ''2024 ELG'').

Subsequent to promulgation of the 2024 ELG, the EPA became aware of new information regarding the retirement status of a number of plants as well as updates some dischargers have made to their wastewater treatment in place. The EPA also identified a flaw in the baseline utilized by the 2024 ELG as it pertains to unmanaged combustion residual leachate (CRL) by omitting capture and pumping costs, an important component of the technology basis. The EPA's revised analysis presented shows these costs imposed by the 2024 ELG are not insignificant. As such, the EPA is concerned about other cost elements that could be impacted by the Agency's assumptions that 100 percent of the contaminated groundwater could in fact be captured and treated, and the Agency's assumptions regarding power plants' ability to achieve the 2024 ELG numerical limitations. The EPA is also concerned that the 2024 ELG may not have fully accounted for the lack of revenue generated by closed utilities, and thus the lack of funding available, to implement treatment in an economically achievable way. In addition, despite the EPA previously acknowledging very little data that characterizes groundwater laden with unmanaged CRL, commenters have not provided any additional data to help characterize this wastestream. In light of the increasing costs, the EPA is now reconsidering the characterization data gap and how it may impact costs.

In the time following the promulgation of the 2024 ELG, the U.S. has experienced extraordinary increases in energy demand, decreases in energy reserves, difficulties in transmission across the electricity grid, increases in energy prices, and heightened concerns about energy reliability. Consequently, in March 2025, EPA Administrator Zeldin announced that the Agency would reconsider 2024 pollution limitations for coal-fired power plants. The EPA identified additional information that showed that, due to supply chain logistical challenges as well as the unique characteristics of each plant's operational needs, the deadlines to comply with the 2024 ELG were infeasible and impractical on a nationwide basis. In late 2025, the EPA issued a final rule that, in part, extended compliance deadlines for many of the zero-discharge requirements in the 2024 ELG and the deadline for facilities to submit a Notice of Planned Participation for the permanent cessation of coal combustion. These compliance deadline extensions gave utilities and permitting authorities the flexibilities needed to ensure affordable and reliable power (90 FR 61328; December 31, 2025) (hereinafter the ''2025 Deadline Extensions Rule''). The 2025 Deadline Extensions Rule did not change the underlying technology bases for the 2024 effluent limitations based on BAT. Subsequent to the 2025 Deadline Extensions Rule, the EPA intended to further evaluate data obtained after the promulgation of the 2024 ELG, as well as data submitted during the 2025 Deadline Extensions Rule public comment period, to determine if further rulemaking for reconsidering the BAT requirements imposed by the 2024 ELG is appropriate.

This proposed rulemaking continues to advance the Trump Administration's commitment to unleash American energy by revising the existing Steam Electric ELG for unmanaged combustion residual leachate to ensure the 2024 ELG does not financially cripple this critical industry or contribute to burdensome energy costs for American families. CRL is leachate from landfills or surface impoundments (collectively called waste management units) that contain coal combustion residuals (CCR). Leachate is composed of liquid, including any suspended or dissolved constituents in the liquid, that has percolated through waste or other materials emplaced in a landfill or that passes through the surface impoundment's containment structure (*e.g.,* bottom, liner, dikes, berms). CRL is typically managed using a liner and leachate-collection system. The primary function of the leachate-collection system is to collect and convey leachate out of the landfill unit and to control the depth of the leachate above the liner. In contrast, many CCR landfills and surface impoundments also have unmanaged CRL, which is distinct from managed CRL. Unmanaged CRL is leachate that is not captured from a leachate-collection system and instead percolates out of the landfill or impoundment unit and into the subsurface. These CRL wastestreams are defined in the current Steam Electric ELGs, and the EPA is using the same definition of unmanaged CRL as it did in the 2024 ELG.

Unmanaged CRL is a complex wastestream from coal-fired power plants. The extent to which unmanaged CRL exists at any given plant is variable and not well documented, the characterization of the unmanaged leachate significantly varies by location, and unmanaged leachate discharges can fluctuate rapidly and extensively. Additionally, unmanaged CRL is one of the more costly wastestreams for coal-fired power plants to manage effectively because, in addition to the treatment technologies themselves that must be sized to accommodate a large volume of flow, a potentially complex and costly system for extracting large volumes [1] of CRL laden wastewater must be installed. This proposal describes the challenges addressing unmanaged CRL, offers a range of regulatory options based on different known technologies, and solicits comment and data on the availability, performance, feasibility, and costs of each proposed option. This proposal only pertains to unmanaged CRL and does not include any proposed changes to managed CRL requirements imposed by the 2024 ELG.

## II. Does this action apply to me?

Entities potentially regulated by this action include:

[1] As discussed later in this preamble, coal ash impoundments containing CRL are typically more than 50 acres in size and more than 20 feet deep. A system for collecting CRL laden groundwater for treatment would need to be sized accordingly.

| Category | Example of regulated entity | North American Industry Classification System (NAICS) Code |
|---|---|---|
| Industry | Electric Power Generation Facilities—Electric Power Generation. | 22111 |
| | Electric Power Generation Facilities—Fossil Fuel Electric Power Generation. | 221112 |

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be regulated by this action. This table includes the types of entities that the EPA is aware could potentially be regulated by this action. Other types of entities not included could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 423.10 (Applicability). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

## III. What is the Agency's authority for taking this action?

The authority for this rulemaking is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including the Clean Water Act (CWA) sections 301, 304(b), 304(g), 307, 402(a), and 501(a); 33 U.S.C. 1311, 1314(b), 1314(g), 1317, 1342(a), and 1361(a).

Unless otherwise provided by law, agencies may reconsider past decisions and revise, replace or repeal a decision so long as the agency provides a reasoned explanation and considers significant reliance interests. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983); *see also Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (a revised rulemaking based ''on a reevaluation of which policy would be better in light of the facts'' is ''well within an agency's discretion,'' and ''[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal'' of its policy choices) (citations omitted). As discussed in section I of this preamble above and as described in further detail below, the EPA is reconsidering the 2024 ELG for unmanaged CRL, in part, because the EPA is concerned that the 2024 ELG may not have relied on appropriately up-to-date and complete data in reaching its decision to regulate unmanaged CRL using technology that the EPA now proposes, based upon new and more complete information, is economically unachievable.

## IV. Background

### *A. Clean Water Act*

Congress passed the Federal Water Pollution Control Act Amendments of 1972, also known as the CWA, to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). The CWA establishes a comprehensive program for protecting our nation's waters. Among its core provisions, the CWA prohibits the direct discharge of pollutants from a point source to waters of the United States (WOTUS), except as authorized under the CWA. Under CWA section 402, discharges may be authorized through a National Pollutant Discharge Elimination System (NPDES) permit. 33 U.S.C. 1342. The CWA also authorizes the EPA to establish nationally applicable, technology-based ELGs for discharges from different categories of point sources, such as industrial, commercial, and public sources. 33 U.S.C. 1311, 1314.

Direct dischargers (*i.e.,* those discharging directly to WOTUS rather than through publicly owned treatment works, or POTWs) must comply with effluent limitations in NPDES permits.[2] Discharges that flow through groundwater before reaching surface waters that are the ''functional equivalent'' of a direct discharge from a point source to a WOTUS are considered direct discharges and must comply with effluent limitations in NPDES permits. *See Cnty. of Maui* v. *Haw. Wildlife Fund,* 590 U.S. 165 (2020). Based upon the applicable effluent limitations guidelines (ELGs) promulgated by the EPA, numeric limitations in NPDES permits are implemented through discharger-specific technology-based effluent limitations (TBELs). CWA sections 301 and 304, 33 U.S.C. 1311 and 1314. If an ELG promulgated by the EPA is inapplicable, then the permitting authority sets TBELs based on its best professional judgment (BPJ). CWA section 402(a)(1)(B), 33 U.S.C. 1342(a)(1)(B); 40 CFR 125.3(c).

The EPA establishes ELGs by regulation for categories of point source dischargers that are based on the degree of control that can be achieved using various levels of pollution control technology. The EPA promulgates national ELGs for major industrial categories for three classes of pollutants: (1) conventional pollutants (*i.e.,* total suspended solids or TSS, oil and grease, biochemical oxygen demand or $BOD_5$, fecal coliform, and pH), as outlined in CWA section 304(a)(4) and 40 CFR 401.16; (2) toxic pollutants (*e.g.,* toxic metals such as arsenic, mercury, selenium, and chromium; toxic organic pollutants such as benzene, benzo-a-pyrene, phenol, and naphthalene), as outlined in CWA section 307(a), 40 CFR 401.15 and 40 CFR part 423 appendix A; and (3) nonconventional pollutants, which are those pollutants that are not categorized as conventional or toxic (*e.g.,* ammonia-N, phosphorus, and total dissolved solids or TDS).

### *B. Relevant Effluent Guidelines*

The EPA develops ELGs that are technology-based regulations for a category of dischargers and are not based on a discharge's effect on water quality. *See, e.g., Sw. Elec. Power Co.* v. *EPA,* 920 F.3d 999, 1005 (5th Cir. 2019) (''[T]he Administrator must require industry, regardless of a discharge's effect on water quality, to employ defined levels of technology to meet effluent limitations.'') (citations and internal quotations omitted). The EPA bases these regulations, in part, on the performance of control and treatment technologies.

There are several TBELs that may apply to a given discharger when issued a NPDES permit under the CWA: four types of standards applicable to direct dischargers, two types of standards applicable to indirect dischargers, and a default site-specific approach. The TBELs relevant to this rulemaking are described in detail below.

#### 1. Best Practicable Control Technology Currently Available

Traditionally, the EPA establishes effluent limitations based on best practicable control technology (BPT) by

[2] Indirect dischargers that discharge through POTWs must comply with pretreatment standards.

considering the average of the best performances of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics. The EPA may promulgate ELGs establishing BPT-based limitations for conventional, toxic, and nonconventional pollutants. In specifying BPT, the EPA looks at a number of factors. The EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of equipment and facilities, the processes employed, engineering aspects of the control technologies, any required process changes, non-water quality environmental impacts (NWQEIs, including energy requirements), and such other factors as the Administrator deems appropriate. *See* CWA section 304(b)(1)(B), 33 U.S.C. 1314(b)(1)(B).

2. Best Available Technology Economically Achievable

BAT represents the second level of stringency for controlling direct discharge of toxic and nonconventional pollutants, after BPT. The U.S. Court of Appeals for the Fifth Circuit has referred to this as the CWA's ''gold standard'' for controlling discharges from existing sources. *Sw. Elec. Power Co.,* 920 F.3d at 1003. In general, BAT represents the best available, economically achievable performance of facilities in the industrial subcategory or category. Consistent with the statutory language, the EPA considers technological availability and economic achievability in determining what level of control represents BAT. CWA section 301(b)(2)(A), 33 U.S.C. 1311(b)(2)(A). Other statutory factors that the EPA considers in assessing BAT are the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, NWQEIs (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(2)(B), 33 U.S.C. 1314(b)(2)(B). The Agency retains considerable discretion in assigning the weight to be accorded each factor. *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1045 (D.C. Cir. 1978). This is especially true for EPA's consideration of NWQEIs. *BP Expl. & Oil, Inc.* v. *EPA,* 66 F.3d 784, 801–02 (6th Cir. 1995). Historically, the EPA has generally determined economic achievability on the basis of the effect of the cost of compliance with BAT limitations on overall industry and subcategory financial conditions. BAT reflects the highest performance in the industry and may reflect a higher level of performance than is currently being achieved in the industry as a whole. *See, e.g., Sw. Elec. Power Co.,* 920 F.3d at 1006; *Am. Paper Inst.* v. *Train,* 543 F.2d 328, 353 (D.C. Cir. 1976); *Am. Frozen Food Inst.* v. *Train,* 539 F.2d 107, 132 (D.C. Cir. 1976). Under this approach, BAT may be based upon process changes or internal controls, even when these technologies are not widespread industry practice. *See Id.* at 132, 140; *Reynolds Metals Co.* v. *EPA,* 760 F.2d 549, 562 (4th Cir. 1985); *Cal. & Hawaiian Sugar Co.* v. *EPA,* 553 F.2d 280, 285–88 (2d Cir. 1977). Courts have previously endorsed this approach. *See Kennecott* v. *EPA,* 780 F.2d 445, 448 (4th Cir. 1985); *see also Sw. Elec. Power Co.,* 920 F.3d at 1031.

3. Best Professional Judgment

In CWA section 301 and the EPA's implementing regulation at 40 CFR 125.3(a) indicate that technology-based treatment requirements under section 301(b) represent the minimum level of control that must be included in an NPDES permit. *See* 33 U.S.C. 1311. Where EPA has not promulgated a BPT or BAT-based limitation applicable to a category or subcategory of dischargers discharging directly into a WOTUS, or where such an EPA-promulgated ELG has been remanded by a court or withdrawn by the EPA, the EPA has provided by regulation that such treatment requirements are to be established by the NPDES permitting authority on a case-by-case basis using the permit writer's BPJ. Under the EPA's regulations, these case-by-case TBELs are developed by permit writers on the basis that CWA section 402(a)(1) authorizes the EPA Administrator to issue a permit that will meet either: all applicable requirements developed under the authority of other sections of the CWA (*e.g.,* technology-based treatment standards, water quality standards, ocean discharge criteria) or, before taking the necessary implementing actions related to those requirements, ''such conditions as the Administrator determines are necessary to carry out the provisions of this Act.'' 33 U.S.C. 1342(a)(1). The regulation at 40 CFR 125.3(c)(2) cites this section of the CWA, stating that technology-based treatment requirements may be imposed in a permit ''on a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable.'' Furthermore, 40 CFR 125.3(c)(3) states that ''[w]here promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Act.'' The factors considered by the permit writer are the same as those that the EPA considers when establishing effluent guidelines. *See* 40 CFR 125.3(d)(1)–( )–3).

*C. 2015 Steam Electric ELG*

1. Summary of the 2015 ELG

On November 3, 2015, the EPA promulgated a rule revising the regulations for the steam electric power generating point source category at 40 CFR part 423. 80 FR 67838 (2015 ELG). The 2015 ELG set the first Federal limitations on the levels of toxic pollutants (*e.g.,* arsenic) and nutrients (*e.g.,* nitrogen) that can be discharged in the steam electric power generating industry's largest sources of wastewater based on technology improvements in the industry over the preceding three decades. Before the 2015 ELG, regulations for the industry were last updated in 1982 and contained only limitations on TSS and oil and grease for the industry's wastestreams with the largest pollutant loadings.

2. Vacatur of Limitations Applicable to CRL and Legacy Wastewater

Electric utilities, environmental groups, and drinking water utilities filed seven petitions for review of the 2015 ELG in various circuit courts. The petitions were consolidated in the U.S. Court of Appeals for the Fifth Circuit as *Southwestern Electric Power Co.* v. *EPA,* Case No. 15–60821. In early 2017, the EPA received two administrative petitions to reconsider the 2015 ELG: one from the Utility Water Act Group (UWAG) and one from the Small Business Administration.

On August 11, 2017, the EPA announced a rulemaking to potentially revise the new, more stringent BAT effluent limitations and pretreatment standards for existing sources (PSES) in the 2015 ELG that apply to flue gas desulfurization wastewater and bottom ash transport water. The Fifth Circuit subsequently granted the EPA's request to sever and hold in abeyance petitioners' claims related to those limitations and standards, and those claims are still in abeyance. With respect to the remaining claims related to limitations applicable to legacy wastewater and CRL, the court issued a decision in 2019 vacating those limitations as arbitrary and capricious under the Administrative Procedure Act and unlawful under the CWA, respectively. *Sw. Elec. Power Co.,* 920 F.3d at 1033. In the case of CRL, the court held that the EPA's setting of BAT

limitations equal to BPT limitations was an impermissible conflation of the two standards, which are supposed to be progressively more stringent, and that the EPA's rationale was not authorized by the statutory factors for determining BAT. *Id.* at 1026. After the court's decision, the EPA announced plans to address the vacated limitations in a later action.

*D. 2020 Steam Electric Reconsideration Rule*

1. Summary of the 2020 ELG

On October 13, 2020, the EPA promulgated the Steam Electric Reconsideration Rule, 85 FR 64650 (2020 ELG). The 2020 ELG changed the technology basis for two wastestreams (FGD wastewater and bottom ash transport water) resulting in revised limitations, created three new subcategories, and revised the technology basis for the voluntary incentives program. The 2020 ELG required most steam electric facilities to comply with the revised effluent limitations ''as soon as possible'' after October 13, 2021, but no later than December 31, 2025. NPDES permitting authorities established the particular applicability date(s) of the new limitations within that range for each facility (except for indirect dischargers) at the time they issued the facility's NPDES permit.

2. 2020 ELG Litigation

Environmental groups filed two petitions for review of the 2020 rule, which were consolidated in the U.S. Court of Appeals for the Fourth Circuit on November 19, 2020, as *Appalachian Voices, et al.* v. *EPA,* No. 20–2187. An industry trade group and certain energy companies moved to intervene in the litigation, which the court authorized on December 3, 2020. On April 8, 2022, the court granted the EPA's motion to place the case into abeyance as a result of a new rulemaking announced in July 2021. The case remains in abeyance.

*E. 2024 Supplemental Steam Electric Rule*

1. Summary of 2024 ELG

On May 9, 2024, as part of a ''suite of final rules'' imposing new requirements on the power generation sector, the EPA promulgated the Steam Electric Supplemental Rule (89 FR 40198) (2024 ELG). This revision of the regulations at 40 CFR part 423 established a zero-discharge limitation for three wastewaters generated at steam electric power plants: flue gas desulfurization wastewater, bottom ash transport water, and CRL. The 2024 ELG also established non-zero numeric discharge limitations on mercury and arsenic from unmanaged CRL, which is a distinct subset of CRL defined in the ELG to include discharges of CRL that the permitting authority determines are the functional equivalent of a direct discharge to a WOTUS through groundwater or discharges of CRL that have leached from a waste management unit into the subsurface and mixed with groundwater before being captured and pumped to the surface for discharge directly to a WOTUS. These mercury and arsenic limitations also applied to a fourth wastestream called legacy wastewater, which is typically discharged from surface impoundments during the closure process, where those surface impoundments had not commenced closure under the EPA's coal combustion residuals (CCR) regulations under the Resource Conservation and Recovery Act as of the effective date of the 2024 ELG.

As a general matter, the Clean Water Act addresses instances in which there are discharges to the jurisdictional waters of the United States (''jurisdictional waters'' or WOTUS). Accordingly, the proposed Steam Electric ELG is designed to address impacts to surface waters (*i.e.,* a WOTUS) from a subset of leachate from coal-fired electric generating utilities that is discharged to a WOTUS:

o discharges of CRL that are the functional equivalent of a direct discharge to a WOTUS through groundwater; or

o discharges of CRL that have leached from a waste management unit into the subsurface and mixed with groundwater before being captured and pumped to the surface for discharge directly to a WOTUS.

By contrast, the CCR rule deals with the disposal units themselves (where they are located, specific design and operating criteria, structural stability requirements, groundwater monitoring and corrective action, closure of the units, etc.) and primarily with their impacts or potential impacts to groundwater.

Discharges covered by an NPDES permit are excluded from the CCR regulations, because such discharges are not ''solid waste'' pursuant to RCRA section 1004(27). The RCRA exclusion only applies to ''industrial discharges that are point sources subject to permits,'' *i.e.,* to the discharges to jurisdictional waters, and not to any activity, including groundwater releases or contaminant migration, that occurs prior to that point. See 40 CFR 261.4(a)(2) (''This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge''). For purposes of the RCRA exclusion, EPA considers the ''actual point source discharge'' to be the point at which a discharge reaches the jurisdictional waters, and not in the groundwater or otherwise prior to the jurisdictional water. Accordingly, the CCR regulations do not apply to the unmanaged CRL regulated under the proposed Steam Electric ELG.

However, by regulating/preventing the release of leachate to groundwater, or requiring corrective action (remediation) of CCR leachate in the groundwater, the CCR rule may secondarily address impacts to surface waters that:

o would otherwise be addressed by the steam electric ELG proposal, and/or

o fall outside of the proposal, because a permitting authority determines the discharge(s) are not the functional equivalent of a direct discharge to a WOTUS through groundwater, or are discharged to a non-WOTUS.

2. 2024 ELG Litigation

A number of parties challenged the 2024 ELG in various petitions that were consolidated before the U.S. Court of Appeals for the Eighth Circuit as *Southwestern Electric Power Co.* v. *EPA,* No. 24–2123. Some petitioners, in part, alleged that EPA arbitrarily inflated the costs of the zero-discharge option for unmanaged CRL, and thus, improperly concluded that zero-discharge technology is not achievable for the unmanaged CRL subcategory, where that technology is available and achievable for other types of leachate discharges. Conversely, other petitioners alleged, in part, that that EPA acted arbitrarily and capriciously by adopting a new subcategory for discharges of unmanaged CRL without defining the universe of regulated entities, explaining how the technology would apply to the vast range of circumstances involving these kinds of discharges, or rationally determining the economic achievability of these limitations. Following a change in administrations, litigation in these cases has been paused while EPA reconsiders the 2024 Rule.

3. Administrative Petitions for Reconsideration of the 2024 ELG and Related Requests

The EPA has received two petitions for reconsideration of the 2024 ELG, one from the Edison Electric Institute (EEI) and one from UWAG.

EEI is a trade association that represents U.S. investor-owned electric companies. On November 13, 2024, EEI

sent a petition to the EPA, which included recommendations to clarify the definition of a ''closed waste management unit,'' and to clarify that BPJ limitations continue to apply at retired plants and that new effluent limitations for unmanaged CRL do not apply to landfills closed by the 2024 ELGs effective date of July 8, 2024 (DCN SE11943). This petition was updated with a supplemental letter from EEI on May 8, 2025, which reiterated recommendations for CRL applicability and included additional recommendations relating to unmanaged CRL (DCN SE11948).

The UWAG is a voluntary non-profit group comprised of individual energy companies and two national trade associations of energy companies: the National Rural Electric Cooperative Association (NRECA) and the American Public Power Association (APPA). NRECA represents nearly 900 local electric cooperatives across the U.S., serving 42 million people and covering 56 percent of the nation's land area. APPA is the national service organization that represents not-for-profit local, State, or other government-owned electric utilities. On February 21, 2025, UWAG sent the Agency a petition for rulemaking to reconsider and repeal the 2024 ELG, as well as administratively stay the 2024 ELG while it is in litigation (DCN SE11944). The petition requests several reviews of the determinations underlying the 2024 ELG, including the 2024 ELG's findings with regard to unmanaged CRL. The petition further expresses concerns related to the unique engineering challenges of ''completely intercepting and capturing any and all CRL leaks, treating them with chemical precipitation to meet the new limit, then discharging the CRL back . . .'' and the potentially exorbitant costs to do so (DCN SE11944).

In addition to these two petitions, on April 25, 2025, the EPA received a request from America's Power, a national trade association representing the U.S. steam electric power plants and its supply chain (DCN SE11903A1). The letter requests that the EPA repeal the zero-discharge requirements of the 2024 ELG and return to the 2020 ELG requirements for CRL, flue gas desulphurization wastewater, and bottom ash transport water.

### *F. 2025 Steam Electric Deadline Extensions Rule*

#### 1. Summary of 2025 Deadline Extensions Rule

On December 23, 2025, the EPA announced a final rule extending several wastewater compliance deadlines for coal-fired power plants. The final action was published December 31, 2025 (90 FR 61328) [3] and provides electricity producers with more time to comply with the 2020 and 2024 ELG deadlines in light of extraordinary increases in electricity demand associated with the resurgence of manufacturing and the artificial intelligence (AI) and data center revolution, and as necessary to meet the national priorities highlighted in Executive Orders issued by President Trump (a discussion of these Executive Orders may be found in the record (DCN SE12125).

In addition to extending certain compliance deadlines related to zero-discharge standards in the 2024 rule, new provisions in the 2025 Deadline Extensions Rule allow permitting authorities the flexibility to extend certain compliance deadlines on a site-specific basis due, for example, to unexpected electricity demand.

The 2025 Deadline Extension Rule did not change the effluent limitations requirements themselves. However, during the rulemaking process for the 2025 Deadline Extensions Rule, the EPA also requested additional data and information on technologies, performance, and technology-based implementation challenges related to the 2024 ELG. The EPA stated this data would be used to inform a future rulemaking to support practical, feasible, and on-the-ground implementations of wastewater pollution discharge limitations.

As a result of the 2025 data call, the EPA received site-specific performance and costs data from Santee Cooper and Longview Power LLC (EPA–HQ–OW–2009–0819–10769 and EPA–HQ–OW–2009–0819–10702, respectively). Both letters raised concerns that the EPA's costing methodology in the 2024 ELG underestimated costs. The cost methodology has been revised for this proposal.

#### 2. 2025 Deadline Extensions Rule Litigation

Legal advocacy groups filed four petitions for review of the 2025 Deadline Extensions Rule in different U.S. Courts of Appeals. *Waterkeeper Alliance, et al.* v. *EPA,* No. 26–128 (2d Cir.); *Appalachian Voices* v. *EPA,* No. 26–1072 (4th Cir.); *Sierra Club* v. *EPA,* No. 26–752 (9th Cir.); *Ctr. for Biological Diversity* v. *EPA,* No. 26–426 (9th Cir.). The petitions have been consolidated in the U.S. Court of Appeals for the Second Circuit, and the litigation is ongoing. *In re: Environmental Protection Agency, Effluent Limitations Guidelines and Standards for the Steam Electric Generating Point Source Category, Deadline Extensions, 90 FR 61328, Published on December 31, 2025,* MCP No. 199 (J.P.M.L. February 10, 2026).

### *G. Disposal of Coal Combustion Residuals From Electric Utilities Final Rule*

#### 1. 2015 CCR Rule

On April 17, 2015, the EPA promulgated the Disposal of Coal Combustion Residuals from Electric Utilities final rule (2015 CCR rule) (80 FR 21302). This rule finalized national regulations to provide a comprehensive set of requirements for the safe disposal of CCR, commonly referred to as coal ash, from steam electric power plants. The 2015 CCR rule established technical requirements for CCR landfills and surface impoundments under subtitle D of the Resource Conservation and Recovery Act (RCRA), the Nation's primary law for regulating solid waste.

#### 2. 2020 Holistic CCR Rules

As a result of the D.C. Circuit Court decisions in *Util. Solid Waste Activities Grp.* v. *EPA,* 901 F.3d 414 (D.C. Cir. 2018) (''*USWAG* decision'' or ''*USWAG*''), and *Waterkeeper All., Inc. et al.* v. *EPA,* No. 18–1289 (D.C. Cir. filed March 13, 2019), the Administrator signed two rules: *A Holistic Approach to Closure Part A: Deadline to Initiate Closure and Enhancing Public Access to Information* (CCR Part A rule) (85 FR 53516, August 28, 2020) on July 29, 2020, and *A Holistic Approach to Closure Part B: Alternate Liner Demonstration* (CCR Part B rule) (85 FR 72506, December 14, 2020) on October 15, 2020. The EPA finalized several amendments to the 2015 CCR rule, which are relevant to the management of the wastewaters covered by this proposed ELG for unmanaged CRL because these wastewaters have historically been co-managed with CCR in the same surface impoundments.

As explained in the 2015 and 2020 ELGs, the ELGs and CCR rules may affect the same electric generating unit or activity at a plant. Therefore, when the EPA finalized the 2015 ELG and 2015 CCR rule, as well as revisions to both regulations in 2020, the Agency coordinated the ELGs and CCR rules to

[3] After publication, the EPA became aware of post-signature typographical errors in the published regulatory text concerning compliance deadlines for pretreatment standards and related reporting recordkeeping requirements in the rule. A corrections document was published January 30, 2026, to ensure that the rule's compliance deadlines and reporting and recordkeeping deadlines match those in the version of the rule signed by the EPA Administrator (91 FR 4016).

minimize the complexity of implementing engineering, financial, and permitting activities. Likewise, the EPA considered the interactions of the ELGs and CCR rules during the development of the 2024 ELG. The EPA's analytic baseline includes the final requirements of the 2015 and 2024 ELG and CCR rules using the most recent data provided under the 2015 CCR rule reporting and recordkeeping requirements.

3. 2024 Legacy CCR Rule

Concurrently with the 2024 ELG, in a separate rulemaking the EPA promulgated in 2024 the Legacy CCR Surface Impoundments and CCR Management Units final rule (2024 Legacy CCR rule). The 2024 Legacy CCR rule established regulatory requirements for inactive CCR surface impoundments at inactive utilities (''legacy CCR surface impoundments'' or ''legacy impoundments'') (80 FR 21302; EPA–HQ–OLEM–2020–0107; FRL–7814–04–OLEM). EPA refers to these rules collectively as the RCRA CCR regulations throughout the remainder of this preamble.

Many of the technical requirements under the RCRA CCR regulations also have associated internet posting requirements that help ensure transparency and provide citizens with information about CCR units in their state. For example, power companies were required to conduct groundwater monitoring requirements for coal ash impoundments and to make the data publicly available starting in March 2018. The EPA maintains a list of the internet sites for facilities posting RCRA CCR compliance information organized alphabetically by state (DCN SE12100). These data cover over 300 coal plants or offsite coal ash disposal areas, including over 750 individual coal ash ponds and landfills and more than 4,600 groundwater monitoring wells.

## V. Steam Electric Power Generating Industry Description and Processes

### *A. General Description of Industry*

The EPA provided general descriptions of the steam electric power generating industry in the 2015 ELG, the 2020 ELG, and the 2024 ELG. The Agency has continued to collect information and update this industry profile. The previous descriptions reflected the known information about the universe of steam electric power plants and incorporated final environmental regulations applicable at that time. For this proposal, the EPA has revised its description of the steam electric power generating industry (and its supporting analyses) to incorporate changes in the plant population and corresponding waste management units, changes in plant retirement status, and updates to wastewater treatment in place. The analyses supporting this proposed ELG rely on an updated baseline that incorporates these changes in the industry and applies the numerical limitations established in the 2024 ELG. The analyses then compare the effect of each of the proposed option requirements for unmanaged CRL to the effect on the baseline (the industry as it exists today with the requirements of the 2024 ELG).

Of the 858 steam electric power plants in the country identified by the EPA, only those coal-fired power plants that discharge unmanaged CRL are expected to incur costs to comply with this proposal. Coal-fired power plants are expected to continue discharging unmanaged CRL from waste management units after ceasing combustion of coal. Such plants may therefore incur costs to comply with this proposal even after retirement.

The EPA determined that between 63 and 111 power plants may be discharging unmanaged CRL based on whether the plants' waste management units are unlined, not clean-closed, or undergoing corrective action. The EPA does not expect that all these landfills and surface impoundments are discharging unmanaged CRL; permitting authorities would ultimately determine whether unmanaged CRL is discharged on a site-specific case-by-case basis. Of these power plants, the EPA has determined that at least seven power plants are currently pumping and treating unmanaged CRL (that is mixed with groundwater) before being captured for discharge directly to a WOTUS. The EPA did not find evidence from available CCR monitoring reports, data reported on installed treatment technologies to meet compliance, or solicited data from industry that additional power plants exist that are pumping and capturing unmanaged CRL at this time. Therefore, these seven plants likely represent the full universe of power plants that are currently pumping and treating unmanaged CRL, and the remaining 104 plants are likely the upper bound number of power plants potentially discharging unmanaged CRL in a manner that permitting authorities could determine are the functional equivalent of a direct discharge to a WOTUS through groundwater. The EPA is only aware of a small number of plants where this determination has been completed. For the remaining plants, the EPA assumes that unmanaged CRL is not currently being pumped and captured and that treatment for unmanaged CRL has not been installed. Therefore, the EPA expects that the costs for treating unmanaged CRL will primarily be incurred by those plants that are determined to be discharging unmanaged CRL as a functional equivalent of a direct discharge, which could include all except the seven plants already directly discharging unmanaged CRL.

### *B. What is unmanaged combustion residuals leachate?*

Under the 2024 ELG, the EPA defined unmanaged CRL at 423.11(ff), which the EPA is continuing to use without change in this proposal. The 2024 ELG specifies two types of unmanaged CRL that are considered distinct from CRL and defined as: (1) discharges of CRL that the permitting authority determines are the functional equivalent of a direct discharge to a WOTUS through groundwater; or (2) discharges of CRL that has leached from a waste management unit into the subsurface and mixed with groundwater before being captured and pumped to the surface for discharge directly to a WOTUS. This section provides a description of how CRL and other wastewaters are generated at a coal-fired power plant.

When a fossil-fuel plant combusts coal, the plant uses a process called flue gas desulfurization (FGD) to remove sulfur dioxide from the exhaust gases. Whether the flue gas desulfurization process is wet or dry, lime or limestone is used to neutralize the acidic gases. The flue gas desulfurization process produces gypsum as a byproduct and generates wastewater. The pollutants in this wastewater vary primarily depending on the coal used as the fuel source, as well as the type of scrubber, the lime composition, and the gypsum-dewatering system. Flue gas desulfurization wastewater is extremely well characterized as discussed further below. After a complex treatment process, the resulting wastewater is discharged to a WOTUS, reused on-site, or evaporated. At plants subject to zero-discharge requirements, treated flue gas desulfurization wastewater is sent to on-site ponds for storage, reused within the plant for other processes such as ash management, or evaporated with the remaining solids sent to a landfill.

CCR waste management units, including landfills and surface impoundments, are areas used by power plants to store, treat, or dispose of coal

ash and related by-products.[4] These waste management units are regulated under RCRA to prevent groundwater contamination. For the purposes of this proposal, surface impoundments are areas designed to store, treat, or dispose of coal ash and wastewater produced by power plants when generating electricity, such as flue gas desulfurization wastewater. The regulatory definition of surface impoundments for purposes of RCRA may be found at 40 CFR 257.53. CCR landfills are defined as ''an area of land or an excavation that contains CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave.'' 40 CFR 257.53. New CCR landfills generally include composite liners and leachate-collection systems. Both types of waste management units can generate wastewater from moisture contained in the material they receive and from precipitation. Wastewater from these waste management units is monitored under various programs, including under the RCRA CCR regulations. For the purposes of assessing unmanaged CRL under this proposed rule the EPA finds that many waste management units have been identified and characterized in public reports available online (see section IV of this preamble for more details).

In addition to the characterization of waste management units, more than 4,600 groundwater monitoring wells have been placed around waste management units under the RCRA CCR regulations, as well as additional monitoring wells attributable to state or local requirements. The RCRA CCR regulations require owners of coal ash units to monitor groundwater for pollutants at least twice a year and annually publish accessible reports detailing the sampling results. These reports must also document statistical analysis, detection monitoring, or corrective actions if levels of ground water contamination are found to be above groundwater protection standards. Thus, the EPA considers that groundwater in the proximity of a waste management unit should be well characterized.

CRL is the wastewater that has passed through coal combustion residuals, generally while the residuals are stored in waste management units. Managed CRL that has been collected from the leachate-collection system of a lined waste management unit is of a finite volume and has characteristics very similar to the wastewater inputs (usually flue gas desulfurization wastewater) to the waste management unit. By contrast, unmanaged CRL is leachate from a waste management unit that is not captured from a leachate-collection system and instead percolates into the subsurface. As discussed earlier, the 2024 ELG defines two situations in which CRL constitutes unmanaged CRL.

### *C. 2024 ELG Baseline Was Likely Incorrect and Has Also Significantly Changed*

Since the promulgation of the 2024 ELG, the EPA has become aware of new information and data demonstrating (1) the existence of an energy crisis, requiring the full use and operation of these steam electric facilities, and (2) changes in the scope of steam electric facilities that plan to remain operational or incur costs under the 2024 ELG.

Much of the information relied upon by the EPA during the 2024 ELG rulemaking process did not anticipate increases in near-term energy demand projections, while more recent information points to an impending, extraordinary spike in energy demand that cannot currently be satisfied by existing power generation. In 2025, the EPA documented several generating facilities that reversed previously announced plans to cease burning coal. Rather, in light of new rising energy demands, these facilities have now decided to continue burning coal.

Additionally, in 2025, the Department of Energy (DOE) issued over a dozen emergency orders to delay the closure of these coal-fired power plants to meet energy demands. For this proposed rule, the EPA expects that even more planned power plant retirements will be impacted and reversed throughout 2026 as a result of the 2025 Deadline Extensions Rule, additional DOE emergency orders will be issued to coal-fired power plants in 2026 and beyond, and that existing coal-fired EGUs will increase coal combusting operations to meet higher energy demands. The EPA further expects that for these reasons, more CCR will be produced and transported to landfills and surface impoundments, and fewer landfills and surface impoundments will be capped or closed. Therefore, the EPA expects discharges of unmanaged leachate to increase relative to the amount of unmanaged CRL discharges anticipated when promulgating the 2024 ELG.

### *D. The Unique Nature of Unmanaged CRL*

There are certain compositional differences between and among different unmanaged CRL originating from different dischargers and mixed with varying types of groundwater with its own unique characteristics that could affect treatment needs for any single discharger. The 2024 ELG assumed that managed CRL and unmanaged CRL would each contain the same pollutants and could be treated to the same numeric limitations, using the same technology, at similar costs. However, unmanaged CRL, by its very nature, permeates through groundwater and may react with, and be affected by, the distinct characteristics of that groundwater and any existing pollutants found therein.

Unmanaged CRL most notably differs from managed CRL because the wastewater has mixed with groundwater. As a result, the volume and pollutant concentrations of unmanaged CRL are heavily influenced by the ambient groundwater through which it passes. The groundwater may have background levels of various pollutants that are distinct from the leachate, but these background levels vary widely from site to site. For example, total arsenic concentrations are frequently under 1 ug/L in groundwater, but concentrations above 10 ug/L are found in 7 percent of sampled wells (DCN SE12121). Indeed, the contaminated volume of groundwater is variable, the direction of the groundwater flow may change throughout the year, and the characterization of the groundwater is highly site-specific. For example, in coastal plain aquifers, saltwater intrusion drastically changes the salinity in the groundwater, and total dissolved solids in the groundwater can range from less than a few hundred ppm to more than several thousand ppm (DCN SE12122).

The extent to which the pollutants that are known to be present in CRL may change through transport in groundwater and, therefore, the actual chemical composition of unmanaged CRL itself is unclear and may vary considerably from any other unmanaged CRL originating from a different discharger. The precise pollutants and concentrations in unmanaged CRL may even vary across different landfills at the same plant. CRL is enriched in oxyanion-forming elements such as arsenic (As), selenium (Se), boron (B), molybdenum (Mo), and vanadium (V), as well as major ions such as sulfate, chloride, and calcium. These pollutants

[4] A mixture of fly ash, bottom ash, gypsum and other coal ash generated by-products, is also known as coal combustion residuals (CCR).

are highly soluble, weakly sorbed under alkaline conditions, and are generally persistent during subsurface transport. CRL itself is typically alkaline and has a pH of 8–12. Interactions with surrounding groundwaters may change the alkalinity, pH, and redox conditions of unmanaged CRL, which may affect its pollutant concentrations. For example, total arsenic has a median concentration of 22 ug/L in impoundment wastewater and a median concentration of 70 ug/L in CRL (DCN SE12123), but the median total arsenic in the CRL/groundwater mix is unknown. The EPA does not have data documenting technology performance with the CRL/groundwater mixture as compared to FGD wastewater or impoundment wastewater. Several comments on the 2024 ELG pointed out this distinction; for example, most of the total arsenic in CRL at three American Electric Power plants is present as arsenate, which is soluble and will not readily settle out after chemical precipitation (EPA–HQ–OW–2009–0819–10671–A1).

Conditions of the site can also contribute to the high variability of pollutants found in unmanaged CRL. Site-specific properties such as site hydrology, hydraulic conductivity, groundwater plume length and age, background contaminants present in groundwater, relative flows and volumes of contributing groundwater, and biogeochemical properties of soils can contribute to high variability in unmanaged CRL composition, and batch laboratory leachate tests to characterize unmanaged CRL often underpredict contaminant release and fail to capture long-term geochemical processes (DCN SE12124). Field-scale monitoring and modeling may provide site-specific hydrogeological data but vary widely from site-to-site because of variability in local hydrological conditions that cannot be assessed on a national level.

As a result of these pollutant and site variations, pump and capture of unmanaged CRL from the subsurface is difficult and requires a thorough analysis of the wastewater and the site conditions to ensure the maximum amount of unmanaged CRL is captured. Even with site-specific design, a pump and capture system is not guaranteed to collect 100 percent of the unmanaged CRL that has leached into groundwater.

Despite this inherent variability of unmanaged CRL, the EPA made several assumptions about the similarities between FGD wastewater, managed CRL, and unmanaged CRL in the 2024 ELG. In promulgating the 2015 ELG, the EPA first determined that CRL from landfills and impoundments included similar types of pollutants as FGD wastewater, and by extension, to waste management unit wastewaters as discussed above. However, the EPA also determined that the pollutants in CRL could vary more widely in concentrations and volumes compared to those in FGD wastewater. Data from the Electric Power Research Institute (EPRI) on untreated FGD water from 36 power plants showed variability attributed to differences in coal composition, operational conditions at each plant, and water circulation and reuse (DCN SE12101). During development of the 2024 ELG, additional data obtained from EPRI showed wastewater characteristics between CRL and FGD wastewater were similar, but nevertheless varied across CCR waste management units due to different types of fuels burned at the plant, duration of pond operation, addition of bottom ash water, types of air pollution controls employed, and ash types (DCN SE11725). The wastewater characterization in the waste management units had the same pollutants that were in the FGD wastewater, but additional variation was observed due to both the presence of other wastes already in the waste management unit and additional inputs such as bottom ash, precipitation, and storm water. Accordingly, the EPA determined that treatment technologies identified for FGD wastewater were generally applicable to CRL but may in some cases require additional pretreatment or a combination of technologies. Such additional treatment technologies could be necessary because of changes to the oxidation state of some FGD pollutants as they transition to the CCR impoundment. For example, a chemical precipitation system that would be very effective at removing particulate arsenic found in FGD wastewater would be significantly less effective at removing dissolved arsenic or soluble arsenate that may be present in CRL. Additionally, the EPA previously recognized that the characterization of wastewater differs within the layers of a CCR impoundment as it is dewatered and prepared for closure (88 FR 18835). Therefore, treatment requirements at a unit that is in the process of closure may also change as closure progresses.

Despite the complexities discussed above, the EPA conducted its analyses in the 2024 ELG under the assumption that pollutants in unmanaged CRL were similar to CRL. Additionally, the EPA assumed that pollutant removals through chemical precipitation for CRL were similar to that of flue gas desulfurization wastewater. The EPA then assumed that pollutant removals through chemical precipitation of unmanaged CRL were similar to that of managed CRL. While FGD wastewater and waste management unit wastewaters demonstrate similar types and forms of pollutants, the same cannot necessarily be said for unmanaged CRL once it has mixed with groundwater. The EPA is aware that mixing with groundwater may result in departure from what is otherwise a very well characterized set of wastestreams, and the EPA received comments further asserting such.

The 2024 ELG did not rely on any data specific to unmanaged CRL to conclude that unmanaged CRL mixed with groundwater would fall within the same ranges of managed CRL evaluated by the EPA. While the EPA received general comments in the 2024 ELG about the possibility of interactions of CRL pollutants mixed into groundwater, commenters did not provide data to demonstrate that CRL mixed into groundwater might result in pollutant concentrations extending beyond the ranges evaluated by the EPA for FGDFGD wastewater or CRL. Similarly, in petitions received after the 2024 ELG and in the 2025 Deadline Extensions Rule data call, the EPA received no data demonstrating the pollutant concentrations in unmanaged CRL were untreatable by the selected BAT technologies. Instead, comments describe ''attenuation,'' such as through adsorption. As the EPA noted in the 2024 rulemaking, adsorption and other attenuation processes would be expected to *remove* pollutants, which means in some cases that chemical precipitation might not be necessary. In other cases, however, additional stages of chemical precipitation treatment may be necessary if the groundwater contains significant concentrations of pollutants from other sources.

### *E. Control and Treatment Technologies*

In general, control and treatment technologies for some wastestreams have continued to advance. Often, these advancements provide plants with additional or alternative approaches for complying with any effluent limitations. In some cases, these advancements have also decreased the associated costs of compliance. For this proposed ELG, the EPA incorporated updated information and evaluated several technologies available to control and treat unmanaged CRL generated by the steam electric power generating industry. See section VII of this preamble for details on updated cost information.

1. Technologies for Treating Unmanaged Combustion Residual Leachate

As described above, in the 2024 ELG the EPA assumed, with little available data, that unmanaged CRL from landfills and impoundments includes similar types of pollutants as both flue gas desulfurization wastewater and managed CRL. As such, the EPA further assumed, with little available data, that certain treatment technologies identified for flue gas desulfurization wastewater and managed CRL could also be used to treat unmanaged CRL. The following describes these potential types of treatment and handling practices for unmanaged CRL:

- *Chemical precipitation.* Chemicals are added as part of the treatment system to help remove suspended solids and dissolved solids, particularly metals. The precipitated solids are then removed from the solution by coagulation/flocculation followed by clarification and/or filtration. The 2024 ELG focused on a specific design that employs hydroxide precipitation, sulfide precipitation (organosulfide), and iron coprecipitation to remove suspended solids and convert soluble metal ions to insoluble metal hydroxides or sulfides. Chemical precipitation was part of the BAT technology basis for the effluent limitations in the 2024 ELG. While the EPA's historical record shows that chemical precipitation can be a robust process that can treat most pollutants found in the various coal combustion wastestreams and may be effective at treating heavy metals, the limited data available to the EPA shows that leachate from impoundments that mixes with groundwater must be evaluated as a process differently than managed CRL. Chemical precipitation can be readily tailored (such as by adjusting the pH and the dose of the reagents used to convert dissolved substances into solid particles) to meet the variability encountered in CRL wastewater (DCN SE12168).
- *High-hydraulic-residence-time biological reduction.* The EPA identified three types of biological treatment systems used to treat flue gas desulfurization wastewater: anoxic/anaerobic fixed-film bioreactors (which target removals of nitrogen compounds and selenium), anoxic/anaerobic suspended growth systems (which target removals of selenium and other metals), and aerobic/anaerobic sequencing batch reactors (which target removals of organics and nutrients).
- *Low-hydraulic-residence-time biological reduction.* This biological treatment system targets removal of selenium and nitrate/nitrite using fixed-film bioreactors in smaller, more compact reaction vessels. The bacteria reduce soluble selenate and selenite to insoluble selenium, which is a filterable solid; nitrate is converted into nitrogen gas. This system differs from the high-hydraulic-residence-time biological treatment system evaluated in the 2015 ELG, in that the low-hydraulic-residence-time system is designed to operate with a shorter residence time (approximately one to four hours, compared to a residence time of 10 to 16 hours for high-hydraulic-residence-time) while still achieving significant removal of selenium and nitrate/nitrite. Both systems are sensitive to high total dissolved solids levels, so proper operation is necessary to accommodate fluctuations in the wastewater.
- *Zero-Discharge Technologies*
  - *Membrane filtration.* A membrane filtration system (*e.g.,* microfiltration, ultrafiltration, nanofiltration, forward osmosis, electrodialysis reversal, or reverse osmosis (RO)) is designed specifically for high-TDS and high-TSS wastestreams. These systems are designed to minimize fouling and scaling associated with industrial wastewater. These systems typically use pretreatment for potential scaling agents (*e.g.,* calcium, magnesium, sulfates) combined with one or more types of membrane technology to remove a broad array of particulate and dissolved pollutants from flue gas desulfurization wastewater. The membrane filtration units may also employ advanced techniques, such as vibration or creation of vortexes to mitigate fouling or scaling of the membrane surfaces. Membrane filtration can achieve zero discharge by recirculating permeate from a reverse osmosis system back into plant operations.
  - *Spray evaporation.* Spray evaporation technologies, which include spray dry evaporators (SDEs) and other similar proprietary variations, evaporate water by spraying fine misted wastewater into hot gases. The hot gases allow the water to evaporate before contacting the walls of an evaporation vessel, treating wastewater across a range of water quality characteristics such as TDS, TSS, or scale forming potential. Spray evaporation technologies use a less complex treatment configuration than brine concentrator and crystallizer systems (see the description of thermal evaporation systems) to evaporate water using a heat source, such as a slipstream of hot flue gas or an external natural gas burner. Spray evaporation technologies can be used in combination with other volume reduction technologies, such as membranes, to maximize the efficiency of each process. Concentrate from a reverse osmosis system can then be processed through the spray evaporation technology to achieve zero discharge by recirculating permeate from the reverse osmosis system back into plant operations.
  - *Thermal evaporation.* Thermal evaporation systems use a falling-film evaporator (or brine concentrator), following a softening pretreatment step, to produce a concentrated wastewater stream and a distillate stream to reduce wastewater volume by 80 to 90 percent and reduce the discharge of pollutants. The concentrated wastewater is usually further processed in a crystallizer that produces a solid residue for landfill disposal and additional distillate that can be reused within the plant or discharged. These systems are designed to remove a broad spectrum of pollutants to very low effluent concentrations.

Additionally, the EPA identified the following potential types of *in situ* treatment and handling practices for unmanaged CRL in the subsurface that would not be applicable to flue gas desulfurization wastewater or managed CRL. These *in situ* technologies require careful characterization of site-specific subsurface conditions that may vary widely in terms of biogeochemistry, pollutants present, and facility configurations.

- *Impermeable Barriers.* Impermeable barriers are underground walls that are designed to prevent or control the flow of groundwater to a certain location. An impermeable barrier placed in the subsurface would prevent the spread of pollutants from discharging to a WOTUS.
- *Permeable Reactive Barriers.* Permeable reactive barriers (PRB) are permeable barriers containing solid reagents or other reactive materials that are placed into the subsurface. As unmanaged CRL or contaminated groundwaters flow through permeable barriers, pollutants react with the reagents and are subsequently removed or treated.
- *Injection.* Injection technologies involve injection of liquid reagents or reactive adsorbents into the subsurface. The liquid reagents or adsorbents then react with and subsequently remove pollutants that may be present in unmanaged CRL or contaminated groundwaters. Injection approaches often require careful characterization of site-specific biogeochemical conditions to ensure effective delivery of reagents.

Additional discussion regarding updates to sources of data and new data

obtained by the EPA may be found in the record (DCN: SE1210505).

## VI. Proposed Rule

This proposal evaluates three regulatory options and identifies one preferred option (Option 1), as shown in Table VI–1 of this preamble. The three regulatory options address unmanaged combustion residual leachate in different ways and using different technologies and management practices as the basis for doing so. In addition to some specific requests for comment included throughout this proposal, the EPA solicits comment on all aspects of this proposal, including the information, data, and assumptions the EPA relied upon to develop the three regulatory options, as well as the proposed BAT, effluent limitations, and alternate approaches included in this proposal.

TABLE VI–1—PROPOSED RULE BAT OPTIONS FOR UNMANAGED CRL SUBCATEGORY

| For discharges of unmanaged CRL to a WOTUS that: | Option 1 (Preferred) | Option 2 (2024 ELG) | Option 3 |
|---|---|---|---|
| Leached from a landfill or impoundment into the subsurface and mixed with groundwater before being captured and pumped to the surface for discharge directly. | Numerical limits on mercury and arsenic. | Numerical limits on mercury and arsenic. | Zero-discharge limits. |
| Are the functional equivalent of a direct discharge as determined by the permitting authority. | BAT limits developed on a BPJ basis by the permitting authority. | Numerical limits on mercury and arsenic. | Zero-discharge limits. |

This proposal does not seek to define what constitutes the ''functional equivalent'' of a direct discharge. Moreover, the EPA is not determining that all potential discharges through groundwater from landfills and surface impoundments are the functional equivalent of a direct discharge to a WOTUS. Rather, the EPA is proposing limitations that would apply to any discharge that is the functional equivalent of a direct discharge through groundwater to a WOTUS and, thus, requires an NPDES permit. The threshold standard for the ''functional equivalence'' determination is outside the scope of this rule. In this proposed rule, the EPA reaffirms its longstanding position, which is consistent with the *County of Maui* decision: the determination of what constitutes the functional equivalent of a direct discharge is case-specific, and some landfills and surface impoundments may meet the definition of point sources under the CWA.

Thus, to the extent that discharges from landfills, surface impoundments, or other features could be considered the functional equivalent of a direct discharge of unmanaged CRL to a WOTUS, this proposal would inform the permitting authority of the appropriate technology-based effluent limitations that would apply. Determining whether a functional equivalent of direct discharge exists at any particular impoundment or landfill is a task for permitting authorities and outside the scope of this proposed rulemaking.

In all three regulatory options, the EPA proposes to codify additional definitions to clarify applicability of the unmanaged CRL limitations.

- First, for purposes of this subpart, the EPA proposes to define a ''closed coal combustion residuals waste management unit'' at 40 CFR 423.11(gg) to provide clarity as to which impoundments and landfills meet the criteria of being closed.
- The EPA proposes to further clarify the applicability of the effluent limitations with new provisions at 40 CFR 423.13(l)(3).
  - The first provision states that the effluent limitations in this subcategory do not apply to retired power plants, and that case-by-case BAT limitations based on the permitting authority's best professional judgment (BPJ) continue to apply.
  - The second provision proposes that unmanaged CRL limitations do not apply to landfills closed by the 2024 ELG's effective date of July 8, 2024, and that case-by-case BAT limitations based on BPJ continue to apply. The EPA solicits comment on these additional provisions.
- The EPA proposes a correction to the CFR text at section 423.13(l)(1)(i) where ''(1)(2)'' was mistakenly printed instead of ''(l)(2).''
- The EPA proposes to clarify in section 423.13(l)(2)(ii)(B) that BAT limitations based on BPJ apply to unmanaged CRL generated before the effective date of the ELG.

### *A. Description of the Options*

The following regulatory options apply to the two types of unmanaged leachate as defined in the 2024 ELG:

*Discharges of pumped unmanaged CRL:* CRL that has leached from a landfill or impoundment into the subsurface and mixed with groundwater, after which it has been captured and pumped to the surface for discharge directly to a WOTUS.

*Functional equivalent of a direct discharge of unmanaged CRL:* CRL that has been determined, by the permitting authority, to be the functional equivalent of a direct discharge to a WOTUS through groundwater.

#### 1. Option 1

Functional Equivalent of a Direct Discharge of Unmanaged CRL

Option 1 would rely on discretion of the permitting authority to set case-by-case BAT limitations that apply to functional equivalents of a direct discharge of unmanaged CRL, after evaluating site-specific factors relevant to the treatment to of unmanaged CRL.

This option would provide the greatest flexibility to ensure appropriate technology-based requirements are set while giving appropriate consideration to all site-specific factors impacting a utility's ability to collect and treat unmanaged CRL. This flexibility is appropriate given the fact that permitting authorities (which are typically states) are better situated on a case-by-case basis at the time of permit issuance to assess the difficulty in capturing and treating unmanaged CRL. Similarly, due to the unprecedented, rapidly increasing energy demands throughout the U.S. (as discussed in both the 2025 Deadline Extensions Rule, and section V.A of this preamble), including the extended operations of EGUs due to ''must run orders'' and the overall need to ensure grid reliability, as well as the resulting likelihood that the 2024 ELG overestimated the number of existing coal-fired power plants that would retire, this flexibility would appropriately allow the permitting authority to select the technologically available and economically achievable treatment method based on plant-specific technological, economic, and other relevant factors.

Over the past decade, whenever the EPA has revised the steam electric ELGs, the Agency has carefully considered the impacts of new requirements on the overall outlook of the industry, including impacts on electricity generation. This proposal continues in that tradition, but is more

tailored to the dynamic energy market of today, by providing permitting authorities with the flexibility to make regulatory decisions that reflect the on-the-ground factors that a specific facility may be contending with at the time of issuance or re-issuance of an NPDES permit, and to ensure that proper consideration is given to the unique needs of specific utilities in order to ensure the continued delivery of affordable and reliable power to U.S. families and businesses. While not meant to be a complete list of considerations, the permitting authority should consider the following when evaluating potential model technologies on a BPJ basis:

- site hydrology;
- hydraulic conductivity;
- groundwater plume length and age;
- background contaminants present in groundwater;
- chemical form and concentration of pollutants in mixed CRL and groundwater;
- relative flows and volumes of contributing groundwater;
- biogeochemical properties of soils;
- changes in local energy demand;
- changes in energy costs to consumers;
- non-water quality environmental impacts, such as solid waste generation or air pollution from waste management;
- changes in fuel consumption due to waste management; and
- pending must-run orders or similar demands that a utility stay in operation longer than planned.

Discharges of Pumped Unmanaged CRL

Option 1 proposes to maintain the existing 2024 ELG mercury and arsenic limitations applicable to discharges of pumped unmanaged CRL. The technology basis for BAT is chemical precipitation, employing hydroxide precipitation, sulfide precipitation (organosulfide), and iron coprecipitation. For further information on this BAT model technology and derivation of these numeric limitations, see the 2024 Steam Electric ELG Technical Development Document (TDD) (DCN SE11757).

Where discharges of pumped unmanaged CRL are occurring, as of the effective date of this ELG, the EPA proposes the limitations must be met as soon as possible, but no-later-than December 31, 2034. This no-later-than date, which is consistent with the latest compliance date for zero-discharge requirements promulgated in the 2025 Deadline Extensions Rule, is being proposed because it would provide permittees with appropriate time to make comprehensive waste management decisions when evaluating how to most efficiently meet the suite of requirements on coal-fired power plants from effluent guidelines. Discharges of pumped unmanaged CRL that commence after the effective date of this ELG must meet these numeric limitations as soon as possible, but no later than the date unmanaged leachate pumping commences or December 31, 2034, whichever is later.

2. Option 2

Functional Equivalent of a Direct Discharge of Unmanaged CRL

Option 2 proposes to maintain the existing 2024 ELG mercury and arsenic limitations for functional equivalents of a direct discharge of unmanaged CRL. The technology basis for BAT is chemical precipitation, employing hydroxide precipitation, sulfide precipitation (organosulfide), and iron coprecipitation. For further information on this BAT model technology and derivation of these numeric limitations, see the 2024 Steam Electric ELG TDD (DCN SE11757).

Where such discharges are occurring, as of the effective date of the ELG, the EPA proposes to retain the requirement that these limitations must be met as soon as possible, but no later than December 31, 2029.

Discharges of Pumped Unmanaged CRL

Option 2 proposes to also maintain the existing 2024 ELG mercury and arsenic limitations for discharges of pumped unmanaged CRL. The technology basis for BAT is chemical precipitation, employing hydroxide precipitation, sulfide precipitation (organosulfide), and iron coprecipitation. For further information on this BAT model technology and derivation of these numeric limitations, see the 2024 Steam Electric ELG TDD (DCN SE11757).

Where such discharges are occurring, as of the effective date of the ELG, the EPA proposes to retain the requirement that these limitations must be met be met as soon as possible, but no later than December 31, 2029.

3. Option 3

Functional Equivalent of a Direct Discharge of Unmanaged CRL

Option 3 proposes to establish a zero-discharge requirement on pollutants from functional equivalents of a direct discharge of unmanaged CRL and would establish BAT limitations for mercury and arsenic based on chemical precipitation treatment as an interim step. The BAT basis for functional equivalents of a direct discharge of unmanaged CRL is the implementation of spray dry evaporators, the same as the 2024 ELG specified for (managed) CRL. See the 2024 ELG Preamble for additional detail on this approach.

Where functional equivalents of a direct discharge of unmanaged CRL that have been identified by a permitting authority are occurring as of the effective date of the ELG, the EPA proposes the zero-discharge limitation must be met as soon as possible, but no later than December 31, 2034. For functional equivalents of a direct discharge of unmanaged CRL commencing after the effective date of the ELG, the limitations must be met as soon as possible, but no later than the date unmanaged leachate pumping commences or December 31, 2034, whichever is later. The 2034 date reflects the deadlines established in the 2025 Deadline Extensions Rule and provides flexibility for those plants seeking to combine wastewater flows for more effective and efficient treatment.

Discharges of Pumped Unmanaged CRL

Under this option, the EPA proposes to establish a zero-discharge limitation for all pollutants in pumped unmanaged CRL with interim BAT limitations on mercury and arsenic based on chemical precipitation treatment. The BAT basis for discharges of pumped unmanaged CRL is the implementation of spray dry evaporators, the same as the 2024 ELG specified for managed CRL. See the 2024 ELG Preamble for additional detail on this approach.

Where discharges of pumped unmanaged CRL are occurring as of the effective date of the ELG, the EPA proposes the zero-discharge limitations must be met as soon as possible, but no later than December 31, 2034. For discharges of pumped unmanaged CRL commencing after the effective date of the ELG, the limitations must also be met as soon as possible, but no later than the date unmanaged leachate pumping commences or December 31, 2034, whichever is later. The 2034 date reflects the deadlines established in the 2025 Deadline Extensions Rule and furthermore provides flexibility for those plants seeking to combine wastewater flows for more effective and efficient treatment.

*B. Rationale for the Proposed Rule*

1. Rationale for Not Proposing Option 3 as BAT

Unacceptably High Compliance Costs for Unmanaged CRL

The EPA is not proposing to select Option 3 as the preferred option for

BAT for both types of discharges of unmanaged CRL because total costs of the option to the industry as a whole are unacceptably high and not economically achievable. As discussed in the Technical Support memo (DCN SE12105), the EPA has revised its cost estimates for this proposal, and the revised cost estimates for spray dry evaporators to achieve zero discharge for both categories of unmanaged CRL are $1.1 billion per year in the lower bound and $2.2 billion in the upper bound (see Table VII–1 and the Technical Support memo (DCN SE12105)).

The costs associated with this option are nearly an order of magnitude higher than total costs of the 2024 ELG to the industry for controlling all of the remaining end-of-pipe discharges from every other wastestream combined. In 2024, the EPA estimated that the total annualized costs to the industry of zero discharge could be as high as $3.69 billion. At that time, EPA determined these costs were unreasonable. With the revised economic analysis in this proposed rule, the EPA has determined that the annualized cost for the zero-discharge option in the 2024 ELG was likely an overestimation of costs; however, despite more representative cost calculations supporting this proposal, the EPA still proposes that the costs to achieve zero discharge ($1.1 to $2.2 billion) are unreasonable. Costs are one of the statutory factors that the EPA must consider, and courts have found that the EPA may properly rely on costs in rejecting potential BAT technologies. *See e.g., BP Expl. & Oil Inc.* v. *EPA,* 66 F.3d 784, 799–800 (6th Cir. 1995). For further discussion of costs and economic achievability, see the Technical Support memo (DCN SE12105).

Additional Cost Burdens Reflecting the Duration of Discharges for Unmanaged CRL

In addition to the unacceptably high costs of Option 3, the EPA has identified several other areas where the cost analysis was unable to account for potentially significant expenditures by a permittee, which would further exacerbate the economic impacts of this option. Most notably, the duration of the discharges in question and the need for treatment beyond the operating life of a regulated utility may significantly increase cost burdens for this option. The EPA is concerned that the 2024 ELG did not fully account for the lack of revenue generated by closed utilities, and thus the lack of funding available, to implement treatment in an economically achievable way. Typically, ELGs no longer apply after an entity ceases the industrial operation generating pollutant discharges; however, given the nature of unmanaged CRL, and the influence contaminated groundwater has on the volume and duration of this wastestream, unmanaged CRL discharges that require treatment could incur costs associated with wastewater treatment operations long after the associated utility has retired and ceased generating electricity and revenue. Economic achievability assessments to support ELGs typically evaluate the compliance costs with respect to revenue and closures of facilities due to compliance costs, which would lend itself to further determine these costs are economically unachievable for any facility that has already closed and has no revenue to support these compliance costs. The increased cost of meeting zero-discharge limitations in unmanaged CRL may be unacceptable in light of the unique position of retired facilities with no revenue with which to support costs associated with such limitations.

Furthermore, the EPA acknowledges that the 2024 ELG record describes a spray dry evaporator employed to achieve zero-discharge of legacy wastewater at the Boswell Energy Center in Cohasset, Minnesota (DCN SE11621A1). The 2024 ELG concluded that the spray dry evaporator was not technologically available for this subcategory. In particular, many facilities will dewater and close their ash impoundments after the facility ceases generating electricity or combustion of coal. Without electricity production, there is no slipstream of flue gas with which to operate the same type of evaporator system that is achieving zero discharge at Boswell. No new information is available that rebuts this conclusion. For this reason, the EPA proposes that for facilities that do not have the same plant-wide configuration as Boswell, zero-discharge of unmanaged CRL may not be technologically available. In other instances, the facility may be unable to operate zero-discharge technologies during a planned or unplanned outage (DCN SE 1210303). The EPA has been unable to identify a basis for further subcategorization that would address the many differences between individual plants.

Feasibility of a Zero-Discharge Standard for Unmanaged CRL

As another potential basis supporting the EPA's proposal to reject Option 3 as BAT, the EPA has looked carefully at the feasibility of a zero-discharge standard in light of the unique nature of unmanaged CRL discharges and the influence contaminated groundwater has on the volumes and durations of these wastestreams, which may pose unique challenges for demonstrating the capabilities of zero-discharge technology.

In the 2024 ELG analysis, the EPA made the assumption that the pollutants in unmanaged CRL were similar to (managed) CRL, and by extension also similar to FGD wastewater. Accordingly, the EPA assumed zero-discharge technologies identified for CRL and FGD could reasonably be applied to unmanaged CRL. The EPA is aware of at least one plant that as employed a zero-discharge technology for all wastestreams at the plant, including unmanaged CRL.

In the 2024 ELG, the EPA did not have performance data demonstrating that the volume of unmanaged CRL as estimated for costing purposes to be pumped from groundwater would result in zero-discharge of all pollutants from unmanaged CRL that is a functional equivalent of a direct discharge (as identified by a permitting authority). As the EPA did not receive or identify performance data to the contrary, the EPA, despite the lack of data, found in the 2024 ELG that discharges of pumped unmanaged CRL could meet a zero-discharge standard by the application of a pump-and-capture treatment system that includes spray dry evaporators (although this option was rejected due to its high costs). In this proposal, the EPA's updated analysis indicates that a zero-discharge limit is still not economically achievable, and it may not be technologically available as applied to all discharges of unmanaged CRL that are the functional equivalent of direct discharges. The volume and pollutant concentration of these functional equivalent discharges are highly dependent on prior groundwater contamination from surface impoundments or landfills and the depth to the existing groundwater table. Operational conditions, such as the number of times the wastestream needs to be cycled or the accumulation of brine, may vary as a result of fluctuations in the volume required to be treated and changes in pollutant concentrations. Groundwater flows may be variable (such as seasonable aquifer replenishment or due to saltwater intrusion) and the pollutant concentrations may fluctuate such that a volume reduction step or additional storage capacity is needed. The impoundment or landfill may be several miles away from the power plant, requiring additional staff and resources

to implement control strategies. On the other hand, under certain conditions, as the EPA acknowledged in the 2024 Rule, absorption and attenuation of pollutants in unmanaged CRL could make treatment easier and, in that case, would likely decrease costs of such treatment. (DCN SE12165). The EPA's cost analysis appropriately reflects the typical range of costs of compliance for the industry nationwide. Nevertheless, these other factors identified above may increase the costs at some sites that markedly depart from the range of costs already considered in the EPA's analysis. As some petitioners have pointed out, completely intercepting and capturing any and all leaks of unmanaged CRL is challenging, if not impossible, for at least some power plants. Even if it were possible to intercept all contaminated groundwater, the energy for evaporation might not be available or could be cost prohibitive.

In summary, it is likely that a subset of utilities subject to a potential zero-discharge requirement would not be able to comply with the requirements, even if they were able to capture and treat the vast majority of a plume before it reaches surface water simply as a function of existing groundwater (previously contaminated with pollutants that resulted from the operation of a generating unit) subsequently reaching a WOTUS in a fashion that a permitting authority determines is still a functional equivalent of a direct discharge of unmanaged CRL. As such, the EPA proposes that setting a broad zero-discharge standard for unmanaged CRL is not only economically unachievable but also has not been demonstrated to be technically feasible for the industry as a whole due to the unique make-up of each unmanaged CRL discharge.

Other Zero-Discharge Technologies for Treating Unmanaged CRL

For the 2024 ELG and for this proposal, the EPA evaluated other zero-discharge technologies that could also eliminate the discharge of unmanaged CRL wastewater such as thermal systems. However, the EPA is not proposing to rely upon them as a basis for BAT limitations because they achieve the same pollutant reductions as the proposed Option 3 BAT technology basis (spray dry evaporators) but typically at a higher cost. The EPA has already rejected Option 3 on the basis of high costs. Nevertheless, the EPA solicits comment on the technologies that could constitute an alternative BAT technology basis for unmanaged CRL.

2. Rationale for Not Proposing Option 2 as BAT

Unacceptably High Compliance Costs for Unmanaged CRL

The EPA is not proposing Option 2 as the preferred option for BAT for both types of discharges of unmanaged CRL because total costs to the industry as a whole are unacceptably high and the EPA proposes that these costs are not economically achievable. As the EPA did not receive or identify performance data to the contrary, the EPA assumes that, despite the lack of data, discharges of pumped unmanaged CRL could meet the numeric limitations for mercury and arsenic. However, as discussed in the Technical Support memo (DCN SE12105), the EPA has revised its costs estimate for this proposal based upon a corrected and updated baseline as compared to the one utilized in the 2024 ELG, and the revised total annualized cost estimates for Option 2 is $660 million per year in the lower bound and $1.4 billion per year in the upper bound at 3.76 percent average cost of capital (see Table VII–1 and the Technical Support memo (DCN SE12105)).

These costs are nearly an order of magnitude higher than total costs to the industry to control all of the remaining end-of-pipe discharges from every other wastestream covered by the 2024 Rule combined. The EPA proposes that expecting the industry as a whole to bear these costs is unreasonable. Costs are one of the statutory factors that the EPA must consider, and courts have found that the EPA can properly rely on costs in rejecting potential BAT technologies. *See e.g., BP Expl. & Oil Inc.,* 66 F.3d at 799–800. For further discussion of costs and economic achievability, see section VII.C of this preamble. Overall, the EPA proposes that the increased costs of imposing stringent national effluent limitations under Option 22 (relative to site-specific costs in Option 1) is unacceptable, particularly in light of the unique position of retired facilities with no revenue with which to support costs associated with meeting the effluent limitations that would apply (see section V.C of this preamble).

For the reasons discussed above, the EPA is not proposing Option 2 as the preferred option for BAT because total costs to the industry as a whole are unacceptably high and the EPA proposes that these costs are not economically achievable. In addition, the EPA has identified other sources of uncertainty that could lead to increased costs beyond those included in the revised cost analysis in certain cases, which are discussed below. These potential additional costs add further support for the EPA's proposed finding that Option 2 presents unacceptably high total costs. The Agency solicits comments on the extent to which these additional considerations should factor into the EPA's final rule.

The Presence of Different Forms and Concentrations of Pollutants at Each Site Could Exacerbate Cost Impacts

The EPA emphasizes that there is a general lack of detailed characterization data for unmanaged CRL, particularly where leachate has mixed with groundwater. As discussed in section V, while there is an abundance of data characterizing the sources of waste and the wastewater itself in impoundments and landfills, data available on leachate is usually modeled, calculated, or estimated, and the characteristics of leachate likely change the moment it mixes with groundwater or undergoes some other physical or chemical change. Without accurate characterization in hand, it is difficult for the EPA to account for uncertainties in additional costs that may be required to meet broadly applicable technology-based limitations in all cases.

Impoundments and landfills reflect anywhere from years to decades of use, with non-homogenous layers reflecting different coal types, precipitation and stormwater, and in some cases bottom ash. When water seeps through the impoundment and mixes with groundwater, there are changes in the ensuing wastewater, including but not limited to pH, temperature, flow rate, and alkalinity. These parameters can influence the chemical forms of the pollutants that are present (DCN: SE12166).

The EPA notes that in the 2015 ELG rule analysis, the Agency assumed that the pollutants in FGD and (managed) CRL were similar. In addition to FGD wastewater, an impoundment or landfill may also receive FGD leftover materials or residues, fly ash, bottom ash, boiler slag, scrubber residues, and cenospheres.[5] Data available to date show this assumption still holds.

In contrast to (managed) CRL, the EPA finds unmanaged CRL that has mixed with groundwater shows a much higher variability. For example, the pH of coal ash CRL from all coal types ranges from 4.16 to 12.2, with a median of 9.11 (DCN SE11725). Groundwater is usually slightly alkaline and is buffered in the presence of limestone or carbonate.

[5] Cenospheres are small, lightweight, ceramic spheres comprised of silica and alumina that result from burning of coal at high temperatures. They are recovered and used for fillers in materials like concrete, polymers, and paints.

Groundwater can become acidic if it passes through coal, sulfides, organics, or is otherwise affected by certain forms of pollution (DCN SE12120). The EPA has also evaluated facility-specific data showing that pollutants in groundwater laden with CRL, particularly their forms and concentrations, are not always similar to FGD and traditionally managed CRL (DCN SE12167). This is due to both the reaction of the pollutants in CRL with groundwater, and the presence of pollutants in the groundwater itself that may not otherwise be present in the CRL. There is also the possibility, as discussed earlier, of adsorption and attenuation that would change the characterization of unmanaged CRL (DCN SE12165). Although the 2024 Rule acknowledged this possibility and concluded that ''to the extent adsorption and other attenuation processes would *remove* pollutants, this would only make it easier'' to achieve the chemical precipitation-based limitations, 89 FR 40251, this does not represent a complete picture of the differences that are expected to exist in unmanaged CRL that has mixed with groundwater and associated difficulties with meeting such limitations. While CRL is typically alkaline, at least three plants have shown arsenate in the unmanaged CRL wastewater (see section V of this preamble). As another example, selenate (selenium VI) favors oxygen-rich, alkaline environments. Analysis of 2025 monitoring data shows untreated CRL has a median pH near neutrality, but it can go as high as pH 9 (DCN SE12135). Should the aquifer be strongly alkaline or weakly buffered, selenate formation cannot be ruled out. To remove selenate in this situation usually requires additional technologies beyond chemical precipitation—which would represent additional costs to a facility—such as biological treatment, membrane filtration (such as reverse osmosis), or ion exchange.

Biological treatment is temperature dependent, pH sensitive, and requires sufficient alkalinity to buffer the system. Biological treatment must also be followed by a disinfection process. If the EPA were to establish chemical precipitation plus membrane filtration as the preferred option, it would cost at least 1.7 times as much as chemical precipitation alone,[6] but in most cases would not remove further pollutants beyond chemical precipitation alone. The 2024 ELG cost methodology shows membrane filtration and ion exchange are more costly than chemical precipitation (DCN SE11724).

Because of the highly unique nature of each unmanaged CRL wastestream and the unsuitability of chemical precipitation to treat all pollutants potentially present in unmanaged CRL that has mixed with groundwater without adding costs beyond what the EPA has already determined to be too costly, the EPA proposes to reject Option 2 in favor of Option 1, which would authorize the permitting authority to establish BAT limitations based on a BPJ determination that is better suited to handle site-specific factors. The EPA solicits data on the characterization of leachate mixed with groundwater and treatment technology performance, including both concentrations and chemical forms of any pollutants.

The Need To Collect a Larger Volume of Groundwater Than Estimated To Meet the Limitations Would Exacerbate Cost Impacts and May Not be Feasible

Another fact that supports the EPA's proposal not to prefer Option 2 is that the volume and pollutant concentrations in the functional equivalent direct discharge are highly dependent on prior groundwater contamination from surface impoundments or landfills and the depth to the existing groundwater table. The 2024 ELG analysis assumed that, once an appropriate volume of groundwater laden with unmanaged CRL was removed from the aquifer, it could be treated to meet the numeric limitations for arsenic and mercury. The 2024 ELG analysis conservatively assumed the groundwater and the unmanaged CRL both had the pollutants found in CRL; *i.e.,* the total volume collected was subject to treatment as if the total volume was CRL. The analysis did not consider whether any remaining pollutants not collected would meet the numeric limitations when the remaining groundwater ''daylights'' or otherwise meets with surface waters. In other words, at issue here is not whether some of the unmanaged CRL mixed with groundwater can feasibly be collected and treated, rather it is an issue of how much unmanaged CRL mixed with groundwater must be collected before there is assurance that the ELG requirements have been met. Even if most of the unmanaged CRL coming from the landfill or impoundment is captured and treated, there could be ongoing exceedances at the functional equivalent direct discharge point. Therefore, in this case, a subset of power plants subject to numeric limitations for mercury and arsenic would not be able to comply with the requirements, even if they were able to capture and treat the vast majority of a plume before it reached surface water, assuming the permitting authority determines the plant still has the functional equivalent of a direct discharge. Neither the 2024 ELG analysis nor this proposal has data identifying how often these situations would occur. When such situations do occur, however, the volume of groundwater with unmanaged CRL collected is potentially underestimated. This could add significant costs for some plants where the EPA is already proposing the total costs to the industry as a whole are too high. As such, the EPA proposes that broadly setting numeric limitations for unmanaged CRL is not only economically unachievable but also has not been adequately demonstrated to be technically feasible due to the unique make-up of each stream of unmanaged CRL.

Additional Costs Incurred as a Result of Multiple Management Units or Aquifers Would Further Exacerbate Cost Impacts

In 2009, the RCRA CCR rule survey identified 676 impoundments and landfills across 240 facilities (DCN SE12167). At 95 of those facilities, there is only one impoundment or landfill identified; 581 facilities have more than one management unit. In some instances, multiple impoundments are located adjacent to each other or in an adjoining manner. As discussed in section V, the EPA is further aware of 111 power plants that have management units that are unlined, not-clean closed, or are undergoing corrective action. This reflects the upper bound number of plants that may be determined to have the functional equivalent of a direct discharge. Consistent with the RCRA CCR rule, the analysis supporting this proposal considers the costs for wells, collection, capture, and treatment with chemical precipitation based on the groundwaters' flow and direction, thus intending to capture the primary plume of groundwater laden with CRL (DCN SE12169). The EPA is already aware that, in some cases, the waste management unit (especially landfills) may be located some distance away from the electric generating unit. (DCN: SE12104). However, there are likely instances where more than one impoundment would need to be independently managed and controlled to meet the numeric limitations under Option 2; in this case, the estimated costs are likely understated. There may also be instances where the groundwater exhibits changes in direction and flow

[6] At an average flow rate of 100 gpm, annualized costs (7 percent discount rate over 20 years) of chemical precipitation + membrane filtration costs 1.7 times as much as chemical precipitation alone.

to the extent a single system of wells is unable to capture the groundwater laden with CRL; in this case, the costs are also likely understated. In both instances, the applicability of Option 2's numeric limitations is a result of the site-specific determination of functional equivalent of a direct discharge, a decision which is beyond the scope of this proposal. The total costs of Option 2, however, are already high enough that any additional costs would further exacerbate the proposed lack of economic achievability of that option. While the possibility of the costs for collecting, pumping, and treating groundwater could have been underestimated for the 2024 ELG, it was not a concern there because the total costs were not near the range where economic achievability was thought to be an issue.

The EPA is also aware that some facilities may have impoundments or landfills located near more than one aquifer (DCN SE12103). Again, the EPA is not determining here that each impoundment or landfill is located such that where there is a functional equivalent of a direct discharge. However, multiple treatment systems may need to be deployed to meet the proposed limitations, whereas the EPA's cost methodology only presents costs for one treatment system. In light of the revised costs presented in this proposal, the added costs of additional systems could exacerbate the EPA's proposed findings regarding lack of affordability and provide further reason not to prefer Option 2.

The Duration of Discharges of Unmanaged CRL May Increase Cost Burdens

Finally, as with Option 3, the duration of the discharges in question and the need for treatment beyond the operating life of a regulated utility may significantly increase the economic impacts of this option. This may provide additional support in favor of rejecting Option 2.

4. Rationale for Proposing Option 1 as the Preferred Option for BAT

After considering updates to the industry-wide economic analyses, and further analysis of the feasibility of broadly setting numeric limitations on discharges of unmanaged CRL, the EPA is proposing to establish through regulation that, for functionally equivalent direct discharges of unmanaged CRL, BAT limitations must be derived by the permitting authority on a case-by-case BPJ basis. Additionally, the EPA is also proposing to retain the numeric discharge limitations for mercury and arsenic based on chemical precipitation for discharges of pumped unmanaged CRL.

Functional Equivalent of a Direct Discharge of Unmanaged CRL

Effluent limitations derived by permitting authorities via BPJ must, by design, be technologically available and economically achievable for a particular facility, after consideration of all appropriate factors (see section IV.B.3 for additional details). In addition, BPJ limitations have the flexibility necessary to consider highly site-specific factors to each individual plant, such as volumes of surrounding aquifers, feasibility of pumping and capturing groundwater, different hydrogeological conditions of the site, and volumes and locations of discharges of unmanaged CRL, all of which are issues that the EPA identified in connection with rejecting Options 2 and 3.

The EPA's proposed preferred option, Option 1, also complies with the CWA section 301 mandate that BAT limitations result in ''reasonable further progress'' toward the Act's goal of eliminating the discharge of all pollutants because it represents a step beyond the BPT-level of control, which is based on surface impoundments alone. 33 U.S.C. 1311(b)(2)(A). Under Option 1, for functionally equivalent direct discharges of unmanaged CRL, permitting authorities must consider more stringent limitations beyond those based on surface impoundments, including whether such limitations are available and achievable for the particular facility, as determined in accordance with the section 304 consideration factors. Some of the technology options for BAT that the permitting authority might consider are discussed in section V.E of this preamble, and the EPA's record includes potential limitations that could be attained based on these technologies.

The EPA also notes that the BPJ approach provides appropriate flexibility, given the rapidly increasing energy demands across the U.S. and the newfound pressures put upon these utilities to produce inexpensive and reliable electricity (as discussed in both the Steam Electric 2025 Deadline Extensions Rule and in section V of this preamble), including uncertainty surrounding retirements of existing coal-fired power plants, extended operations of EGUs due to ''must run orders,'' and the overall need to ensure grid reliability.

Discharges of Pumped Unmanaged CRL

The EPA is proposing to identify chemical precipitation as BAT for plants with discharges of pumped unmanaged CRL because it is both technologically available and economically achievable for such plants. The EPA identified seven plants with these types of discharges through their corresponding CCR rule Corrective Action Plans pursuant to 40 CFR part 257, subpart D. For these seven facilities, the EPA assumes no additional costs for pumping equipment would be incurred under the proposed options. The EPA did estimate the costs of treatment for these seven facilities using the 2024 ELG cost model for chemical precipitation. Thus, these costs reflect treating a known volume of flow that has been shown to be adequate to meet the proposed numeric effluent limitations for mercury and arsenic. The estimated total annualized cost to industry at 3.76 percent average cost of capital for these facilities is $121 million under Option 1 (see Table VII–1). The EPA proposes that the costs incurred to meet the proposed arsenic and mercury limitations based on chemical precipitation are economically achievable for plants with existing discharges of pumped unmanaged CRL. Finally, for discharges of pumped, unmanaged CRL, chemical precipitation treatment represents reasonable further progress over the BPT-level of control (surface impoundments).

## VII. What are the benefits, costs and economic impacts of the proposed revisions?

The EPA conducted two main types of analyses: economic impact analysis addressing how many regulated entities are affected, and benefit-cost analysis addressing the social benefits and costs associated with the proposed ELG. This section provides an overview of the methodology the EPA used to assess the social benefits and costs, and the economic impacts and summarizes the results of these analyses. ''The Economic Analysis Memorandum for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category—Unmanaged Combustion Residual Leachate'' (hereafter, the Economic Analysis memo) in the docket provides additional detail (DCN SE12127).

### *A. Introduction and Overview*

In developing ELGs, and as required by CWA section 301(b)(2)(A), the EPA evaluates the economic achievability of regulatory options to assess the impacts of applying the limitations and standards to the industry as a whole. For this proposal, the EPA compared the values to a baseline that reflects implementation of existing environmental regulations (as of this

proposal), including the 2024 ELG. Like the prior analyses of the 2015, 2020, and 2024 ELGs, the cost and economic impact analysis for this proposed ELG focuses on understanding the magnitude and distribution of compliance costs across the industry. With respect to broader market impacts, because of data and methodological limitations, the EPA conducted a screening analysis that assesses the direction and magnitude of changes relative to other regulations that the EPA determined would have small impacts and be economically achievable. Specifically, the EPA analyzed the ratio of compliance costs to revenue to see how the three main regulatory options change the number of plants and their owning entities that exceed thresholds indicating potential financial strain.

In addition to the analyses supporting the economic achievability of the proposed regulatory options, the EPA conducted other analyses to (1) characterize other potential impacts of the regulatory options (*e.g.,* on electricity rates), (2) determine the social benefits and costs, and (3) determine broad impacts to small businesses to meet the requirements of E.O.s or other statutes (*e.g.,* E.O. 12866, Regulatory Flexibility Act, Unfunded Mandates Reform Act).

*B. Method for Estimating Compliance Costs*

Compliance costs are the foundation for both economic achievability and the cost side of the benefit-cost analysis. The EPA estimated plant-specific compliance costs to control unmanaged CRL discharges at steam electric plants to which the ELGs apply. The EPA assessed the operations and treatment system components currently in place at a given unit (or expected to be in place because of other existing regulations, including the 2024 ELG and the 2015 CCR rule), identified equipment and process changes that plants would likely make under each of the three regulatory options presented in Table VI–1 of this preamble, and estimated the capital and O&M costs to implement those changes.

Because of uncertainty regarding which steam electric plants have unmanaged CRL discharges and may therefore incur costs to meet effluent limitations in this proposed ELG, the EPA used a bounding approach for developing plant-level costs that considers factors indicative of the potential for an unmanaged CRL discharge to be present, including (1) the presence of landfills or surface impoundments that are not clean closed or composite lined, (2) a total estimated groundwater pumping rate greater than 0.5 gallons per minute (gpm), and (3) whether the facility was undergoing corrective action for groundwater exceedances based on the site's most recent groundwater monitoring reported in the CCR database. The EPA solicits comment on all aspects of its groundwater pumping rates estimates, including the use of single groundwater pumping systems. See the Technical Support memo for additional details (DCN SE12105).

The lower bound scenario considers a population of 63 plants containing waste management units (landfills or surface impoundments) that do not have a composite liner, are not clean closed, and report undergoing corrective action for groundwater exceedances based on the site's most recent groundwater monitoring reported in the CCR database. All waste management units that fit these criteria from these 63 plants were accounted for in the EPA's cost analysis and assumed a separate treatment system for unmanaged CRL. For the upper bound scenario, the EPA considered 111 plants with reported waste management units that are not clean closed or composite lined but did not limit the waste management units to those with corrective action. As a conservative estimate and to better compare the upper and lower bound estimates, the EPA calculated costs for all waste management units associated with the 111 plants and assumed a separate treatment system for each waste management unit. In both scenarios, the EPA identified seven plants where pumping and treatment of groundwater was selected as the corrective remedy. These seven plants only received costing estimates for treatment of unmanaged CRL and did not incur costs for pumping and capturing unmanaged CRL in either the upper and lower bound estimations, whereas the EPA calculated costs for the remaining 56 to 104 plants to include both pumping and treating unmanaged CRL.

Together, the results represent a reasonably estimated range of nationwide costs of treatment for unmanaged CRL, but as discussed in the following paragraphs, it could overestimate costs at some facilities and underestimate costs at others. These modeling assumptions should not be interpreted as a finding that any specific site is subject to the unmanaged CRL limitations. Rather, these assumptions should be considered as assisting in a reasonable estimation of costs nationwide, with actual site-specific costs under- or overestimated. While the EPA believes that using waste management units that have triggered corrective action is a reasonable proxy for estimating waste management units most likely to incur costs associated with unmanaged CRL under this proposed ELG, the EPA notes that a facility in corrective action for its groundwater contamination does not mean that the waste management unit at issue would necessarily be found to be a point source with a functional equivalent of a direct discharge of unmanaged CRL to a WOTUS. Thus, in some cases, these costs will be overestimated for specific facilities. At the same time, it may be possible that unmanaged CRL may be subject to CWA permitting but does not trigger corrective action under the 2015 CCR regulations.

In estimating private compliance costs, the EPA used the estimated weighted average cost of capital for the industry of 3.76 percent to annualize one-time costs and costs recurring on other than an annual basis. For this analysis, the EPA annualized capital costs over the useful life of the longest-lived technology installed at any plant (20 years) and annualized costs incurred on a non-annual, periodic basis using the recurrence period (*e.g.,* over 6 years for costs incurred every six years). The EPA then calculated total industry costs by summing plant-specific annualized costs.

The cost estimates presented in Table VII–1 are the total annualized compliance costs associated with unmanaged CRL for the industry as a whole. In comparison to similar estimates for the 2024 ELG, the Option 2 costs are higher than those presented in 2024, reflecting the updates to the EPA's cost model and industry profile.

TABLE VII–1—TOTAL ANNUALIZED COMPLIANCE COSTS FOR UNMANAGED CRL

[In millions, 2024$, at 2026]

| | Total annualized compliance costs for unmanaged CRL (in millions) | | | | | |
|---|---|---|---|---|---|---|
| | Option 1 | | Option 2 | | Option 3 | |
| | Lower bound | Upper bound | Lower bound | Upper bound | Lower bound | Upper bound |
| Total costs (pre-tax) | $121 | $121 | $658 | $1,437 | $1,076 | $2,240 |

For the assessment of industry costs, the EPA considered costs on both a pre-tax and after-tax basis. Pre-tax annualized costs provide insight on the total expenditure as incurred, while after-tax annualized costs are a more meaningful measure of impact on privately owned for-profit entities because they incorporate approximate capital depreciation and other relevant tax treatments that reduce the net compliance burden on entities that own the plants. Since taxes are transfers, pre-tax costs reflect the real cost to society and are appropriate for benefit-cost analysis. Similarly, after-tax costs are reflective of private costs, which drive private decision-making, and are therefore appropriate for use in economic impact analysis.

The cost estimates shown in Table VII–1 are an intermediate step to producing the estimated incremental costs associated with this proposal relative to the baseline which is full implementation of the 2024 ELG. Table VII–2 summarizes the incremental costs of the three options as compared to baseline; these costs represent the costs of this proposed rule. Relative to the baseline, the preferred proposed ELG (Option 1) results in after-tax annualized savings of $462 million and $1,104 million for the lower and upper bound scenarios, respectively. Option 2 results in no incremental costs because it represents the same technology basis as the baseline.

TABLE VII–2—ESTIMATED INCREMENTAL COSTS RELATIVE TO THE BASELINE

| Tax basis | Annualized incremental costs (in millions) | | | | | |
|---|---|---|---|---|---|---|
| | Option 1 | | Option 2 | | Option 3 | |
| | Lower Bound | Upper Bound | Lower Bound | Upper Bound | Lower Bound | Upper Bound |
| Pre-Tax | −$537 | −$1,315 | $0 | $0 | $418 | $803 |
| After-Tax | −462 | −1,104 | 0 | 0 | 350 | 668 |

The EPA may, if new and relevant data are received on this proposed ELG, quantify the costs of any final rule using the same models and methodologies used here and in the 2020 and 2024 ELGs.

### *C. Method for Estimating Economic Impacts*

The EPA assessed the economic impacts of this proposed ELG on existing EGUs at steam electric plants and the entities that own those plants, based on comparison of costs to revenue. The Economic Analysis memo in the record (DCN SE12127) discusses these methods and results in greater detail.

The EPA conducted the cost and economic impact analyses at both the plant and parent company level. The first level provides insight on the magnitude of compliance costs relative to the plant revenue derived from electricity generation. The second level of analysis adds insight on the impact of compliance requirements for entities that own multiple plants. Having both levels of analysis is important because the impacts could differ between these two levels. The cost and economic impact analyses—at both the plant and parent company level—provide screening-level indicators of the impacts of costs for unmanaged CRL controls relative to historical operating characteristics of steam electric plants incurring those costs (*i.e.,* level of electricity generation and revenue). The EPA conducted these analyses for baseline and for the three regulatory options presented in Table VI–1 of this preamble, then compared these impacts to understand the incremental effects of the regulatory options in this proposal.

For each of the two levels of analysis (plant and parent entity), the Agency assumed, for analytic convenience, that none of the compliance costs would be passed on to consumers through electricity rate increases and would instead be absorbed by the steam electric plants and their parent entities. This assumption overstates the impacts of compliance expenditures (or cost savings), as steam electric plants that operate in a regulated market may pass on changes in production costs to consumers through changes in electricity prices. If the impacts are found to be economically achievable under the assumption that no costs are passed to consumers, then the impacts will be reduced—and also economically achievable—if entities have the ability to pass along some costs to consumers.

#### 1. Plant-Level Cost-to-Revenue Analysis

The EPA developed revenue estimates for this analysis using Energy Information Administration (EIA) data. The EPA then calculated the change in the annualized after-tax costs of the three regulatory options presented in Table VI–1 of this preamble as a percent of baseline annual revenues. The after-tax costs incorporate approximate capital depreciation and other relevant tax treatments and are therefore a more meaningful measure of the compliance impacts on privately owned for-profit plants. Cost-to-revenue ratios are screening-level indicators of potential economic impacts. EPA guidance describes certain cost-to-revenue ratios for evaluating small entity impacts under the Regulatory Flexibility Act (RFA) (U.S. EPA 2006). The EPA used this guidance as the basis for also looking at impacts at the level of the plants, following the approach used in previous ELG regulatory analyses. Plants incurring costs below one percent of revenue are unlikely to face economic impacts, while plants with costs between one percent and three percent

of revenue have a higher chance of facing economic impacts, and plants incurring costs above three percent of revenue have a still higher probability of economic impact. Under the preferred proposed ELG (Option 1), the EPA estimated that four plants, for both lower and upper bound scenarios, would incur costs greater than or equal to one percent of revenue, including three plants that have costs greater than or equal to three percent of revenue. This represents a burden reduction when compared to the 2024 ELG baseline, for which 33 and 78 plants are estimated to incur unmanaged CRL costs greater than one percent of revenue, for the lower and upper bound scenarios, respectively. The Economic Analysis memo in the record (DCN SE12127) provides results for the other regulatory options the EPA analyzed.

This proposed rulemaking does not cause adverse impacts on small entities. In fact, Option 1, the preferred option, is estimated to result in fewer small entities incurring significant impacts. Between 5 and 11 fewer small entities will experience impacts exceeding one percent of revenue as a direct result of this rule if finalized, and between 4 and 6 fewer small entities will experience impacts exceeding three percent of revenue.

2. Parent Entity-Level Cost-to-Revenue Analysis

The EPA also assessed the economic impact of the regulatory options presented in Table VI–1 of this preamble at the parent entity level. The screening-level cost-to-revenue analysis at the parent entity level provides insight on the impact at the level of entities that own steam electric plants. In this analysis, the domestic parent entity associated with a given plant is defined as the entity with the largest ownership share in the plant. For each parent entity, the EPA compared the incremental change in the total annualized after-tax costs and the total revenue for the entity to baseline. Following the methodology employed in the analyses for the 2015, 2020 and 2024 ELGs, the EPA considered a range of estimates for the number of entities owning an existing EGU at a steam electric plant to account for partial information available for steam electric plants that are not expected to incur ELG compliance costs.

Like the plant-level analysis above, cost-to-revenue ratios provide screening-level indicators of potential economic impacts, this time to the owning entities; higher ratios suggest a higher probability of economic impacts. The EPA estimated that the number of entities owning existing EGUs at steam electric plants ranges from 209 to 373, depending on the assumed ownership structure of those plants not likely to incur ELG costs and not explicitly analyzed. The EPA estimates that under the preferred proposed ELG (Option 1) and for the lower and upper bound cost scenarios, two parent entities would incur annualized unmanaged CRL costs representing one percent or more of their revenues, with both of these entities incurring costs representing more than three percent of revenue. This represents a burden reduction when compared to the 2024 ELG baseline, for which nine and 22 parent entities are estimated to incur unmanaged CRL costs greater than one percent of revenue, with seven and 11 of these parent entities estimated to incur costs greater than three percent of revenue.

Therefore, this proposed rulemaking does not have adverse impacts on small entities or parent entities and Option 1, the preferred option reduces impacts relative to the baseline option.

*D. Estimated Annual Costs of the Proposed Regulatory Options/Scenarios*

The estimated annual costs of the proposed ELG refers to social costs, which are the costs of the proposed ELG from the viewpoint of society as a whole, rather than the viewpoint of regulated plants and owning entities (which are private costs). In calculating social costs, the EPA used the pre-tax costs, as these costs represent the total expenditures irrespective of any adjustments to reflect depreciation and other relevant tax treatments. The EPA tabulated these costs in the year they are estimated to be incurred, which varies across plants based on the estimated compliance year. These estimated annual costs are also the costs used in the benefit-cost analysis.

For the analysis of social costs, the EPA estimated a plant- and year-explicit schedule of technology implementation cost outlays that reflects the ''no later than date'' for each option. For the baseline and Option 2, the schedule is based on plant owners installing technologies to meet the applicable limitations no later than the end of 2029. For Options 1 and 3, the deadline is December 2034. As described in section 3.1, of the Economic Analysis Memo, the EPA assumed that plants would implement technologies over several years leading to this deadline as their permits are renewed to incorporate the applicable limitations. For the baseline and Option 2, technology implementation years run from 2027 through 2029. For Options 1 and 3, the technology implementation years run from 2030 through 2034. The useful life of the technology extends for 20 years past the last year of technology installation. Thus, the full analysis period for all options for the estimation of social costs is 28 years: 2027–2054. As described further in the Economic Analysis memo to the record (DCN SE12127), the increases in the cost to state governments to develop NPDES permits based on the permitting authority's BPJ instead of the limitations specified in the baseline are small, particularly when compared to compliance costs. Consequently, the social costs are predominantly based on the pre-tax costs estimated for steam electric plants.

Table VII–3 of this preamble presents the incremental total annualized social costs of the three regulatory options, compared to baseline and calculated using three percent and seven percent discount rates. The preferred proposed ELG (Option 1) has estimated social costs savings of $446 million to $1,090 million using a three percent discount rate and $532 million to $1,286 million using a seven percent discount rate.

TABLE VII–3—ESTIMATED INCREMENTAL TOTAL ANNUALIZED SOCIAL COSTS RELATIVE TO THE BASELINE

| Discount rate | Annualized social costs (in millions) | | | | | |
|---|---|---|---|---|---|---|
| | Option 1 | | Option 2 | | Option 3 | |
| | Lower bound | Upper bound | Lower bound | Upper bound | Lower bound | Upper bound |
| 3% Discount Rate | −$446.2 | −$1,089.8 | $0 | $0 | $375.6 | $715.7 |
| 7% Discount Rate | −531.9 | −1,286.3 | 0 | 0 | 250.5 | 475.2 |

*E. Economic Achievability*

In developing ELGs, and as required by CWA section 301(b)(2)(A), the EPA evaluates economic achievability to assess the impacts of applying the limitations and standards on the industry as a whole. As described in more detail below, the proposed rule is expected to allow flexibility for permitting authorities to develop BAT limitations for certain discharges of unmanaged CRL using their best professional judgment, considering site-specific factors. The EPA estimates that this flexibility will result in cost savings when compared to the baseline and will allow compliance decisions that impose minimum economic impact across the industry and customers. As noted in section VI.B, the same approach cannot be used to assess economic achievability for open and closed facilities; nonetheless, it is the combination of effects that determines economic achievability to the industry as a whole.

The EPA cannot prospectively determine how many or which instances of unmanaged CRL discharged through groundwater may ultimately be found to require CWA permits. As described above, to be a covered by the NPDES Program, there must be a discharge (or functionally equivalent discharge) of a pollutant from a point source into a WOTUS. To ensure that technology costs are economically achievable for the proposed options, the EPA assumed a worst-case costing scenario based on the upper bound set of facilities. The EPA's assumption for the purposes of a worst-case costing analysis does not mean the EPA views all of these potential discharges as requiring CWA permitting. Instead, total costs (and pollutant loadings) provide the range within which actual costs (and pollutant loadings) are expected to fall. The EPA acknowledges that a best estimate would be helpful, but in the absence of determinations on which discharges are subject to CWA permitting, the EPA cannot definitively define the ultimate scope of coverage. This position is consistent with the position outlined above. In this proposal, the EPA has made a reasonable estimation of costs, fulfilling the Agency's rulemaking requirements. Using these costs, the EPA then conducted a screening-level analysis of economic impacts, which helps inform the EPA's proposed determination that the unmanaged CRL limitations reflected in the preferred proposed option (Option 1) are economically achievable. For further discussion of the screening-level analysis and economic achievability, see sections VII.A through VII.D of this preamble.

Impacted Businesses

Relative to the baseline, the proposed ELG is estimated to reduce compliance costs for steam electric plants that have unmanaged CRL discharges determined to be the functional equivalent of a direct discharge to a WOTUS by their permitting authority. Under the baseline, the EPA estimates that a total of 808 plants are subject to the steam electric point source category overall and that, in the baseline, 20 to 41 plants would incur cost-to-revenue ratios greater than 3 percent for unmanaged CRL costs under the lower and upper bound cost scenarios, respectively. Of these plants, seven to 10 plants are owned by small entities under the lower and upper bound scenarios, respectively. An additional 13 to 37 plants incur unmanaged CRL costs greater than 1 percent (but less than 3 percent) of revenue in the baseline under the lower and upper bound cost scenarios.

The preferred proposed ELG (Option 1) significantly reduces these baseline impacts. As detailed in section VIII below, the EPA estimated that, under the proposed ELG, a total of three plants (*i.e.,* 17 to 38 fewer plants than in the baseline for the corresponding scenarios) may incur compliance costs greater than three percent of revenue, including two plants owned by small entities. Only one plant, owned by a large entity, incurs unmanaged CRL costs between 1 and 3 percent of revenue. The Economic Analysis memo in the docket provides additional detail (DCN SE12127).

*F. Impacts on Residential Electricity Prices*

The EPA presents the effects of the proposed ELG on consumers in the Economic Analysis memo to the record (DCN SE12127). While the CWA section 304(b) ''consideration'' factors do not require these details, the EPA presents them for informational purposes. To consider all scenarios where cost savings are passed on partially to electricity consumers, the EPA made an inclusive assumption based on all cost savings being passed on to electricity consumers, even though this is unlikely in reality. If all annualized compliance cost savings were passed on to residential consumers of electricity instead of being retained by the operators and owners of power plants (following the same assumption the EPA has made for analytic convenience for all prior steam electric rulemaking analyses), the average yearly electricity bill for a typical household would be $1.38 to $3.37 lower under the preferred proposed ELG (Option 1) as compared to the baseline. These results represent the largest cost savings that would be realized by households.

*G. Benefit-Cost Analysis*

The proposed rule is estimated to result in avoided social costs of $446 million to $1,090 million in 2024 dollars under the lower and upper bound scenarios (at a three percent discount rate). The proposed rule will also lead to forgone benefits in cases where site-specific considerations result in the permitting authority developing less stringent limitations using its BPJ than the limitations that apply under the baseline, but the EPA expects the forgone benefits to be lower than the cost savings and therefore estimates the proposed rule to provide net benefits. More details on benefits are provided in section XI.

## VIII. Pollutant Loadings

In developing ELGs, the EPA typically evaluates the pollutant loading reductions of regulatory options to assess the impacts of the compliance requirements on discharges from the whole industry. The EPA took the same approach to the one described above for plant-specific costs for estimating pollutant reductions associated with this proposal. That is, the EPA compared the values to a baseline that reflects implementation of existing environmental regulations, namely the 2024 ELG for unmanaged CRL.

The general methodology that the EPA used to calculate pollutant loadings in this proposed ELG is the same as that described in the 2024 ELG. The EPA first estimated—on an annual, per plant basis—the pollutant discharge load associated with the technology basis evaluated for plants to comply with the 2024 ELG requirements for unmanaged CRL. The EPA similarly estimated plant-specific post-compliance pollutant loadings as the load associated with the technology bases for plants to comply with effluent limitations based on each regulatory option in this proposed rule. For each regulatory option, the EPA then calculated the changes in pollutant loadings at a particular plant as the sum of the differences between the estimated baseline and post-compliance discharge loadings for unmanaged CRL.

*A. Unmanaged Combustion Residual Leachate*

For unmanaged CRL, the EPA used the average pollutant effluent concentrations and plant-specific discharge flow rates to estimate the

mass pollutant discharge per plant for the baseline and the proposed options. The EPA used plant population data compiled for the 2024 ELG as the initial basis for estimating discharge flow rates and updated the population to reflect changes in plant retirement status. As discussed in the Technical Support memo (DCN SE12105), the plants that indicated retirement by the end of 2025 were not included in the analysis. The EPA solicits comment on the exclusion of retired plants from the analysis given that such plants are still expected to incur costs associated with treatment of unmanaged CRL.

The EPA also used utilities' ''CCR Rule Compliance Data and Information'' websites to identify waste management units that may discharge unmanaged CRL. For discharges of unmanaged CRL, the EPA estimated the volume of leachate-laden groundwater captured from pumping systems that draw down the groundwater elevation along the hydraulically downgradient cross-sectional width of the CCR management unit. See the Technical Support memo for additional details (DCN SE12105).

The EPA assigned pollutant concentrations based on current operating conditions or treatment in place for baseline and the operation of a treatment system designed to comply with the proposed options. To represent the average pollutant concentrations for unmanaged CRL, the EPA used average pollutant concentrations for CRL calculated from data compiled from the 2015 ELG and 2024 ELG. However, due to the lack of pollutant concentration data available for each analyte in unmanaged CRL, as well as the highly variable impact of ambient groundwaters on pollutant concentrations in unmanaged CRL, only total suspended solids (TSS) and total dissolved solids (TDS) were calculated for pollutant loadings. The selection of TSS and TDS ensures that the sum of these two metrics does not double count other pollutants that potentially may be present in unmanaged CRL, which the EPA is unable to numerically quantify due to lack of available data. The EPA did not make assumptions about ambient TSS and TDS concentrations in groundwater when calculating the pollutant loadings; however, data collected from groundwater monitoring reports suggest that TDS concentrations for CRL and groundwater are generally similar (DCNs SE12135 and SE12105).

To estimate pollutant removal associated with chemical precipitation, the EPA first transferred the average flue gas desulfurization effluent concentrations for chemical precipitation to CRL, as it did in the 2015 ELG. The EPA then transferred the untreated and chemical-precipitation treated average pollutant concentrations for TSS and TDS from CRL to unmanaged CRL. For the spray dry evaporator treatment option, the EPA assumed that the pollutant loadings would be reduced to zero since the technology would facilitate zero-discharge.

### *B. Summary of Incremental Changes of Pollutant Loadings*

Table VIII–1 of this preamble summarizes the net reduction to annual pollutant loadings, compared to baseline, associated with each regulatory option in Table VI–1 of this preamble. The estimated pollutant loading in Option 1 includes only calculations from seven plants that the EPA identified as discharging unmanaged CRL that is mixed with groundwater before being captured and pumped to the surface before discharge directly to a WOTUS. The EPA did not include estimates from plants that may have discharges of unmanaged CRL that the permitting authority determines are the functional equivalent of a direct discharge to WOTUS, which would be subject to BAT limitations based on BPJ under Option 1. The EPA cannot predict which plants will be determined to have a functional equivalent direct discharge or the resulting requirements based on the permitting authority's BPJ. Thus, the EPA cannot estimate pollutant loadings post implementation at those plants and cannot include those plants in these estimates.

TABLE VIII–1—ESTIMATED INCREMENTAL REDUCTIONS IN ANNUAL POLLUTANT LOADING COMPARED TO THE BASELINE FOR REGULATORY OPTIONS 1, 2, AND 3

[In millions of pounds/year]

| | Incremental change in pollutant loading | | | | | |
|---|---|---|---|---|---|---|
| | Option 1 | | Option 2 | | Option 3 | |
| | Upper bound | Lower bound | Lower bound | Upper bound | Lower bound | Upper bound |
| Pollutant Loading (millions of pounds/year) ..... | −12.9 | −29.8 | 0 | 0 | 584 | 1,190 |

**Note:** Reductions in pollutant loadings are rounded to three significant figures.

## IX. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, sections 304(b) and 306 of the CWA require the EPA to consider non-water quality environmental impacts (including energy requirements) associated with ELGs. These non-water quality environmental impacts are especially important due to the energy crisis and rising demands for energy and reliability in the U.S., as discussed in section V.C. Accordingly, the EPA has considered the potential impacts of this proposed ELG on energy consumption, air emissions, solid waste generation, and changes in water use. In general, to conduct this analysis, the EPA used the same methodology (with updated data as applicable) as it did for the analyses supporting the 2024 ELG. The following sections summarize the methodology and results. See the Technical Support Memo for additional details (DCN SE12105).

### *A. Energy Requirements*

Steam electric power plants use energy when transporting ash and other solids on or off site, operating wastewater treatment systems (*e.g.,* pumping, chemical precipitation, spray dry evaporators), or operating ash handling systems. For this proposal, the EPA considered whether there would be an associated change in the incremental energy requirements for treatment of unmanaged CRL compared to the baseline. Energy requirements vary depending on the regulatory option evaluated and the current operations of the facility. Therefore, as applicable, the EPA estimated the energy usage in MWh for treatment equipment added to the plant systems or in gallons of fuel consumed for transportation/operating equipment and summed the facility-specific estimates to calculate the net

change in energy requirements from baseline for the regulatory options.

The EPA estimated the amount of energy needed to operate wastewater treatment systems based on the horsepower ratings of the pumps and other equipment. The EPA also estimated any changes in the fuel consumption associated with transporting solid waste from steam electric power plants to landfills (on- or off-site). The frequency and distance of transport depend on a plant's operation and configuration; specific factors include the volume of waste generated and the availability of either an on-site or off-site nonhazardous landfill and its distance from the plant. Table IX–1 of this preamble shows the net change in annual electrical energy usage associated with the regulatory options compared to the baseline, as well as the net change in annual fuel consumption requirements associated with the three regulatory options compared to the baseline. The estimated energy and fuel usage in Option 1 includes only calculations from seven plants that the EPA identified as discharging unmanaged CRL that is mixed with groundwater before being captured and pumped to the surface and discharged directly to a WOTUS. The EPA did not include estimates from plants that may have discharges of unmanaged CRL that the permitting authority determines are the functional equivalent of a direct discharge to WOTUS, which would be subject to BAT limitations based on BPJ under Option 1.

TABLE IX–1—ESTIMATED INCREMENTAL CHANGE IN ANNUAL ENERGY REQUIREMENTS COMPARED TO THE BASELINE ASSOCIATED WITH REGULATORY OPTIONS

| Non-water quality environmental impact | Energy use associated with regulatory options | | | | | |
|---|---|---|---|---|---|---|
| | Option 1 | | Option 2 | | Option 3 | |
| | Lower bound | Upper bound | Lower bound | Upper bound | Lower bound | Upper bound |
| Incremental change in electrical energy usage (MWh) | −133,000 | −319,000 | 0 | 0 | 2,050,000 | 4,160,000 |
| Incremental change in fuel (thousand gallons) | −185 | −296 | 0 | 0 | 766 | 1,054 |

*B. Air Pollution*

The three proposed regulatory options are expected to affect air pollution through two main mechanisms: (1) changes in auxiliary electricity use by steam electric power plants due to the need to operate wastewater treatment; and (2) changes in transportation-related emissions due to the trucking of solid waste to landfills. This section discusses air emission changes associated with these mechanisms as they relate to treatment of unmanaged CRL and presents the corresponding estimated total and net changes in air emissions.

Steam electric power plants generate air emissions from operating transport vehicles, such as dump trucks, which release criteria air pollutants and GHGs. A decrease in energy use or vehicle operation would result in decreased air pollution and emissions.

To estimate the air emissions associated with changes in electrical energy use projected as a result of the regulatory options in this proposal compared to baseline, the EPA combined the energy usage estimates with air emission factors associated with electricity production to calculate air emissions associated with the incremental energy requirements. The EPA estimated nitric oxide + nitrogen dioxide ($NO_X$) and sulfur dioxide ($SO_2$) emissions using plant- or NERC-specific emission factors (tons/MWh) obtained from a 2024 Rule run of IPM for run year 2035.

To estimate air emissions associated with the operation of transport vehicles, the EPA used the MOVES4.0 model to identify air emission factors (tons/mile) for the air pollutants of interest. The EPA estimated the annual number of miles that dump trucks moving wastewater treatment solids to on- or off-site landfills would travel for the regulatory options. The EPA used these estimates to calculate the net change in air emissions for the three regulatory options. Table IX–2 presents the estimated net change in air emissions associated with auxiliary electricity and transportation for the proposed options. The estimated air emissions in Option 1 include only calculations from seven plants that the EPA identified as discharging unmanaged CRL that is mixed with groundwater before being captured and pumped to the surface before discharge directly to a WOTUS. The EPA did not include estimates from plants that may have discharges of unmanaged CRL that the permitting authority determines are the functional equivalent of a direct discharge to WOTUS, which would be subject to BAT limitations based on BPJ under Option 1.

TABLE IX–2—ESTIMATED NET CHANGE IN INDUSTRY-LEVEL AIR EMISSIONS COMPARED TO THE BASELINE ASSOCIATED WITH AUXILIARY ELECTRICITY AND TRANSPORTATION FOR OPTIONS

| Non-water quality environmental impact | Air Emissions associated with regulatory options | | | | | |
|---|---|---|---|---|---|---|
| | Option 1 | | Option 2 | | Option 3 | |
| | Lower bound | Upper bound | Lower bound | Upper bound | Lower bound | Upper bound |
| Incremental change in $NO_X$ (thousand tons/year) | −0.01 | −0.02 | 0 | 0 | 0.12 | 0.23 |
| Incremental change in $SO_2$ (thousand tons/year) | −0.01 | −0.02 | 0 | 0 | 0.10 | 0.21 |

*C. Solid Waste Generation*

Steam electric power plants generate solid waste associated with sludge from wastewater treatment systems when treating unmanaged CRL (*e.g.,* chemical precipitation, SDE). The EPA estimated the total and incremental change in the amount of solids generated for each plant compared to baseline under each regulatory option. Table IX–3 of this preamble shows the net change in annual solid waste generation, compared to baseline, associated with the three regulatory options. The estimated solid waste generation in Option 1 includes only calculations from seven plants that the EPA identified as discharging unmanaged CRL that is mixed with groundwater before being captured and pumped to the surface and discharged directly to a WOTUS. The EPA did not include estimates from plants that may have discharges of unmanaged CRL that the permitting authority determines are the functional equivalent of a direct discharge to WOTUS, which would be subject to BAT limitations based on BPJ under Option 1.

TABLE IX–3—ESTIMATED INCREMENTAL CHANGES TO SOLID WASTE GENERATION COMPARED TO THE BASELINE ASSOCIATED WITH REGULATORY OPTIONS

| Non-water quality environmental impact | Solid waste generation associated with regulatory options | | | | | |
|---|---|---|---|---|---|---|
| | Option 1 | | Option 2 | | Option 3 | |
| | Lower bound | Upper bound | Lower bound | Upper bound | Lower bound | Upper bound |
| Incremental change in solids generated (tons/year) | −1,320,000 | −3,030,000 | 0 | 0 | 4,320,000 | 8,780,000 |

*D. Changes in Water Use*

The EPA does not expect a change in water use associated with the treatment technology options (chemical precipitation, spray dry evaporation) considered for the treatment of unmanaged CRL for the proposed regulatory options. However, treatment of unmanaged CRL associated with Option 2 and Option 3 requires pumping and capturing the unmanaged CRL before treatment can be implemented. Furthermore, in some cases, additional wellheads would be installed to pump clean water into the groundwater to help push the groundwater in the desired direction. Because the nature of unmanaged CRL is highly site-specific, pumping unmanaged CRL could potentially involve large amounts of groundwaters that are mixed with unmanaged CRL. As a result, groundwater reservoirs could be depleted through treatment of unmanaged CRL, which may impact downstream drinking water sources that rely on groundwater reservoirs. For this proposed ELG, the EPA estimated the total volume of leachate-laden groundwater that could be pumped annually across the industry may be between 20 billion to 41 billion gallons for the lower and upper bound estimations, respectively, for Options 2 and 3. Furthermore, as discussed earlier in section VI, this volume could be an underestimation, as the EPA does not have data to determine the exact volume of groundwater that might need to be pumped to fully address the functional equivalent of a direct discharge. Therefore, the proposed Options 2 and 3 could have a substantial impact on water usage by depleting groundwater reservoirs when capturing unmanaged CRL for treatment. Option 1 is based on site-specific BPJ analyses conducted by the permitting authority, and plants may have very different sets of requirements that impact their potential water usage. As a result, the EPA cannot accurately predict post-implementation water usage for Option 1.

## X. Environmental Assessment and Benefits

*A. Introduction*

This section summarizes the potential environmental and human health effects and benefits due to changes in unmanaged CRL discharges from steam electric power plants. An environmental assessment memo in the record provides additional details on these analyses (DCN SE12102), including a qualitative comparison of the change in impacts associated with the proposed rule regulatory options to those projected under the baseline; specifically, it presents information from the EPA's review of the scientific literature of impacts of pollutants discharged from unmanaged CRL on human health and the environment. The 2015 EA (EPA–821–R–15–006), 2020 EA (EPA 821–R–20–002), and 2024 EA (EPA–821–R–24–005) provide information from the EPA's earlier review of the scientific literature and of documented cases of the impacts on human health and the environment associated with the wider range of steam electric power plant wastewater discharges addressed in earlier rules.

Current scientific literature indicates that untreated steam electric power plant wastewaters, including unmanaged CRL, contain large amounts of a wide range of pollutants, some of which are toxic and bioaccumulative and cause detrimental environmental and human health impacts. To the extent that the proposed rule results in less stringent treatment of unmanaged CRL from certain facilities than under the 2024 baseline, there would be forgone benefits from forgone water quality improvements and the associated human health, ecological and use and non-use effects, and market and productivity benefits.

For additional information, see section X of the environmental assessment memo (DCN SE12102). The EPA also considered environmental and human health effects associated with changes in air emissions, solid waste generation, and energy usage.

*B. Updates to the Environmental Assessment Methodology*

For this proposal, the EPA updated the environmental assessment methodology to focus on a qualitative evaluation of potential environmental and human health impacts associated with unmanaged CRL. This approach reflects the nature of the available data and the objectives of the environmental assessment, which are to identify pathways of exposure, characterize potential receptors, and evaluate the relative magnitude of impacts under existing regulations and the proposed regulatory options.

The qualitative assessment integrates information from multiple lines of evidence, including facility operating practices, hydrogeologic settings, reported monitoring data, peer reviewed literature, and prior EPA analyses of coal combustion residuals. Due to the unique nature of unmanaged CRL mixing with subsurface groundwater, site-specific concentrations are limited or variable, therefore EPA relied on

bounding analyses to assess the likelihood and direction of potential impacts.

*C. Outputs From the Environmental Assessment*

The EPA evaluated the potential environmental and ecological changes associated with anticipated changes in pollutant loadings under the proposed rule. As described in the environmental assessment memo to the record, the analysis focuses on changes in environmental and human health impacts resulting from exposure to toxic and bioaccumulative pollutants, with particular attention to surface water pathways and groundwater to surface water connections. The environmental assessment memo provides a qualitative summary of the potential environmental and human health effects of the proposed limitations on discharges of unmanaged CRL, including summaries of the potential pollutant effects of total dissolved solids (TDS) and total suspended solids (TSS) in receiving and downstream waters. The EPA also evaluated environmental and human health effects of other environmental changes such as changes to air emissions, solid waste generation, and energy usage.

*D. Benefits*

This section summarizes the national environmental benefits due to changes in unmanaged CRL discharges from steam electric power plants. The Economic Analysis memo in the record provides additional details on the benefits analyses (DCN SE12127).

Following the approach used in prior steam electric rulemakings, the benefit categories associated with the proposed rule regulatory options fall into four broad categories: (1) human health benefits from surface water quality improvements, (2) ecological conditions and recreational use effects from surface water quality changes, (3) market and productivity benefits, and (4) air-related effects. Data limitations, modeling limitations, and gaps in the understanding of how society values certain environmental changes expected to result from changes to unmanaged CRL discharges prevented the EPA from quantifying and monetizing the benefits of this proposed rule. The EPA assessed benefits qualitatively, indicating their direction and potential magnitude where possible.

The following section summarizes the EPA's analysis of the benefit categories the Agency was able to identify to various degrees. The analysis builds on the environmental assessment summarized in section IX and detailed in the record (see DCN SE12102).

1. Qualitative Analysis of Benefits

The EPA estimates that the proposed rule may change the incidence of adverse health effects from exposure to metals and toxic pollutants in unmanaged CRL through the ingestion of self-caught fish (*e.g.,* arsenic, mercury, lead) or drinking water (*e.g.,* trihalomethanes from bromide in source waters). The EPA did not quantify changes in loadings for metals and toxic pollutants, but the environmental assessment identifies resources affected by unmanaged CRL discharges that indicate potential pathways of human exposure to unmanaged CRL pollutants.

The proposed rule is expected to result in surface water quality changes including changes in aquatic and wildlife habitat, water-based recreation (*e.g.,* fishing, swimming, boating, and near-water activities), aesthetic value, and nonuse value from changes in ecosystem health. For some receiving waters, where a permitting authority establishes case-by-case BAT limitations based on technologies more advanced than chemical precipitation, the proposed rule may result in changes in improved habitat conditions for plants, invertebrates, fish, and amphibians, and the wildlife that prey on aquatic organisms, including enhanced protection of threatened and endangered species.

By changing discharges of total suspended sediment that contribute to turbidity, the proposed rule may also result in changes in water treatment costs for municipal drinking water systems located downstream from steam electric plant impoundments or landfills that have unmanaged CRL. Changes in sediment discharge may affect sedimentation in reservoirs and navigable waters and alter the frequency of maintenance dredging.

Under the preferred option (Option 1), effluent limitations would be established on a site-specific basis using the permitting authority's BPJ, and resulting compliance measures and costs may differ from those assumed in the 2024 ELG baseline and the regulatory options analyzed for this proposal. In some cases, permitting authorities may determine that less extensive controls are appropriate given site-specific conditions, which could lower compliance costs as compared to the baseline but also reduce pollutant load reductions and the associated environmental benefits (*i.e.,* result in forgone benefits when compared to the baseline). In other cases, site-specific information may support more stringent controls, particularly where unmanaged CRL discharges have a clear connection to surface water exposure pathways, potentially resulting in greater environmental and human health benefits than previously anticipated (as well as possibly greater compliance costs).

The magnitude of potential benefits is uncertain and depends on the number of plants with unmanaged CRL discharges that meet the definition of a functionally equivalent discharge under the ELGs, and any eventual limitations set by permitting authorities based on BPJ. However, even to the extent that the proposed rule results in less stringent limitations for all plants where BPJ will apply, as EPA conservatively assumed under both the lower and upper bound cost scenarios, the EPA estimates the forgone benefits of the proposed rule to be less than the substantial cost savings the Agency estimated.[7]

## XI. Implementation

*A. Continued Implementation of Existing Limitations and Standards*

The EPA has continually stressed since the announcement of the proposed supplemental 2024 ELG that the existing 40 CFR part 423 limitations and standards in effect continue to apply. In the sections below, the EPA discusses considerations for permitting authorities and regulated entities as they continue to implement existing regulations and look ahead to any final rule.

*B. Implementation of New Limitations and Standards*

Under the preferred option, EPA would modify section 423.13 to clarify that any new unmanaged CRL BAT requirements would not extend to retired plants closed by the effective date of the 2024 ELG. A new definition at section 423.11(gg) would define the term ''closed coal combustion residual waste management unit'' as a landfill or impoundment that no longer receives coal combustion residuals or other wastes as of the effective date of the 2024 ELG (*i.e.,* July 8, 2024). The term closed coal combustion residual waste management unit is defined to provide clarity and help avoid confusion over what ''closed'' means in this situation. For example, precipitation could enter

[7] The proximity analysis similarly indicates that differences in potential impacts to sensitive receptors (impaired waters, drinking water resources, and habitats for threatened and endangered species) are minimal or uncertain relative to the baseline. In contrast, the costs associated with maintaining to expanding treatment requirements (chemical precipitation or zero discharge) are more quantifiable and substantial.

impoundments and lead to the generation of unmanaged CRL long after the EGU has ceased coal combustion and the impoundment has stopped receiving coal combustion residuals. In these instances, the proposed rule would direct the permitting authority to establish BAT limitations on a case-by-case basis using BPJ. The EPA is proposing these updates to the regulation in response to stakeholder input. This definition reflects the EPA's previous implementation of the 2015 and 2024 ELGs, and codifying it in the regulatory text would provide clarity to permitting authorities and certainty for the regulated community.

*C. Reporting and Recordkeeping Requirements*

As discussed in section VI of this preamble, CRL can be discharged not only as an end-of-pipe discharge, but also through groundwater, and the EPA is proposing revised BAT limitations for a subcategory of electric generating units that includes those with discharges of CRL that a permitting authority determines are the functional equivalent of direct discharges of CRL to a WOTUS. The requirements in the 2024 ELG for annual reporting and recordkeeping requirements will continue to facilitate the permitting authorities' review of such discharges. These existing requirements also facilitate compliance monitoring and make compliance information available to the public. The existing information collection request (ICR) that was published along with the 2024 ELG already includes all of the information necessary to comply with the proposed revised BAT limitations. The EPA expects that the burden of this ICR will decrease as fewer facilities will be subject to its requirements.

*D. Site-Specific Water Quality-Based Effluent Limitations*

EPA regulations at 40 CFR 122.44(d)(1), implementing section 301(b)(1)(C) of the CWA require each NPDES permit to include any requirements, in addition to or more stringent than ELGs or standards promulgated pursuant to sections 301, 304, 306, 307, 318, and 405 of the CWA, necessary to achieve water quality standards established under section 303 of the CWA, including state narrative criteria for water quality. Those same regulations require that limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) that the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard, including state narrative criteria for water quality (40 CFR 122.44(d)(1)(i)).

The preamble to the 2015 rule discussed bromide as a parameter for which water quality-based effluent limitations may be appropriate. The EPA stated its recommendation that permitting authorities carefully consider whether water quality-based effluent limitations for bromide or TDS would be appropriate for FGD wastewater discharged from steam electric power plants upstream of drinking water intakes. The EPA also stated its recommendation that the permitting authority notify any downstream drinking water treatment plants of the discharge of bromide. To the extent there are covered discharges of unmanaged CRL to a WOTUS, the EPA continues to recommend that permitting authorities carefully consider whether water quality-based effluent limitations are appropriate.

*E. Severability*

The purpose of this section is to clarify the EPA's intent with respect to the severability of provisions of any final rule based on this proposed rule. In the event of a stay or invalidation of part of any final rule based on this proposed rule, the Agency's intent is to preserve the remaining portions of the rule to the fullest extent possible. The EPA notes the following existing regulatory text at 40 CFR 423.10(b) that would not be altered by this proposed rule: ''The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.'' Moreover, to dispel any doubt regarding the EPA's intent and to inform how any final regulation would operate if severed, the Agency proposes to find that it would adopt each portion of this proposed rule independent of the other portions. As explained below, the EPA carefully crafted this proposed rule so that each provision or element of a final rule based on this proposed rule can operate independently. Moreover, the EPA has organized the proposed rule so that if any provision or element of a final rule based on this proposed rule is determined by judicial review or operation of law to be invalid, that partial invalidation would not render the remainder of the rule invalid.

The three options in this proposed rule propose to regulate discharges associated with two types of unmanaged CRL discharges. Each proposed option would, if finalized, provide limitations and standards associated with each type of unmanaged CRL, which are independent of one another. This is because the EPA considers the BAT statutory factors for each type of discharge independently. For example, if proposed Option 1 were finalized and the limitations established for functionally equivalent direct discharges of unmanaged CRL were deemed invalid, the EPA's view is that this would not impact the separate limitations established for discharges of unmanaged CRL that is captured and pumped to the surface.

## XII. Data Request

The EPA solicits comment providing specific data and information to the Agency to support the analysis of other wastestreams in any subsequent reconsideration action. Specifically, the EPA solicits comment on facilities or electric generating units missing from the industry profile, updated flue gas desulfurization flow rates, CRL flow rates at new post-2015 waste management units, and pilot test performance data as further described below.

*Industry Profile*

Some electric utilities have suggested that the industry profile utilized in the 2024 ELG was missing facilities or electric generating units for one or more wastestreams. The EPA solicits information for any facility or electric generating unit with one or more of the 2024 ELG wastewaters but was not evaluated for costs and pollutant loadings for that wastewater in the 2024 ELG rule record. Specifically, the EPA solicits comment on the facility name, the relevant electric generating unit, the wastewater(s) missing from the 2024 ELG rule analysis, and an explanation of why the Agency's 2024 ELG rule record information and assumptions were either incorrect or are no longer accurate.

*Updated Flue Gas Desulfurization Flow Rates*

The Electric Power Research Institute comments on the 2025 Deadline Extension proposed rule suggest that the EPA's flow rate data may be stale and in need of updating. The EPA solicits comment providing information that would confirm or refute this statement. Specifically, to ensure that the EPA can compare, and potentially replace, data collected as part of the 2010 survey, for each wet flue gas desulfurization scrubber in service at a plant, the Agency solicits comment on the following updated information:

- The steam electric generating units, and nameplate capacity, serviced by the flue gas desulfurization scrubber.
- The amount of flue gas desulfurization scrubber purge (or slurry discharge) sent to wastewater treatment or discharge for the last two years (2024 and 2025), specifically:
  - Typical flowrate in gpm or gallons per day (gpd), including duration and frequency of flue gas desulfurization scrubber purge (or slurry discharge) generation (hours per day and days per year).
  - Design (*i.e.,* maximum) flowrate (gpm or gpd) for existing wastewater treatment, including the number of days the wastewater treatment system operated at the design flowrate (if the system had not operated at design flow rate during this time period, a comment should characterize the highest flow rate observed and other relevant information for characterizing operations above the typical flow rate).
- The flue gas desulfurization maximum design chlorides (for the flue gas desulfurization system) in parts per million (ppm) and operating chlorides (in the flue gas desulfurization purge/slurry) in ppm.

Where a plant is taking any steps to minimize the amount of flue gas desulfurization scrubber purge (or slurry discharge) sent to treatment or discharge, the EPA solicits comment describing the processes utilized, or considered, to minimize flow. For example, several stakeholders have suggested that replacement of water-based seals with mechanical seals has been evaluated or conducted at a number of facilities.

*CRL Flow Rates at New Waste Management Units*

Since the effective date of the 2015 CCR rule, many facilities have constructed new landfills, landfill cells, and surface impoundments with composite (or alternative composite) liners. Since these liners and associated leachate-collection systems may differ from pre-2015 practices, the EPA solicits comment on CRL flow rate information from these new waste management units. Specifically, to ensure that the EPA can compare, and potentially replace, data collected as part of the 2010 survey, for each waste management unit constructed post-2015 the Agency solicits comment on the following updated information:

- A description of the leachate-collection system.
- The typical and maximum gallons per day volume of leachate (including leaks, seepage, toe drains, or similar releases) collected in 2024 and 2025.
- The frequency of process wastewater generation in 2024 and 2025 (days per year).
- A description of the estimation method where not directly measured.
- A description of how the collected leachate is managed (*e.g.,* transferred to an on-site treatment system, commingled and treated with flue gas desulfurization wastewater, rerouted back to the impoundment).

The EPA also solicits comment on any waste management units which have closed since the 2010 survey where collected CRL flows at these waste management units now differ from the 2010 survey data, including where such waste management units have clean closed and no longer generate CRL.

*Pilot Tests*

Utilities and vendors have described the limitations in 423.13(g)(3) and 423.15(b)(13) as unnecessarily tight, requiring additional pre-treatment or post-treatment from the treatment chain described in prior rulemakings. The EPA solicits comment providing pilot testing data on FGDFGD wastewater and CRL that would suggest a relaxation of these limitations might be warranted when applied to discharges from existing sources. Specifically, the EPA solicits comment providing draft or final pilot studies (whether on-site or off-site), including any influent and effluent data and associated laboratory reports. While the existing limitations utilize indicator pollutants, the EPA solicits comment providing information on any relevant pollutants so that the Agency might consider whether similar removals are attainable with less treatment across a range of such pollutants.

## XIII. Statutory and Executive Order Reviews

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

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

This proposed action is an economically significant regulatory action as defined under section 3(f)(1) of Executive Order 12866. Accordingly, it was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to E.O. 12866 interagency review have been documented in the docket. The potential impacts of this rule are summarized in section VII of this preamble. This analysis, ''Economic Analysis Memorandum for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category—Unmanaged Combustion Residual Leachate'' (DCN SE12127), is available in the docket. From a 2024 ELG baseline, the EPA estimated that the proposed action would result in annualized cost savings of $446 million and $1,090 million in 2024 dollars at a three percent discount rate, for the lower and upper bound cost scenarios, respectively. Similarly, the EPA estimated that the proposed action would save $532 million and $1,286 million annually (in 2024 dollars), for the lower and upper bound cost scenarios, respectively, at a seven percent discount rate.

*B. Executive Order 14192: Unleashing Prosperity Through Deregulation*

This action is expected to be an Executive Order 14192 deregulatory action, based on the preferred option, Option 1.

*C. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations under OMB control number 2040–0313.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden on the small entities subject to the rule. Of the estimated 111 to 191 small entities that own steam electric plants subject to these ELGs, the EPA estimated that two small entities (one cooperative and one nonutility) will incur unmanaged CRL compliance costs equal to or greater than one percent of revenue and the same two entities' compliance costs also exceed three percent of revenue.

This proposed rule does not cause adverse impacts on small entities. In fact, Option 1, the preferred option, is estimated to result in fewer small entities incurring significant impacts. Between 5 and 11 fewer small entities will experience impacts exceeding one percent of revenue as a direct result of this rule if finalized, and between 4 and 6 fewer small entities will experience

impacts exceeding three percent of revenue.

Therefore, relative to baseline, the proposed rule significantly reduces the burden on small entities compared to the baseline where an estimated seven to 13 small entities incur unmanaged CRL costs equal to or greater than one percent of revenue. The EPA detailed its analysis in the Economic Analysis memo in the record (DCN SE12127). I have therefore concluded that this action will not impose a regulatory burden on any regulated small entities while relieving burden on between 7 and 13 small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This proposed action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

*F. 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.

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

This proposed action would not have Tribal implications as specified in Executive Order 13175. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes as specified in Executive Order 13175. The EPA's analyses show that no plant subject to the proposed ELGs is owned by Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this proposed action is not subject to Executive Order 13045. Since any health effects of this proposed action would not fall disproportionally on children, the EPA's Policy on Children's Health also does not apply.

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

This proposed action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed rule is estimated to reduce costs to the industry. The annualized cost savings are small relative to the estimated total electricity generation across the power sector (equivalent to 0.01 to 0.03 cents per kWh).

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

**List of Subjects in 40 CFR Part 423**

Environmental protection, Electric power generation, Power facilities, Waste treatment and disposal, Water pollution control.

**Lee Zeldin,**

*Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 423 as follows:

## PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

■ 1. The authority citation for part 423 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.;* 1311; 1314(b), (c), (e), (g), and (i)(A) and (B); 1316; 1317; 1318 and 1361.

■ 2. Amend § 423.11 by adding paragraph (gg) to read as follows:

**§ 423.11 Specialized definitions**

* * * * *

(gg) The term *closed coal combustion residual waste management unit* means a landfill or surface impoundment which does not receive coal combustion residuals on or after July 8, 2024. Removal of coal combustion residuals from the waste management unit does not affect that unit's closure status under this part. Any *closed coal combustion residual waste management unit* that receives coal combustion residuals is no longer defined as *closed* under this part.

■ 3. Amend § 423.13 by:

■ a. Revising paragraphs (l)(1)(i) and (l)(2)(ii);

■ b. Redesignating paragraph (l)(2)(iii) as (l)(2)(iv);

■ c. Adding a new paragraph (l)(2)(iii);

■ d. Removing the table heading ''Table 12 to Paragraph (l)(2)(iii)'' and adding in its place ''Table 12 to Paragraph (l)(2)(iv)''; and

■ e. Adding paragraph (l)(3).

The revisions and additions read as follows:

**§ 423.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).**

* * * * *

(l) * * *

(1) * * *

(i) Except for those discharges to which paragraph (l)(1)(i)(B) or (C) or (l)(2) of this section applies, there shall be no discharge of pollutants in *combustion residual leachate.*

* * * * *

(2) * * *

(ii) For discharges of *unmanaged combustion residual leachate* as defined at § 423.11(ff)(2), the quantity of pollutants in *unmanaged combustion residual leachate* shall not exceed the quantity determined by multiplying the flow of *unmanaged combustion residual leachate* times the concentration in table 11 to paragraph (l)(2)(i)(A) of this section.

(A) Dischargers must meet the effluent limitations for *unmanaged combustion residual leachate* in this paragraph (l)(2)(ii) by a date determined by the permitting authority that is as soon as possible beginning July 8, 2024, but no later than December 31, 2034. The effluent limitations in this paragraph (l)(2)(ii) apply to the discharge of *unmanaged combustion residual leachate* generated on and after the date determined by the permitting authority for meeting the effluent limitations, as specified in this paragraph (l)(2)(ii).

(B) For discharges of *unmanaged combustion residual leachate* before the date determined in paragraph (l)(2)(ii)(A) of this section, the EPA is declining to establish BAT limitations and is reserving such limitations to be established by the permitting authority on a case-by-case basis using the permitting authority's best professional judgment.

(iii) For discharges of *unmanaged combustion residual leachate* as defined at § 423.11(ff)(1), site-specific BAT effluent limitations shall be established by the permitting authority after reviewing the information in paragraph (l)(2)(iii)(A). The site-specific BAT

effluent limitations must reflect the permitting authority's determination of the maximum warranted reduction in pollutant discharges after consideration of factors relevant for determining the best available technology at each facility.

(A) To determine the site-specific BAT effluent limitations, the permitting authority shall consider:

(1) the annual leachate monitoring report and data collected under § 423.19(k);

(2) groundwater monitoring, corrective action, closure plans, and reports conducted under the Coal Combustion Residuals Disposal Regulations at 40 CFR part 257 subpart D including the magnitude of residual contaminant mass, if any, that may remain in groundwater following implementation of a required remedy;

(3) other readily available groundwater monitoring data upstream and downstream of each impoundment or landfill owned or operated by the facility, including the relevant state's department of water quality monitoring data and characterization of background groundwater quality that has not been affected by leakage from a disposal of Coal Combustion Residuals unit as defined in 40 CFR 257.53;

(4) results of any modeling of leachate fate and transport conducted for the facility; and,

(5) whether the facility is already complying with the numeric limitations for mercury and arsenic for unmanaged combustion residual leachate where that leachate has been captured and pumped to the surface for discharge directly to a waters of the United States.

(6) The permitting authority may consider impacts of site-specific BAT effluent limitations that result in unacceptable changes in local energy demand, energy costs to consumers, solid waste generation, air pollution, and fuel consumption.

(7) The permitting authority may consider pending must-run orders that a utility remain in operation longer than planned.

(B) The permitting authority must provide a written explanation of the site-specific best available technology determination in the fact sheet or statement of basis for the draft permit under 40 CFR 124.7 or 124.8. The written explanation must describe why the permitting authority has rejected any technologies or measures that perform better than the selected technologies or measures.

(C) The site-specific best available technology put forth in the fact sheet or statement of basis may include consideration of any additional information deemed appropriate by the permitting authority including the statutory factors listed in the Clean Water Act section 304(b). The weight given to each factor is within the permitting authority's discretion based upon the circumstances of each facility.

(D) The permitting authority may require additional information or monitoring from the permit applicant to support the site-specific determination of best available technology, including an inspection.

(E) Prior to any permit reissuance after December 31, 2031, the permitting authority must review the monitoring results and other performance measures of the facility to determine whether it continues to meet the requirements of paragraphs (l)(1) and (2) of this section.

* * * * *

(3) *Facilities permanently ceasing combustion of coal.*

(i) Paragraphs (l)(1) and (2) of this section do not apply to *combustion residual leachate* generated by electric generating units at facilities that meet the applicability at § 423.10(a) as of July 8, 2024, but where the facility has permanently ceased generation of electricity from a process utilizing fossil type fuel. Instead, BAT effluent limitations for *combustion residual leachate* shall be established by the permitting authority on a case-by-case basis using best professional judgment.

(ii) Paragraphs (l)(1) and (2) of this section do not apply to *combustion residual leachate* generated by a *closed coal combustion residual waste management unit* as defined at § 423.11(gg). Instead, BAT effluent limitations for *combustion residual leachate* shall be established by the permitting authority on a case-by-case basis using best professional judgment.

* * * * *

[FR Doc. 2026–09895 Filed 5–15–26; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 384

**[Docket No. FMCSA–2025–0099]**

**RIN 2126–AC78**

## Fees for Commercial Driver's License Information System

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FMCSA proposes to implement a user fee as authorized by Congress in the ''Strengthening the Commercial Driver's License Information System Act'' applicable to State driver licensing agencies (SDLAs) for accessing the Commercial Driver's License Information System (CDLIS). The fees would be collected by the American Association of Motor Vehicle Administrators (AAMVA), the organization that represents the State agencies responsible for complying with the Federal regulations concerning the commercial driver's license (CDL) program. AAMVA operates and maintains CDLIS on behalf of FMCSA.

**DATES:** Comments must be received on or before June 17, 2026.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2025–0099 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2025-0099/document.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W58–213, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W58–213, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

**FOR FURTHER INFORMATION CONTACT:** Patrick D. Nemons, Director, Office of Safety Programs, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 385–2400; *patrick.nemons@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** FMCSA organizes this NPRM as follows:

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy
II. Abbreviations
III. Legal Basis
IV. Background
V. Discussion of Proposed Rulemaking
VI. Section-by-Section Analysis
VII. Regulatory Analyses
A. E.O. 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures
B. E.O. 14192 (Unleashing Prosperity Through Deregulation)

C. Advance Notice of Proposed Rulemaking
D. Regulatory Flexibility Act
E. Assistance for Small Entities
F. Unfunded Mandates Reform Act of 1995
G. Paperwork Reduction Act
H. E.O. 13132 (Federalism)
I. Privacy
J. E.O. 13175 (Indian Tribal Governments)
K. National Environmental Policy Act of 1969
L. Rulemaking Summary

## I. Public Participation and Request for Comments

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this NPRM (FMCSA–2025–0099), indicate the specific section of this document to which your 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2025-0099/document,* click on this NPRM, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the 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 the NPRM, it is important that you clearly designate the submitted comments as CBI.Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

### *B. Viewing Comments and Documents*

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2025-0099/document* and choose the document to review. To view comments, click this NPRM, then click ''Document Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in room W58–213 of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

### *C. Privacy*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its regulatory process better. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edits and are searchable by the name of the submitter.

## II. Abbreviations

AAMVA American Association of Motor Vehicle Administrators
ANPRM Advance notice of proposed rulemaking
CE Categorical Exclusion
CDL Commercial driver's license
CDLIS Commercial Driver's License Information System
CFR Code of Federal Regulations
CMV Commercial motor vehicle
DOT Department of Transportation
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
MPR Master Pointer Record
NPRM Notice of proposed rulemaking
PIA Privacy Impact Analysis
PTA Privacy Threshold Analysis
SDLA State driver licensing agency
SOI State of Inquiry
SORN System of records notice
SOR State of Record
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

## III. Legal Basis

Congress authorized this action when it amended 49 U.S.C. 31309 in December 2024, through passage of the ''Strengthening the Commercial Driver's License Information System Act'' (Pub. L. 118–156, section 2(a), Dec. 17, 2024, 138 Stat. 1716). This Act clarified that the Secretary of Transportation (the Secretary) or a qualified entity could operate CDLIS, and also expressly authorized the collection and use of a fee either by the Secretary or the authorized operator for ''operating, maintaining, developing, modernizing, or enhancing, or any other use relating to, the information system, including for personnel and administration costs relating to the information system,'' (Pub. L. 118–156, section 2(a)(6), codified at 49 U.S.C. 31309(e)(3)(B)). Congress did not set the fee; rather, the revised statute states that ''The total amount of fees collected under this subsection shall equal, as nearly as possible, the total amount necessary for the purposes and uses described in paragraph (3)(B),'' (Pub. L. 118–156, section 2(a)(6), codified at section 31309(e)(2)).

The Secretary delegated authority to the FMCSA Administrator to implement chapter 313 of title 49 relating to commercial motor vehicle (CMV) operators in 49 CFR 1.87(e)(1).

## IV. Background

CDLIS is a nationwide computer system that enables SDLAs to ensure each CDL holder has only one driver's license and one complete driver record.[1] SDLAs use CDLIS to complete CDL procedures, such as transmitting out-of-state convictions and withdrawals, transferring the driver record when a CDL holder moves to another State, and responding to requests for driver status and history.

CDLIS was established pursuant to the Commercial Motor Vehicle Safety Act of 1986 and FMCSA has promulgated regulations governing the CDLIS in 49 CFR parts 383 and 384. These regulations aim to ensure that only safe and qualified drivers operate CMVs, as defined in 49 U.S.C. 31301and the implementing regulations under 49 CFR part 383.

After CDLIS was operational in the early 1990s, the Federal Highway

[1] Under 49 CFR 383.21, ''no person who operates a commercial motor vehicle shall at any time have more than one driver's license.''

Administration (and later FMCSA) allowed AAMVA, who operates CDLIS, to collect user fees to operate and maintain the system. Regulations implementing the CDLIS statutory framework (49 U.S.C. 31309) were first promulgated in 1994, (59 FR 26029) and the statute provided the Secretary with discretion to establish a fee for using ''the system'' (*i.e.,* CDLIS) and required all collected fees to be deposited into the Highway Trust Fund. In 2004, the Government Accountability Office issued a fiscal law opinion providing guidance that would have required FMCSA, under the codified statutory language, to deposit any fees collected into the Highway Trust Fund.[2] However, under SAFETEA–LU, enacted in fiscal year 2005, Congress authorized CDLIS Modernization Grants for fiscal years 2006 to 2009, which provided FMCSA the ability, under then OMB Circular A–110 [3] to allow AAMVA, on FMCSA's behalf, to collect CDLIS user fees as ''program income'' during the periods of performance of the four CDLIS Modernization Grants awarded to AAMVA.[4] ''Program income'' included income earned ''during the project period,'' *i.e.,* the period of performance of the CDLIS Modernization Grants.[5]

Congress has not authorized any new grants that would have allowed AAMVA to continue collecting program income to maintain CDLIS. Subsequent to the final CDLIS modernization grant ending, FMCSA directed AAMVA to terminate collecting program income on October 1, 2023. Currently, AAMVA is using previously collected program income to operate CDLIS, as well as funds provided by FMCSA through grants and contract support. However, once AAMVA depletes their previously collected funds, all funding would need to be provided by the Federal Government unless user fees can be implemented. FMCSA directs readers to the AAMVA memo to FMCSA that is dated June 18, 2025, which is available in the docket for this rulemaking, and which includes estimates on the costs for operating CDLIS.

In December 2024, Congress amended 49 U.S.C. 31309 in several ways. First, Congress expressly authorized the Secretary to permit a qualified entity to operate CDLIS. Congress also specifically allowed for the collection and use of a fee either by the Secretary or the authorized operator for the ''operating, maintaining, developing, modernizing, or enhancing, or any other use relating to, the information system, including for personnel and administration costs relating to the information system,'' (Pub. L. 118–156, section 2(a)(6), codified at 49 U.S.C. 31309(e)(3)(B)). Congress did not set the fee; rather, the revised statute states that ''[t]he total amount of fees collected under this subsection shall equal, as nearly as possible, the total amount necessary for the purposes and uses described in paragraph (3)(B),'' (Pub. L. 118–156, section 2(a)(6), codified at section 31309(e)(2)).

## V. Discussion of Proposed Rulemaking

CDLIS consists of a central site and nodes for all 51 SDLAs (50 States and the District of Columbia), interconnected on AAMVA's proprietary, secure network. The central site stores identification data about each commercial driver registered in the jurisdictions, such as: name, date of birth, last five digits of the Social Security number, State driver's license number and ''also known as'' information (*i.e.,* former/previous names), and/or previous State driver's license numbers. The information at the central site constitutes a driver's unique CDLIS Master Pointer Record (MPR). The jurisdiction nodes store the driver history records, which include driver identification information, license information, history of convictions, and history of withdrawals for each commercial driver licensed by the particular State.

When a jurisdiction, such as an SDLA, queries the CDLIS Central Site to obtain information about an applicant prior to issuing a CDL, the CDLIS Central Site compares data provided by the State of Inquiry (SOI) against all MPRs at the central site. If one or more matches are returned, then the CDLIS Central Site ''points'' the SOI to the State of Record (SOR), where more detailed information about the driver's commercial driving history is found. When a jurisdiction convicts or withdraws an out-of-state commercial driver who holds a CDL, the State of Conviction or State of Withdrawal transmits the relevant conviction or withdrawal information to the driver's SOR through the CDLIS Central Site, using the MPR.

In the past, AAMVA used a combination of fees to offset the costs of operating the system. CDLIS maintenance fees were used to cover the cost of the central site support and maintenance, leased line services and support, Network Control Software, the AAMVA help desk, AAMVA's CDLIS development and testing, and AAMVA's CDLIS staff and contractors. AAMVA's CDLIS maintenance fee, when last charged to each State, was $0.33 for each MPR record on CDLIS owned by the particular State. Each State was charged monthly, paying 1/12 of the annual fee (with the annual fee being recalculated for each monthly billing cycle).

In addition to the maintenance fees, AAMVA charged transaction fees. When States, the Federal Government, or third parties (such as motor carrier employers) queried CDLIS, they were charged a fee to cover the operations cost of that transaction. These fees varied depending upon how many transactions were made per month, such that entities with a higher volume of queries fell into a higher ''tier'' and were charged a lower per-transaction fee. FMCSA paid the fees for Federal, State, and local law enforcement transactions, through a combination of grants and contracts. Moving forward, FMCSA would not continue to pay these transaction fees, as the 2024 statute explicitly states that DOT (and by extension FMCSA) may not be charged a fee for access to, use of, or data in the CDLIS.

Transaction fees for States and the Federal Government would be rolled into the proposed user fee. However, the transaction fees for third-party users would be paid by those third parties. Because they are not required to use CDLIS, those user fees need not be set via rulemaking. Thus, AAMVA estimated the percentage of transactions attributable to third parties based on historical CDLIS usage data and considered those transactions when estimating the fee to be charged to States. AAMVA expects to incur annual CDLIS-related costs of approximately

[2] ''SBA's Imposition of Oversight Review Fees on PLP Lenders,'' B–300248 (2004), available at *https://www.gao.gov/products/b-300248*. Though the opinion was focused on the Small Business Administration, the guidance was applicable to other Executive Branch Agencies.

[3] OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (Oct. 8, 1999), available at: *https://www.govinfo.gov/content/pkg/FR-1999-10-08/pdf/99-OMB*. Circular A–110 has since been superseded by 2 CFR part 200.

[4] Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, sec. 4123, 119 Stat. 1144 (Aug. 10, 2005).

[5] OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (Oct. 8, 1999), available at: *https://www.govinfo.gov/content/pkg/FR-1999-10-08/pdf/99-26264.pdf*. FMCSA was not relying on 49 U.S.C. 31309, but rather SAFETEA–LU and program income, to allow AAMVA to charge fees. The DOT Office of Inspector General audited this practice and supported FMCSA's approach at the time–that the fees collected under the grants were to be considered ''program income.'' ''Use of Income Derived from the Commercial Driver's License Information System or Modernization,'' Report No. MH–2008–059 (July 10, 2008), available at *https://www.oig.dot.gov/sites/default/files/00CDLIS_Final_7-30-2009.pdf*.

$10.9 million per year and anticipates that fees from States will recover approximately $9.6 million per year. The remainder will be recovered from fees assessed to third parties. This NPRM proposes the user fee to be charged to each State as a percent rate of the total number of MPRs owned by each State. As explained in the fee analysis later in this preamble, this proposed MPR fee has been calculated to recover, as closely as possible, all costs associated with CDLIS, including ''operating, maintaining, developing, modernizing, or enhancing, or any other use relating to, the information system, including for personnel and administration costs relating to the information system,'' [6] less the expected income from fees assessed to third parties. The proposed fee of $0.52 annually (or approximately $0.043 per month) is higher than the last charged fee. FMCSA would oversee the amount of fees collected from the States and third parties to ensure that the total fees collected by AAMVA are solely used for the benefit of CDLIS and to determine whether, at any point, another rulemaking will be necessary to adjust the fees to match the costs associated with CDLIS.

FMCSA used information provided by AAMVA to calculate the proposed user fee. This analysis can be found in the ''Regulatory Analysis'' section of this NPRM and the information provided by AAMVA is available in the docket for this rulemaking. As a result of this analysis, this NPRM proposes that for an initial period of 6 months, AAMVA would charge States a user fee calculated using the same rate used when user fees were last charged in 2024, namely $0.33 per MPR. During this time, FMCSA would continue to supplement the user fees under the terms of its contract with AAMVA. This contract runs from August 1, 2025, with an option for FMCSA to renew for a full year on August 1, 2026, and additional three-month options beginning on August 1, 2027, and continuing through to a final three-month option on May 1, 2028. This dual payment system would only be in place long enough to allow AAMVA to accumulate a portion of their annual costs to operate, maintain, develop, modernize, and enhance CDLIS up to $5.45 million. FMCSA is proposing to allow AAMVA to collect this emergency fund in order to ensure there is no lapse in funding should an unexpected expense occur. After this initial period, once FMCSA's contract support is over, AAMVA would charge the States an annual user fee of $0.52 per MPR, unless and until a different fee is established via a later rulemaking. As in the past, AAMVA intends to invoice the States monthly, with each monthly fee calculated as 1/12 of the annual fee (or roughly $0.043 per MPR).

FMCSA seeks to establish the user fee expeditiously to lessen FMCSA's required financial assistance to CDLIS (under the contract referenced above) and to implement fully Congress's 2024 modifications to the statutory requirements of the CDLIS. As such, the potential effective dates included in this proposal align with FMCSA's option periods during the last year of its CDLIS support contract with AAMVA. FMCSA intends to include as the effective date the earliest option period available when it issues a final rule, so long as that date will provide States with enough time to prepare for the expense.

FMCSA seeks input on this proposed fee structure. When you respond, please include the number of the question and the reasoning for your response.

1. Since States have not paid CDLIS fees since 2024, FMCSA seeks information on how quickly the States could resume paying fees, either at the previous 2024 rate of $0.33 per MPR or the new proposed rate of $0.52 per MPR.

2. Should FMCSA align the implementation dates with the Federal fiscal year? Which State fiscal years align with the Federal fiscal year, which runs from October through September? Would it be a hardship for States if the CDLIS fee changed in the middle of their fiscal year?

3. Based on the information provided by AAMVA, available in the docket and summarized in this rulemaking, would interested parties benefit from additional detail regarding the administration of CDLIS and its costs in order to provide more effective comments on the proposed fees? If so, what additional information would be beneficial?

## VI. Section-By-Section Analysis

This section-by-section analysis describes the proposed changes in numerical order. This NPRM proposes the addition of a new section 384.237, which would establish the user fees to be paid by States required to use CDLIS under the provisions in that part.

Paragraph (a) would set the fee, based on the number of master pointer records attributed to each State in CDLIS. Paragraph (a)(1) would propose a lower fee for an initial 6-month period; paragraph (a)(2) would set the fee for the period after the initial period defined in paragraph (a)(1). Paragraph (b) would explicitly allow for the fee in paragraph (a) to include, as part of its calculation, the collection of fees to be used toward information technology development and modernization.

## VII. Regulatory Analyses

### *A. Executive Order (E.O.) 12866 (Regulatory Planning and Review) and DOT Rulemaking Procedures*

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, and DOT Rulemaking Procedures, 49 CFR part 5, subpart B. The Office of Management and Budget (OMB) determined that this NPRM is not a significant regulatory action under section 3(f) of E.O. 12866 and has not reviewed it under that E.O.

This NPRM proposes user fees for States required to use CDLIS in 49 CFR part 384. User fees are not considered costs but rather are transfers per OMB guidance on E.O. 12866.[7] There are no other costs associated with this NPRM.

In order to develop the appropriate user fees to be included in the NPRM, FMCSA reviewed information, provided by AAMVA, detailing the costs of operating and maintaining CDLIS, to include future modernization of the system, which is available in the docket for this rulemaking. FMCSA also took into consideration the fees previously charged by AAMVA. What follows is a summary of the fee assessment.

Historically, AAMVA charged States between $0.33 and $1.00 per MPR, as they worked to determine the appropriate fee amount for cost recovery. The costs of building and maintaining CDLIS have changed over the years, as has the percentage of costs covered by the States. In addition, the statute now allows for the collection of fees to cover modernization, which was not included in prior fees. Based on the count of MPRs per State in January of 2025, the monthly fee would range from $571 (DC) to $73,392 (CA and TX). Table 1 provides a complete list of the distribution of CDLIS fees by State, based on 2025 MPR counts. The following summary discusses current costs and MPR data used to develop the $0.52 per MPR fee included in this NPRM.

[6] 49 U.S.C. 31309(e)(3)(B).

[7] Circular A–4, Regulatory Analysis (68 FR 58366, Oct 9, 2003).

TABLE 1—DISTRIBUTION OF CDLIS FEE BY STATE, AS OF JANUARY 2025

| State | CDLIS MPRs | Monthly fee | Percent of total | State | CDLIS MPRs | Monthly fee | Percent of total | State | CDLIS MPRs | Monthly fee | Percent of total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| AK | 64,177 | $2,801 | 0.4 | KY | 225,234 | $9,829 | 1.3 | NY | 963,752 | $42,058 | 5.6 |
| AL | 238,063 | 10,389 | 1.4 | LA | 284,020 | 12,395 | 1.7 | OH | 809,948 | 35,346 | 4.7 |
| AR | 251,466 | 10,974 | 1.5 | MA | 298,748 | 13,037 | 1.7 | OK | 237,688 | 10,373 | 1.4 |
| AZ | 402,167 | 17,550 | 2.3 | MD | 206,170 | 8,997 | 1.2 | OR | 222,900 | 9,727 | 1.3 |
| CA | 1,681,772 | 73,392 | 9.8 | ME | 78,537 | 3,427 | 0.5 | PA | 736,421 | 32,137 | 4.3 |
| CO | 325,273 | 14,195 | 1.9 | MI | 370,209 | 16,156 | 2.2 | RI | 27,595 | 1,204 | 0.2 |
| CT | 109,900 | 4,796 | 0.6 | MN | 316,902 | 13,830 | 1.8 | SC | 301,438 | 13,155 | 1.8 |
| DC | 13,088 | 571 | 0.1 | MO | 436,642 | 19,055 | 2.5 | SD | 87,430 | 3,815 | 0.5 |
| DE | 68,385 | 2,984 | 0.4 | MS | 191,343 | 8,350 | 1.1 | TN | 298,714 | 13,036 | 1.7 |
| FL | 1,088,315 | 47,494 | 6.3 | MT | 87,576 | 3,822 | 0.5 | TX | 1,678,054 | 73,230 | 9.8 |
| GA | 480,740 | 20,979 | 2.8 | NC | 772,448 | 33,709 | 4.5 | UT | 183,551 | 8,010 | 1.1 |
| HI | 39,952 | 1,743 | 0.2 | ND | 71,094 | 3,103 | 0.4 | VA | 432,138 | 18,858 | 2.5 |
| IA | 224,881 | 9,814 | 1.3 | NE | 114,804 | 5,010 | 0.7 | VT | 36,839 | 1,608 | 0.2 |
| ID | 147,510 | 6,437 | 0.9 | NH | 44,512 | 1,942 | 0.3 | WA | 317,972 | 13,876 | 1.9 |
| IL | 426,735 | 18,623 | 2.5 | NJ | 434,339 | 18,954 | 2.5 | WI | 320,935 | 14,006 | 1.9 |
| IN | 371,391 | 16,207 | 2.2 | NM | 125,235 | 5,465 | 0.7 | WV | 85,017 | 3,710 | 0.5 |
| KS | 199,789 | 8,719 | 1.2 | NV | 147,285 | 6,427 | 0.9 | WY | 70,930 | 3,095 | 0.4 |

AAMVA incurs annual CDLIS-related costs of approximately $10.9 million per year and anticipates that fees from States will recover approximately $9.6 million per year. The remainder will be recovered from fees assessed to third parties, which are not handled via rulemaking. The annual costs for CDLIS include operations and maintenance (65 percent), administration (6 percent), and development and modernization (29 percent). Because these costs include an allowance for development and modernization, it is likely that they will accumulate over time, and then be spent down during future updates or modernizations. In the meantime, AAMVA has requested that it be allowed to accumulate a reserve fund for emergencies quickly, roughly equal to six months of its annual costs, which would equal $5.45 million (half of $10.9 million per year).

FMCSA calculates the $0.52 per MPR fee by dividing the $9,604,767 in State-covered costs by the 18,340,985 individual MPRs in CDLIS. AAMVA intends to invoice the States monthly, and the annual fee is therefore divided by 12 to estimate a monthly fee of 1/12 the annual fee, which roughly amounts to $0.043 per MPR. FMCSA would exercise oversight of AAMVA's implementation of the user fee and would review the fee and associated inputs on a regular basis to determine if the fee should be adjusted by another rulemaking.

### *B. E.O. 14192 (Unleashing Prosperity Through Deregulation)*

E.O. 14192, Unleashing Prosperity Through Deregulation, was issued on January 31, 2025 (90 FR 9065, Jan. 31, 2025). E.O. 14192 requires that, for every one new regulation issued by an Agency, at least ten prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. OMB issued final implementation guidance addressing the requirements of E.O. 14192 on March 26, 2025.[8]

This rulemaking would establish a user fee, which is not considered a cost. Therefore, this rulemaking would qualify as neither an E.O. 14192 regulatory or deregulatory action and would not require any offsetting regulatory actions.

### *C. Advance Notice of Proposed Rulemaking*

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking if a proposed safety rule ''under this part'' [9] is likely to lead to the promulgation of a major rule.[10] As this rulemaking is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

### *D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[11] requires Federal agencies to consider the effects of the regulatory action on small businesses and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

This NPRM would impact States, which do not qualify as small entities. Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

### *E. Assistance for Small Entities*

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's

[8] M–25–20 Guidance Implementing Section 3 of Executive Order 14192, Titled ''Unleashing Prosperity Through Deregulation.''

[9] Part B of Subtitle VI of Title 49, U.S.C., *i.e.,* 49 U.S.C. chapters 311–317.

[10] A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

[11] Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman*) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

*F. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 $206 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2024 levels) or more in any one year. Though this rulemaking would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rulemaking elsewhere in this preamble.

*G. Paperwork Reduction Act*

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

*H. E.O. 13132 (Federalism)*

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.''

FMCSA analyzed this proposed rule and determined that it has implications for federalism. A summary of the impact of federalism on this rule follows.

Under this rulemaking, States will be required to pay user fees to use CDLIS, a system they are required to use under 49 CFR parts 383 and 384. This represents a direct effect on the States, as well as a direct cost of compliance. As a result, FMCSA contacted the following organizations and offered to engage in federalism consultations with representatives from the States: AAMVA, the Commercial Vehicle Safety Alliance, the National Governors Association, and the National Conference of State Legislatures. Copies of these letters can be found in the docket for this rulemaking. FMCSA did not receive request(s) for consultation on the proposals. As such, FMCSA has determined that no further federalism analysis is warranted at this time.

*I. Privacy*

The Consolidated Appropriations Act, 2005 [12] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. The Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and will be submitted to DOT's Privacy Officer for review and final adjudication.

In addition, The E-Government Act of 2002,[13] requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. This rulemaking would not impact technology that collects, maintains, or disseminates information.

*J. E.O. 13175 (Indian Tribal Governments)*

This rulemaking does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribe, 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.

*K. National Environmental Policy Act of 1969*

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under DOT Order 5610.1D,[14] Subpart B, subsection e, paragraphs (6)(d), (6)(s), and (6)(t). The categorical exclusions (CEs) in these paragraphs cover regulations concerning the following topics:

(6)(d): the training, qualifying, licensing, certifying, and managing of personnel;

(6)(s): the reduction or prevention of truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license; and

(6)(t): ensuring that States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986 by . . . (2) having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license.

The proposed fee schedule for States querying CDLIS is covered by these CEs, as the CDLIS queries are made in the course of licensing CMV drivers.

*L. Rulemaking Summary*

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=2126-AC78.*

**List of Subjects in 49 CFR Part 384**

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

Accordingly, FMCSA proposes to revise 49 CFR chapter III, part 384 to read as follows:

## PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 1. The authority citation for part 384 continues to read as follows:

**Authority:** 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 2. Part 384 is amended by adding a new section 384.237 to read as follows:

[12] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 8, 2004).

[13] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

[14] Available at *https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts.*

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**§ 384.237 Commercial Driver's License Information System User Fees.**

(a) States must pay a user fee to the authorized operator of the Commercial Driver's License Information System (CDLIS), to be calculated according to the number of master pointer records (MPR) associated with each State in CDLIS each month.

(1) Beginning August 1, 2027, the annual fee will be $0.33 per MPR.

(2) Beginning February 1, 2028, the annual fee will be $0.52 per MPR.

(b) The calculation of the fee in paragraph (a) may include costs for operating, maintaining, developing, modernizing, enhancing, or any other use relating to, CDLIS, including for personnel and administration costs relating to the information system.

Issued under authority delegated in 49 CFR 1.87.

**Derek D. Barrs,**

*Administrator.*

[FR Doc. 2026–09943 Filed 5–15–26; 8:45 am]

**BILLING CODE 4910–EX–P**

## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1104

**[Docket No. EP 790]**

### Review of Replies to Replies

**AGENCY:** Surface Transportation Board.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Board's regulations pertaining to the filing of pleadings prohibit the filing of a reply to a reply. The Board is considering whether to modify its regulations or practices to allow replies to replies (and if so, to what extent) and seeks comments on how the Board's regulations on such filings would best promote fairness, efficiency, and predictability for all parties that appear in proceedings before the Board.

**DATES:** Comments are due by June 17, 2026.

**ADDRESSES:** Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 790, 395 E Street SW, Washington, DC 20423–0001. Comments will also be posted to the Board's website.

**FOR FURTHER INFORMATION CONTACT:** Sarah Fancher at (202) 740–5507. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** In May 2025, as part of ongoing, comprehensive agency reform efforts, Vice Chairman Schultz and Board staff held a series of listening sessions with legal practitioners to discuss their experiences before the Board. Press Release, STB, STB Gathers More than 100 Ideas from Practitioners to Streamline Board Processes, (June 10, 2025), *https://www.stb.gov/news-communications/latest-news/pr-25-22/.* The sessions were an opportunity for practitioners to offer ideas on possible improvements to the agency's processes and procedures affecting litigants and parties appearing before the agency. Dozens of attorneys participated and offered numerous ideas for process improvements. Many practitioners raised the Board's practice regarding the treatment of replies to replies and indicated a desire for a more consistent approach to such filings.

While the Board's regulations generally prohibit the filing of a reply to a reply, 49 CFR 1104.13,[1] historically the Board often has accepted them in individual cases in the interest of a complete record, *see, e.g., City of Alexandria, Va.—Pet. for Declaratory Ord.,* FD 35157, slip op. at 2 (STB served Nov. 6, 2008). Recently, however, the Board has indicated that ''the benefits from the orderly and efficient administration of cases, including reducing burden on the public and agency, justify enforcing this rule more strictly.'' *See Sunflower State Indus. Ry.—Pet. for Declaratory Ord.,* FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025).

Public input would assist the Board in assessing whether to modify its replies to replies (hereafter, rebuttals) regulations and/or practices or to leave the regulation unchanged. A review of federal court and other agency practices reveals various approaches to rebuttals, ranging from a strict prohibition to allowing rebuttals as of right in all motion practice.[2] The Board recognizes that there are advantages and disadvantages to both approaches and that the optimal approach may fall somewhere between or depend on the type of proceeding. On the one hand, allowing rebuttals would ensure that the moving party or the party with the burden of proof has ''the last word,'' which may promote fairness. In addition, arguments may be crystalized and ambiguities clarified in rebuttals, which could lead to better-informed Board decisions. On the other hand, rebuttals might be used inappropriately to introduce new evidence or argument that was not, but could have been, included with the proponent's opening pleadings, creating unfair surprise for litigants. Further, prohibiting rebuttals may promote efficiency by bringing the record to a close sooner and encouraging parties to include all relevant evidence and argument in their initial pleadings.

The Board seeks comments to assist it in deciding whether to develop modified regulations or practices regarding rebuttals or to leave the regulation unchanged. The Board is particularly interested in the following options:

- *Leave 49 CFR 1104.13 unchanged.* Should the Board keep its current regulation that does not allow for rebuttals? If the Board were to leave the current prohibition in place, under what standard should it consider requests for leave to file a rebuttal? Should the Board more strictly enforce its current prohibition on rebuttals?
- *Amend 49 CFR 1104.13 to allow for rebuttal.* Should the Board amend its regulation to allow rebuttal in all circumstances, or should rebuttal be limited to certain types of matters and/or motions? If the latter, in what situations should rebuttals be permitted? If a rebuttal is not allowed as of right in a particular matter or motion, under what standard should the Board consider a request to file a rebuttal?
- *Limits to rebuttal pleadings.* If the Board were to amend its regulation to allow rebuttals, should the Board limit the content of rebuttals, *e.g.,* to address matters raised on reply? What would be an appropriate deadline for a rebuttal and should a deadline vary depending on the type of motion and/or proceeding at issue? Should the Board impose other limits on rebuttals, *e.g.,* word count limits? Should the Board prohibit any subsequent filings (*i.e.,* surrebuttals), barring exceptional circumstances?
- *Other motions practice.* Should the Board amend its regulations to include a meet-and-confer requirement for some or all motions practice before the Board, *e.g.,* for procedural motions in matters with a limited number of parties?

Commenters are not limited to addressing these questions but may offer other input on treatment of rebuttals and related motion practice issues. The

[1] The Board's regulations allow for replies to replies in certain proceedings, such as rate cases. *See, e.g.,* 49 CFR 1111.9(a)(7) (allowing for rebuttal evidence in rate cases).

[2] *See, e.g.,* N.D. Ga. Civ. R. 7.1(c) (allowing for replies to a responsive pleading within 14 days); D. Mass. R. 7.1(b)(3) (requiring leave of court to file a reply to an opposition filing); W.D. Mich. Civ. R. 7.2(c) (allowing for replies to a responsive brief that opposes a dispositive motion within 14 days); *id.* at 7.3(c) (prohibiting replies to a responsive brief that opposes a non-dispositive motion without leave of court); 47 CFR 1.45 (allowing a reply to an opposition filing filed with the Federal Communications Commission within five days).

Board seeks comments and suggestions that are consistent with the goal of balancing fairness with efficiency and predictability for all parties that appear in proceedings before the Board.

Because this advance notice of proposed rulemaking (ANPRM) does not impose or propose any requirements, and instead seeks comments and suggestions for the Board to consider in possibly developing a subsequent proposed rule, the requirements of the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, do not apply to this action. Nevertheless, as part of any comments submitted in response to this ANPRM, parties may include comments or information that could help the Board assess the potential impact of a subsequent regulatory action on small entities pursuant to the RFA.

Executive Order 12866, as modified by Executive Order 14215, provides that the Office of Information and Regulatory Affairs will review all significant rules. OIRA has determined that this rule is not significant under section 3(f) of Executive Order 12866.

*It is ordered:*

1. Comments are due on June 17, 2026.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on its date of service.

Decided: May 13, 2026.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2026–09900 Filed 5–15–26; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 18

**[Docket No. FWS–R7–ES–2023–0086; FXES111607MRG01–267–FF07CAMM00]**

**RIN 1018–BG75**

## Marine Mammals; Incidental Take of Polar Bears in the Southern Beaufort Sea; Seismic Exploration Activities by SAExploration, Inc.

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of availability of draft environmental assessment; and request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, received a request under the Marine Mammal Protection Act of 1972 from SAExploration, Inc., to issue regulations facilitating the authorization of incidental, unintentional take of small numbers of polar bears during seismic exploration activities on the North Slope of Alaska. Take may result from three-dimensional seismic survey programs and associated activities occurring for a period of 5 years beginning July 1, 2026. If this rule is finalized, we may issue letters of authorization, upon request, for specific activities in accordance with the final rule for a period of up to 5 years. We intend that any final action resulting from this proposed rule will be as accurate and effective as possible. Therefore, we request comments on these proposed regulations and the accompanying draft environmental assessment from the public, Tribes, and local, State, and Federal agencies.

**DATES:** Comments on these proposed incidental take regulations and the accompanying draft environmental assessment will be accepted on or before June 17, 2026. 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.

*Information collection requirements:* If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Such comments should be submitted to OMB, with a copy to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see ''Information Collection'' section below under **ADDRESSES**) by July 17, 2026.

**ADDRESSES:**

*Document availability:* You may view this proposed rule, the associated draft environmental assessment, comments received, and other supporting material (including Supporting & Related Material) at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2023–0086, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

*Comment submission:* You may submit comments on the proposed rule and draft environmental assessment by one of the following methods:

- *Electronic submission:* Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2023–0086.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2023–0086, Policy and Regulations Branch, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments at *https://www.regulations.gov.* You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

*Information collection requirements:* Written comments and suggestions on the information collection requirements should be submitted within 60 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference ''1018–New/RIN 1018–BG75'' in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Burgess, by email at *r7mmmregulatory@fws.gov,* by telephone at 907–786–3800, or by U.S. mail at U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, AK 99503. 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

In accordance with the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1371(a)(5)(A)) and its implementing regulations, we, the U.S. Fish and Wildlife Service (hereafter, FWS or we), propose incidental take regulations that, if finalized, would authorize the incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) during seismic exploration and associated activities on the North Slope of Alaska. If finalized, this proposed rule would be effective for

a 5-year period beginning at the date of issuance.

This proposed rule is based on our draft findings that the total takings of polar bears during specified activities will impact small numbers of animals, will have a negligible impact on this species or stocks, and will not have an unmitigable adverse impact on the availability of this species for subsistence use by Alaska Natives. We base our draft findings on data from monitoring the encounters and interactions between this species and the oil and gas industry; research on this species; oil spill risk assessments; potential and documented effects on this species from similar activities; information regarding the natural history and conservation status of polar bears; and data reported from Alaska Native subsistence hunters. In conjunction with this proposed rulemaking, we have prepared a draft environmental assessment, which is also available for public review and comment.

These proposed regulations include permissible methods of taking; mitigation measures to ensure that SAExploration, Inc,'s (SAE) activities will have the least practicable adverse impact on the species, their habitat, and the availability of this species for subsistence uses; and requirements for monitoring and reporting.

**Background**

Section 101(a)(5)(A) of the MMPA gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18 (at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the FWS. According to the MMPA, the FWS shall allow this incidental taking for a period of up to 5 consecutive years if we find that the total of such taking:

(1) will affect only small numbers of individuals of the species or stock;

(2) will have no more than a negligible impact on the species or stock;

(3) will not have an unmitigable adverse impact on the availability of the species or stock for taking for subsistence use by Alaska Natives; and

(4) we issue regulations that set forth:

(a) permissible methods of taking,

(b) means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses, and

(c) requirements for monitoring and reporting of such taking.

If final regulations allowing such incidental take are issued, we may then subsequently issue letters of authorization (LOAs), upon request, to authorize incidental take during the specified activities.

The term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government means ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild'' (the MMPA defines this as 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'' (the MMPA defines this as Level B harassment).

The terms ''negligible impact'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27 (*i.e.,* regulations governing small takes of marine mammals incidental to specified activities) as follows: ''Negligible impact'' is 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. ''Unmitigable adverse impact'' means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term ''small numbers'' is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impacts'' as two separate and distinct requirements for promulgating incidental take regulations (ITR) under the MMPA (see *Natural Res. Def. Council, Inc.* v. *Evans,* 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2002)). Instead, for our small numbers determination, we evaluate if the number of marine mammals estimated to be incidentally taken is small relative to the size of the species or stock.

The term ''least practicable adverse impact'' is not defined in the MMPA or its enacting regulations. In promulgating ITRs, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of specified activities, but not so restrictive as to make specified activities unduly burdensome or impossible to undertake and complete.

In this proposed rule to set forth new ITRs, the term ''Industry'' includes individuals, companies, and organizations involved in exploration, development, production, extraction, processing, transportation, research, monitoring, and support services of the petroleum industry. SAE's activities may result in the incidental taking of polar bears. The MMPA does not require that SAE must obtain incidental take authorization; however, any incidental taking that occurs without authorization is a violation of the MMPA.

**Summary of Request**

On January 27, 2022, the FWS received a request from SAE to promulgate regulations for nonlethal incidental take of small numbers of Southern Beaufort Sea (SBS) stock polar bears on the North Slope of Alaska for a period of 5 years (December 2023 through November 2028). After coordination with the FWS on mitigation measures and take analysis during meetings on March 23, 2022, and April 18, 2022, we received a revised request to promulgate regulations on May 4, 2022. The FWS further coordinated with SAE on January 12, 2023, and February 3, 2023, and received a revised request on February 14, 2023, which was deemed adequate and complete. However, a proposed ITR based on this February 14, 2023, request was ultimately not published for public comment on the **Federal Register** and therefore, no associated regulations were promulgated.

On August 12, 2025, the FWS received a new revised request from SAE to promulgate regulations for nonlethal incidental take of small numbers of SBS stock of polar bears on the North Slope of Alaska for a period of 5 years (beginning July 1, 2026) (hereafter referred to as the ''Request''). The FWS further coordinated with SAE to discuss polar bear denning survey area sizes on September 24, 2025. The FWS deemed SAE's revised Request (received August 12, 2025) adequate and complete on September 25, 2025.

**Description of the Proposed Regulations**

These proposed regulations, if finalized, would authorize the incidental, unintentional take of small numbers of polar bears that may result from the specified activities based on standards set forth in the MMPA. They would not authorize or ''permit'' activities, only the incidental take of polar bears that may occur associated with those activities. The proposed regulations include:

(1) Permissible methods of taking;

(2) Measures designed to ensure the least practicable adverse impact on polar bears and their habitat, and on the availability of this species or stock for subsistence uses; and

(3) Requirements for monitoring and reporting.

These proposed regulations, if finalized in their current form, would differ from prior polar bear take authorizations in terms of the types of incidental take that would be allowed. Past iterations of polar bear take authorizations have been consistent in expressly prohibiting incidental lethal take but inconsistent in terms of allowable types of incidental harassment. See 76 FR 47010, August 3, 2011 (allowing all nonlethal incidental take); 81 FR 52276, August 5, 2016 (allowing incidental Level B harassment but not incidental Level A harassment); 86 FR 42982, August 5, 2021 (allowing incidental Level B harassment but not incidental Level A harassment); and 90 FR 27398, June 6, 2025 (allowing incidental Level B harassment and incidental Level A harassment). Some of these inconsistencies reflect differences in the types of incidental harassment that FWS anticipated to result from each set of specified activities. For instance, the FWS did not anticipate or authorize incidental Level A harassment in the original Beaufort Sea 2021–2026 regulations (86 FR 42982, August 5, 2021) but did anticipate and thus allowed Level A harassment in the revised Beaufort Sea 2021–2026 regulations (90 FR 27398, June 6, 2025). However, Level A harassment was not anticipated but was nevertheless allowed (at least implicitly) in the Beaufort Sea 2006–2011 regulations (71 FR 43926, August 2, 2006).

The FWS is now considering whether the best reading of the MMPA's provisions concerning ITRs requires the FWS to allow (1) all types of incidental take that result from the specified activities; (2) only the types of incidental take that FWS anticipated during the rulemaking process; or (3) only the types of incidental take that were requested to be allowed.

**Description of Letters of Authorization (LOAs)**

An LOA is required to conduct activities pursuant to an ITR. Under this proposed ITR, if finalized, SAE may request LOAs that would authorize take of polar bears that occurs incidental to the specific activities described in these proposed regulations. Requests for LOAs must be consistent with the activity descriptions and mitigation and monitoring requirements of the ITR and be received in writing at least 90 days before the activity is to begin. Requests must include (1) an operational plan for the activity, including the number of days of work and the nature of work to be conducted; (2) a digital geospatial file of the project footprint; (3) estimates of monthly human occupancy of the project area; (4) an interaction plan for polar bears; (5) a site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on polar bears, including frequency and dates of aerial infrared (AIR) surveys when such surveys are required; and (6) Plans of Cooperation (POC), if required as described below. Once this information has been received, we will evaluate each request and issue the LOAif we find that the level of taking will be consistent with the findings made for the total taking allowable under the ITR. We must receive an after-action report on the monitoring and mitigation activities within 90 days after the LOA expires. For more information on requesting and receiving an LOA, refer to 50 CFR 18.27(f).

**Description of Plans of Cooperation (POC)**

A POC is a documented plan describing measures to mitigate potential conflicts between specified activities and Alaska Native subsistence hunting. The circumstances under which a POC must be developed and submitted with a request for an LOA are described below.

To help ensure that specified activities do not have an unmitigable adverse impact on the availability of the species for Alaska Native subsistence hunting opportunities, all applicants requesting an LOA under this ITR must provide the FWS documentation of communication and coordination with Alaska Native communities potentially affected by the specified activity and, as appropriate, with representative subsistence hunting and co-management organizations. If Alaska Native communities or representative subsistence hunting organizations express concerns about the potential impacts of specified activities on subsistence activities, and such concerns are not resolved during this initial communication and coordination process, then a POC must be developed and submitted with the applicant's request for an LOA. In developing the POC, SAE will further engage with Alaska Native communities and/or representative subsistence hunting organizations to provide information and respond to questions and concerns. The POC must provide adequate measures to ensure that specified activities will not have an unmitigable adverse impact on the availability of polar bears for Alaska Native subsistence uses.

**Description of Specified Geographic Region and Specified Activities**

The specified geographic region covered by the requested ITR includes onshore and nearshore areas along the Beaufort Sea coast of Alaska's North Slope. The boundary extends from the Colville River (150.85° W) in the west to the Canning River (145.98° W) in the east and south approximately 40 kilometers (km) (25 miles (mi)) inland. No lands or waters within the exterior boundaries of the Arctic National Wildlife Refuge (Arctic NWR) are included in the SAE ITR region. The geographical extent of the SAE seismic area is approximately 6,201 square km ($km^2$) (approx. 1.5 million acres (ac)) and is smaller than the region covered in the 2026–2031 Proposed Beaufort Sea ITR (91 FR 11240, March 9, 2026) (figure 1, below).

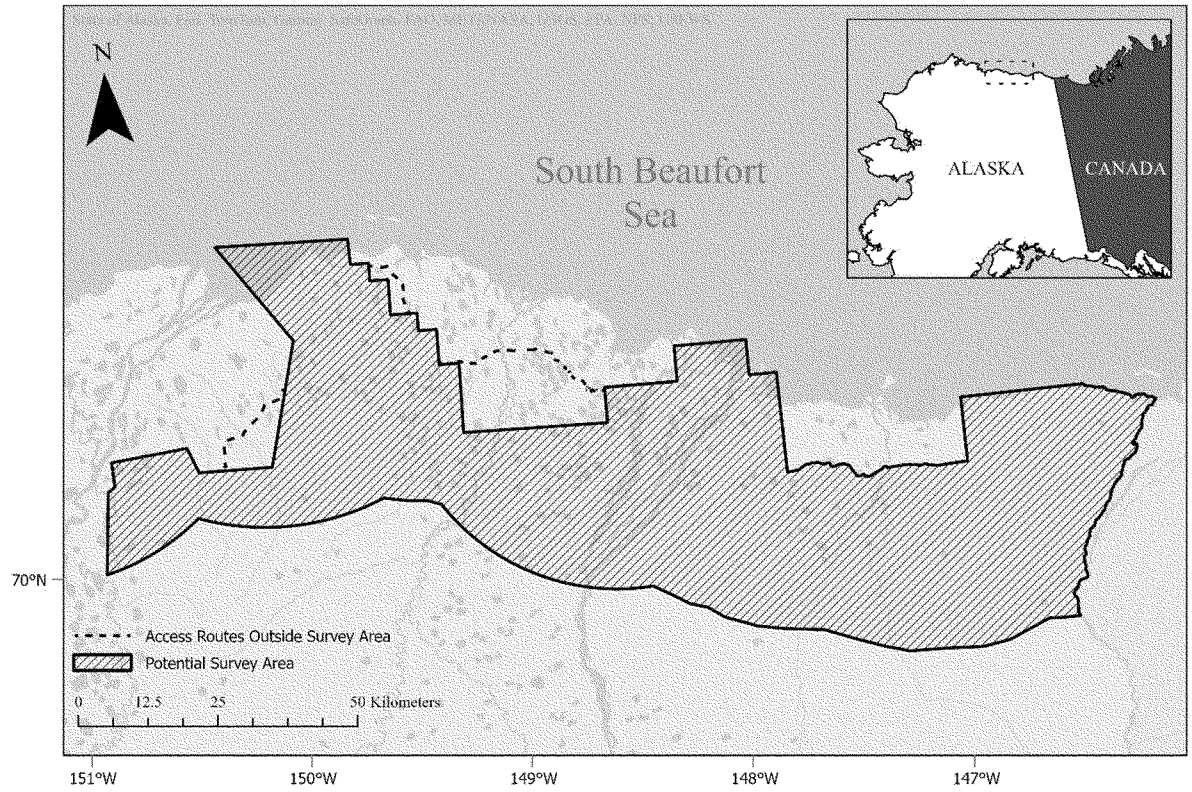


**Figure 1—Map of Proposed SAExploration, Inc, ITR Region, Beaufort Sea**

SAE's specified activities include seismic exploration on land along the Beaufort Sea coast to map potential hydrocarbon deposits. Pre-acquisition activities will begin with helicopter-based archeological surveys (if needed) in the summer, followed by AIR surveys for maternal polar bear dens in December and January. Seismic acquisition will begin with advanced crew surveys and ice checks after January 15, followed by mobilization of camp facilities, and finally seismic acquisition. Post-survey activities will include helicopter-based cleanup in the summer. These activities are anticipated to occur over a 5-year period.

*Archaeological Surveys*

Prior to field activities, SAE will perform archaeological surveys of the project area. Field surveys will require helicopter-based transects spaced 1.3 km (0.8 mi) apart to ensure terrain between the transects can be visually inspected. Landings may be made to investigate any landforms of interest, and crews may perform shovel tests if landforms are deemed likely to contain cultural resources or if surface artifacts are found. Field surveys may take up to 10 days of flying at altitudes below 457 meters (m) (1,500 feet (ft)), with up to 20 take-offs and landings per day, and will occur during July or August. Surveys near coastal, or high-use polar bear areas will be prioritized prior to the mid-August annual influx of polar bears along the coastal areas.

*AIR Surveys for Maternal Polar Bear Dens*

SAE will conduct or obtain between one and three AIR surveys dependent upon location. As described below in *Den Simulation* and displayed in figures 2 and 3, below, the FWS developed, and SAE incorporated into their Request, a spatial projection of polar bear denning density probabilities along the North Slope of Alaska (*i.e.,* a denning density map) to delineate high and moderate denning density zones (see *Den Simulation* for greater detail). Project areas located in high denning density zones will be AIR surveyed three times, project areas in moderate denning density zones will be AIR surveyed twice, and anywhere outside of either the moderate or high denning density zones will be AIR surveyed once. When either one or two AIR surveys are needed, the first survey would be flown between November 25 and December 25 and the second survey would occur between December 15 and January 15. In areas where three surveys are required, the additional survey would occur between December 5 and December 31. A minimum of 24 hours would be required between completion of the previous AIR survey and beginning a new AIR survey. The AIR surveys will be flown between an altitude of 244 m (800 ft) and 457 m (1,500 ft) using a fixed-wing aircraft originating from Deadhorse Airport.

*Advance Crew Survey and Ice Check*

Approximately 2 weeks prior to mobilization, an advance crew will perform route surveys and ice checks along existing routes to measure ice integrity. The advance crew will mobilize no earlier than January 15, or upon the opening of winter tundra travel, whichever occurs later. Ice checking will be conducted using tracked vehicles and snow machines. Tracked vehicles will have vehicle-mounted infrared devices to scan tributary crossings for potential polar bear dens within defined denning habitat.

An additional component of the advance crew will be a snow survey crew mobilizing 7–20 days prior to the main project crew. This crew consists of camp trailers, fuelers, Steigers (tractors), Tuckers (industrial snow machines), and support trailers with three to four crews of two personnel each. These crews will focus on evaluating ice conditions and safe routes for seismic operations and can cover up to 16 km (9.94 mi) per day. At the end of each day, crews will return to camp. The camp will move, as needed, to remain

within a reasonable distance of operations.

*Mobilization and Support Facilities*

Seismic camp facilities and crews will mobilize shortly after the advance crew has delineated a route. Up to two 180-person-camp seismic crews may be supported in any given winter season to conduct seismic programs within the project area. Equipment will be staged at existing facilities in Deadhorse. A predetermined route, along preexisting routes to the maximum extent practicable, will be used to mobilize equipment from existing gravel or ice roads and pads. Camp equipment will include long-haul fuel tractors, remote fuelers, water makers, an incinerator, a resupply and survival sleigh, tractors, loaders, and Tuckers. Camp locations are selected based on topography and snow conditions and may remain in place for up to 7 days before moving. Typically, a camp may move 1.6–3.2 km (1–2 mi) every 5–7 days, or four–six moves per month. The camp will generally remain in the center of the active seismic survey area.

If there is not sufficient road access and a lake or tundra area is of sufficient size for an airstrip, a camp may include a temporary winter airstrip. Airstrips will be located within 2 km of camp and have a footprint of approximately 22.8 m (75 ft) wide and 701–1,066 m (2,300–3,500 ft) long for aircraft to land. The advanced scouting trip will identify any lakes or tundra locations that can be used to construct an airstrip. Airstrip construction will require a rubber tracked Steiger with a blade to clear a berm to delineate the edge of the landing strip. Approximately two trips per week are anticipated, or as operations require. Flights will originate from Deadhorse Airport and aircraft will transit at an altitude greater than 457 m (1,500 ft) as weather and safety conditions allow. Once the camp is moved, the airstrip will no longer be maintained by the crew. Personnel and camp facilities will be demobilized on approximately May 31 or upon closure of winter tundra travel.

*Seismic Program*

Seismic surveys using vibroseis will be conducted on land or stable pack ice using truck- or track-mounted vibrators. Surveys on ice will occur on a minimum of 1.2 m (3.9 ft) of ice, which is necessary to support heavy vehicles. First, the geophones (receivers) will be placed at receiver points marked by the advance crew approximately every 30–35 m (98–115 ft). Vibrator source points will be marked at equivalent intervals. The vibrators will move to the beginning of a seismic survey line, begin vibrating in synchrony, and recording begins. There will be two sizes of vibrators: large vibrators with a weight of 44,000 kilograms (kg) and small vibrators with a weight of 12,475 kg. The smaller vibrators will be used to limit impacts in areas such as narrow riverbeds and ungrounded lakes. The method of acquisition for this project will be source-driven shooting with multiple vibrators collecting data at the same time, but only a single vibrator is required to travel down any source line, reducing the project's footprint.

Operations will continue for 24 hours per workday and are based on two 12-hour shifts. A seismic program may last between 30 and 100 days in a winter season depending on the requested survey areas and the seismic survey density. Approximately 5–7 days are required to set out equipment in each section with the camp located in the center of the spread. During acquisition, camps are expected to be occupied by approximately 160–180 people.

*Summer Cleanup*

After all the snow is gone in July or August, SAE will contract a helicopter to perform flyovers of the survey area looking for debris that may have been left behind. The cleanup crew will also inspect all camp locations, any area that had an unplanned release or tundra disturbance, and each source and receiver line. This activity will occur over approximately 15 days, including possible weather days. Each survey day will require about 6 hours of flight time, traveling below 305 m (1,000 ft) above ground level, and will include 25–40 landings. All SAE summer cleanup will be scheduled in a manner that aims to complete any work near coastal, or high-use, polar bear areas before the annual influx of polar bears coming to shore in mid-August to minimize impacts to polar bears. However, in order to mitigate impacts to threatened eiders in the project area, SAE will not conduct cleanup activities in nesting areas before July 31.

## Description of Marine Mammals in the Specified Geographic Region

Polar bears are the only species of marine mammal managed by the FWS likely found within the specified geographic region. Information on the range, stocks, biology, and environmental impacts on polar bears was considered in the development of this proposed ITR. A summary of such information can be found at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2023–0086 (available as described above in **ADDRESSES**).

## Potential Impacts of the Specified Activities on Marine Mammals

*Impacts of Surface Activities on Polar Bears*

Disturbance impacts on polar bears will be influenced by the type, duration, intensity, timing, and location of the source of disturbance. Disturbance from the specified activities would originate primarily from helicopter overflights, tundra travel, seismic data acquisition, mobilization and operation of camp facilities, and cleanup activities. The noises, sights, and smells produced by these activities will elicit variable responses from polar bears, ranging from no impact (ignoring the stimulus) to avoidance to attraction. When disturbed by noise, animals may respond behaviorally by walking, running, or swimming away from a noise source, or physiologically via increased heart rates or hormonal stress responses (Harms et al. 1997; Tempel and Gutierrez 2003). However, individual response to noise disturbance can be based on previous interactions, sex, age, and maternal status (Anderson and Aars 2008; Dyck and Baydack 2004). Noise and odors could also potentially attract polar bears to work areas. Attracting polar bears to these locations could result in human-polar bear interactions, unintentional harassment, intentional hazing, or possible lethal take in defense of human life. This proposed ITR, if finalized, would facilitate the authorization of the incidental, unintentional take of polar bears that may result from the specified activities and would require mitigation measures to manage attractants in work areas and reduce the risk of human-polar bear interactions.

*Human-Polar Bear Interactions*

A larger percentage of SBS polar bears are spending more time on land during the open-water season, which may increase the risk for human–polar bear interactions (Atwood et al. 2016; Rode et al. 2022). SAE's Request outlines polar bear monitoring and reporting requirements and a polar bear interaction plan with information describing SAE's personnel training and attractants management. Polar bear interaction plans, personnel training, attractants management, and polar bear monitoring are mitigation measures used to reduce human-polar bear interactions and minimize the risks to polar bears and humans when interactions occur. Polar bear interaction plans detail the policies and procedures that will be implemented by SAE to avoid attracting and interacting with polar bears, and minimize impacts

to the polar bears. Interaction plans also detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel. Appropriate management of attractants (*e.g.,* human food, garbage) may decrease the likelihood of polar bears associating humans with food, which mitigates the risk of human-polar bear interactions (Atwood and Wilder 2021). Information gained from monitoring polar bears near industrial infrastructure is used for better understanding polar bear distribution, behavior, and interactions with humans. Tools that may be used to facilitate detection and monitoring of polar bears include bear monitors, thermal cameras, and remotely operated cameras. It is possible that human-polar bear interactions may occur during the specified activities, and mitigation measures will be implemented by SAE to minimize the risk of human-polar bear interactions during the specified activities.

From mid-July to mid-November, SBS polar bears can be found in large numbers and high densities on barrier islands, along the coastline, and in the nearshore waters of the Beaufort Sea, particularly on and around Barter and Cross Islands (Wilson et al. 2017). This distribution leads to a significantly higher number of human-polar bear interactions on land and at offshore structures during the open-water season than other times of the year. Polar bears that remain on the multi-year pack ice are not typically present in the ice-free areas where vessel traffic occurs, as barges and vessels associated with Industry activities travel in open water and avoid large ice floes.

On land, most polar bear observations occur within 2 km (1.2 mi) of the coastline based on polar bear monitoring reports. Facilities within the offshore and coastal areas are more likely to be approached by polar bears, and they may act as physical barriers to polar bear movements. As polar bears encounter these facilities, the chances for human-polar bear interactions increase. However, polar bears have frequently been observed crossing existing roads and causeways, and they appear to traverse the human-developed areas as easily as the undeveloped areas based on monitoring reports. The applicant has considered polar bear ecology as it relates to seasonal distributions and habitat usage when proposing the timing of when to conduct activities in certain locations as a measure to help minimize or avoid human-polar bear interactions.

*Effects of Aircraft Activities on Polar Bears*

The frequency and level of airborne sounds typically produced by aircraft are unlikely to cause either temporary or permanent impairment to polar bear hearing unless polar bears are very close to the sound source (Healy, 1974, Richardson et al. 1995, Southall et al. 2019). Although no hearing impairment is likely as a result of the specified activities, aircraft overflights may elicit biologically significant behavioral responses from polar bears. Although neither temporary nor permanent hearing impairment is anticipated during the specified activities, impacts from aircraft overflights have the potential to elicit biologically significant behavioral responses from polar bears. Exposure to aircraft overflights is expected to result in short-term behavior changes, such as walking, running, or ceasing to rest, in some impacted polar bears, and, therefore, has the potential to be energetically costly. Polar bears observed during intentional aircraft overflights conducted to study impacts of aircraft on polar bear responses, with an average flight altitude of 143 m (469 ft), exhibited biologically meaningful behavioral responses during 66.6 percent of aircraft overflights. These behavioral responses were significantly correlated with the aircraft's altitude, the bear's location (*e.g.,* coastline, barrier island), and the bear's activity (Quigley 2022; Quigley et al. 2024). Polar bears associated with dens exhibited various responses that ranged from no response to increased head movement and observation of the disturbance to the initiation of rapid movement and/or den abandonment when exposed to aircraft flying at altitudes of 150 m or less (Larson et al. 2020). Aircraft activities can impact polar bears across all seasons; however, aircraft have a greater potential to disturb both individuals and groups of polar bears on land during the summer and fall, due to well-characterized increased densities of polar bears on land during these months. These onshore polar bears are primarily fasting or seeking alternative terrestrial foods (Cherry et al. 2009; Griffen et al. 2022), and polar bear responses to aircraft overflights may result in metabolic costs to already limited energy reserves. To reduce potential disturbance of polar bears during aircraft activities, mitigation measures, such as minimum flight altitudes over polar bears and their frequently used areas and flight restrictions around known polar bear aggregations, will be conducted when it is safe to perform these operations during aircraft activities.

*Effects to Denning Polar Bears*

Known or suspected polar bear dens around the oilfield, discovered opportunistically and/or during planned surveys for tracking marked polar bears and detecting polar bear dens, are monitored by the FWS. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. Each year, LOA and incidental harassment authorization (IHA) holders coordinate with the FWS to conduct surveys to attempt to determine the location of known or suspected polar bear dens and denning habitat within one mile of human activity. If a known or suspected den site is located, SAE will immediately consult with the FWS to determine if additional surveys or mitigation measures are required. The exact prescription of mitigation measures may vary based on specifics of an individual den site, but in the past, after locating a known or suspected den site, FWS has worked with operators to implement various mitigation measures, such as activity exclusion zones and 24-hour monitoring of the den site. In addition, SAE has already committed to providing a 1.6 km exclusionary zone around any putative dens located.

The responses of denning polar bears to disturbance and the consequences of these responses can vary throughout the denning process. We divide the denning period into four stages when considering impacts of disturbance: den establishment, early denning, late denning, and post-emergence; definitions and descriptions are provided by Woodruff et al. (2022a) and are also located in the 2026–2031 Proposed Beaufort Sea ITR and its associated supplemental information (91 FR 11240, March 9, 2026)). The stage at which harassment occurs defines the level of disturbance response (Level B harassment, Level A harassment, or Lethal) attributed to either the sow or cub(s), along with the probability of the specific response occurring (see *Denning Analysis*).

*Impacts of the Specified Activities on Polar Bear Prey Species*

Seals, especially ringed seals (*Phoca (pusa) hispida*) and bearded seals (*Erignathus barbatus*), are the primary prey species of polar bears in the specified geographic area. Polar bears could be impacted by reduced seal availability, displacement of seals in response to SAE's activities, increased energy demands to hunt for displaced seals, and increased dependency on

limited alternative prey sources, such as scavenging on bowhead whale carcasses harvested during subsistence hunts. If seal availability were to decrease, then the survival of polar bears may be drastically affected (Fahd et al. 2021). However, due to the location of the specified activities in relation to suitable seal habitat, the FWS does not anticipate any substantial impacts of prey availability to polar bears as a result of SAE's specified activities. Furthermore, if impacts were to occur, any impacts on seals are anticipated to be minor and short-term, and these impacts are unlikely to substantially reduce the availability of seals as a prey source for polar bears. Information on the potential impacts of the specified activities on polar bear prey species can be found at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2023–0086 (available as described above in **ADDRESSES**).

*Potential Impacts of Oil Spills on Polar Bears*

The FWS reviewed the potential impacts of oil spills on the SBS stock of polar bears and records of oil spills in the specified geographic region and evaluated oil spill response methods in the specified geographic region. No oil and gas extraction or production would be conducted as a part of this proposed ITR. The extent of possible oil spills would be small and highly localized and would be the result of small tank or equipment failure. Therefore, no polar bears are expected to be affected by oil spills. Information from this review can be found as described above in **ADDRESSES**. The FWS's findings from this review are consistent with the findings described in 2026–2031 Proposed Beaufort Sea ITR (91 FR 11240, March 9, 2026).

**Estimated Take**

*Definitions of Incidental Take Under the Marine Mammal Protection Act*

Below we provide definitions of three types of take of polar bears. The FWS does not anticipate any lethal take as a part of this proposed ITR; however, the definitions of the three take types are provided for context and background.

Lethal Take

Human activity may result in biologically significant impacts to polar bears. In the most serious interactions (*e.g.,* vehicle collision, running over an unknown den causing its collapse), human actions can result in the mortality of polar bears. We also note that in the past, while not considered incidental, polar bears have been killed in situations where there is an imminent threat to human life. Polar bears have also been accidentally killed during efforts to deter polar bears from a work area for safety, and have died from direct chemical exposure (81 FR 52276, August 5, 2016). If unintentional disturbance of a female polar bear by human activity during the denning season caused the female to abandon her cubs in the den before the cubs can survive on their own, incidental lethal take of polar bear cubs would occur.

Level A Harassment

Human activity may result in the injury of polar bears. Level A harassment, for nonmilitary readiness activities, is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

Numerous actions can cause take by Level A harassment of polar bear cubs during the denning period, such as creating a disturbance that separates mothers from dependent cubs (Amstrup 2003), inducing early den emergence during the late denning period (Amstrup and Gardner 1994; Rode et al. 2018), instigating early departure from the den site during the post-emergence period (Andersen et al. 2024), or repeatedly interrupting the nursing or resting of cubs to the extent that it impacts the cubs' body condition.

Level B Harassment

Level B harassment for nonmilitary readiness activities means any act of pursuit, torment, or annoyance that 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, feeding, or sheltering. Changes in behavior that disrupt biologically significant behaviors or activities for the affected animal are indicative of take by Level B harassment under the MMPA. Such reactions include, but are not limited to, the following:

- Fleeing (running or swimming away from a human or a human activity);
- Displaying a stress-related behavior such as jaw or lip-popping, front leg stomping, vocalizations, circling, intense staring, or salivating;
- Abandoning or avoiding preferred movement corridors such as ice floes, leads, polynyas, a segment of coastline, or barrier islands;
- Using a longer or more difficult route of travel instead of the intended path;
- Interrupting breeding, sheltering, or feeding;
- Moving away at a fast pace (adult) and cubs struggling to keep up;
- Temporary, short-term cessation of nursing or resting (cubs);
- Ceasing to rest repeatedly or for a prolonged period (adults);
- Loss of hunting opportunity due to disturbance of prey; or
- Interruption in normal denning behavior that does not cause injury, den abandonment, or early departure of the female with cubs from the den site.

This list is not meant to encompass all possible behaviors; other behavioral responses may be indicative of take by Level B harassment. Relatively minor changes in behavior such as the animal raising its head or temporarily changing its direction of travel are not likely to disrupt biologically important behavioral patterns, and the FWS does not view such minor changes in behavior as indicative of a take by Level B harassment. It is also important to note that eliciting behavioral responses that equate to take by Level B harassment repeatedly may result in Level A harassment.

*Surface Interactions*

We analyzed take by Level B harassment for polar bears that may be potentially encountered and impacted during SAE's seismic exploration activities within the specified geographic region.

*Impact Area*

To assess the area of potential impact from the project activities, we calculate the area affected by project activities where harassment is possible. We refer to this area as an impact area. Behavioral response rates of polar bears to disturbances are highly variable, and data to support the relationship between distance to polar bears and disturbance is limited. Dyck and Baydack (2004) found sex-based differences in the frequencies of vigilance bouts, which involves an animal raising its head to visually scan its surroundings, by polar bears in the presence of vehicles on the tundra. However, in their summary of polar bear behavioral response to ice-breaking vessels in the Chukchi Sea, Smultea et al. (2016) found no difference between reactions of males, females with cubs, or females without cubs. During the FWS's coastal aerial surveys, 99 percent of polar bears that responded in a way that indicated possible Level B harassment (polar bears that were running when detected or began to run or swim in response to the aircraft) did so within 1.6 km (1 mi), as measured from the ninetieth percentile horizontal detection distance from the flight line. Similarly, Andersen and

Aars (2008) found that female polar bears with cubs (the most conservative group observed) began to walk or run away from approaching snowmobiles at a mean distance of 1,534 m (0.95 mi). Thus, while future research into the reaction of polar bears to anthropogenic disturbance may indicate a different zone of potential impact is appropriate, the current literature suggests that the 1.6-km (1.0-mi) impact area will encompass the vast majority of polar bear harassment events.

*Estimated Harassment*

We estimated Level B harassment using the spatiotemporally specific encounter rates and temporally specific harassment rates derived in the 2026–2031 Proposed Beaufort Sea ITR (91 FR 11240, March 9, 2026) in conjunction with SAE's project operations footprint. Table 1 provides the definition for each variable used in the formulas to calculate the number of potential harassment events.

TABLE 1—DEFINITIONS OF VARIABLES USED IN HARASSMENT ESTIMATES OF NON-DENNING POLAR BEARS ON THE NORTH SLOPE OF ALASKA

| Variable | Definition |
|---|---|
| $B_{es}$ | bears encountered in an impact area for the entire season. |
| $r_{rb}$ | repeat bear rate. |
| $a_c$ | coastal exposure area. |
| $a_i$ | inland exposure area. |
| $r_o$ | occupancy rate. |
| $e_{co}$ | coastal open water season bear-encounter rate in bears/season. |
| $e_{io}$ | inland open water season bear-encounter rate in bears/season. |
| $e_{ci}$ | coastal ice season bear-encounter rate in bears/season. |
| $e_{ii}$ | inland ice season bear-encounter rate in bears/season. |
| $t_i$ | ice season harassment rate. |
| $B_t$ | number of estimated Level B harassment events. |

The variables defined above were used in a series of formulas created to estimate the total harassment from surface-level interactions. Encounter rates were originally calculated as polar bears encountered per square km per season. As a part of their Request, SAE provided the FWS with the greatest area of surveys within the coastal zone and the inland zone during any given year of the ITR. We assumed 100 percent human occupancy of these areas during activities, which will begin no earlier than January 15, and last no longer than 100 days. SAE also provided spatial files that indicated the roads and travel routes that they will use during seismic surveys. SAE will preferentially use previously existing routes; however, they have identified 29.9 km (18.6 mi) of unique tundra travel that is not associated with any previous travel. Estimates of potential harassment include activities on previously existing routes, and routes not associated with any previous travel.

Impact areas were multiplied by the appropriate encounter rate to obtain the number of polar bears expected to be encountered in the impact area per season ($B_{es}$). The equation below (equation 1) provides an example of the calculation of polar bears encountered in the ice season for an impact area in the coastal zone.

$$B_{es} = a_c * e_{ci}$$

Equation 1

To generate the number of estimated Level B harassments for each impact area, we multiplied the number of polar bears in the impact area per season by the proportion of the season the area is occupied, the rate of occupancy, and the harassment rate (equation 2).

$$B_t = B_{es} * S_p * r_o * t_i$$

Equation 2

*Aircraft Impacts on Polar Bears*

Polar bears in the project area will likely be exposed to the visual and auditory stimulation associated with the applicant's fixed-wing and helicopter activities; however, these impacts are anticipated to be minimal and short-term. Aircraft activities may cause disruptions in the normal behavioral patterns of polar bears as either an auditory or visual stimulus, thereby resulting in incidental Level B harassment. To reduce the likelihood that polar bears are disturbed by aircraft, SAE has included a variety mitigation measures, such as minimum flight altitudes over polar bears and restrictions on sudden changes to aircraft movements and direction. Once mitigated, such disturbances are expected to have no more than short-term, temporary, and minor impacts on individual polar bears.

*Estimating Harassment Rates of Aircraft Activities*

Harassment rates during aircraft activities were estimated using results from studies of fixed-wing aircraft and helicopter overflights (Quigley 2022;

Quigley et al. 2024). In these studies, researchers conducted aerial searches along the northern coast of Alaska between Point Barrow and the western Canadian border, approaching polar bears at different altitudes. When polar bears did not exhibit behavioral changes consistent with harassment, researchers then re-approached them at progressively lower altitudes, reaching as low as 30 m (100 ft). Researchers recorded behavioral changes during these approaches and evaluated if and when Level B harassment occurred. The researchers examined the following covariates: polar bear location (''barrier island'' or ''mainland''), initial behavior (''active'' or ''inactive''), group size, whether the polar bear belonged to a family group, and the number of previous overflights (*i.e.,* how many times the group was re-approached to elicit a behavioral change). A Bayesian imputation approach accounted for polar bears that exhibited a behavioral change consistent with harassment on their first approach, thus lacking an identified altitude at which no harassment occurred due to a lack of a ''non-harassment'' observation. Their final model included location, activity level, and the number of previous overflights as predictors of the altitude at which a polar bear was harassed (Quigley 2022; Quigley et al. 2024). For our aircraft impacts analysis, we used harassment rates estimated for active polar bears observed on barrier islands, as they had the highest rates of harassment. We further assumed that there were no previous overflights.

We provide harassment rates for the following five categories of flights: take-offs, landings, low-altitude flights (defined as those between 122 m (400 ft) and 305 m (1,000 ft) altitude), mid-altitude flights (defined as those between 305 m (1,000 ft) and 457 m (1,500 ft) altitude), and high-altitude flights (defined as those between 457 m (1,500 ft) and 610 m (2,000 ft) altitude). We assigned harassment rates to each of these flight categories using the harassment rate for the lowest altitude in the category (*e.g.,* for low-altitude flights, we used the harassment rate estimated for 122 m (400 ft)). This binning method of using the lowest altitude harassment rate in the bin allowed our estimates to be inclusive of possible changes in altitude due to variable flight conditions (table 2).

TABLE 2—HARASSMENT RATES FOR THE FIVE CATEGORIES OF FLIGHTS FOR FIXED-WING AIRCRAFT AND HELICOPTER OVERFLIGHTS

| Flight category | Fixed-wing | Helicopter |
|---|---|---|
| Take-offs | 0.99 | >0.99 |
| Landings | 0.99 | >0.99 |
| Low-Altitude Flights (122–305 m) | 0.86 | >0.99 |
| Mid-Altitude Flights (305–457 m) | 0.03 | 0.82 |
| High-Altitude Flights (457–610 m) | <0.01 | 0.05 |

**Note:** The rates in this table are based on Quigley et al. (2024).
We used the harassment rate associated with 30 m (100 ft) for take-offs and landings.

*Estimating Area of Impact for Aircraft Activities*

For each category of the flight path (*i.e.,* take-off, low-altitude travel, mid-altitude travel, high-altitude travel, and landing), we calculated an impact area and duration of impact using flight hours or flight path information provided in the Request. Using flight logs available through *https://www.FlightAware.com* (FlightAware), a website that maintains flight logs in the public domain, we estimated a take-off distance of 2.41 km (1.5 mi) and a landing distance of 4.83 km (3 mi) per 305 m (1,000 ft) of altitude. For traveling segments, we treated the aircraft as a traveling impact zone. We then spatially referenced all take-offs, landings, and travel areas to determine whether they were within the coastal or inland zone. The coastal zone is defined as the area offshore and within 2 km (1.2 mi) of the coastline, and the inland zone is defined as anything greater than 2 km (1.2 mi) from the coastline. We estimated all archeological and summer cleanup flights to occur in the coastal zone to account for uncertainty about future flight plans. To determine the potential coastal and inland impact areas ratio of the resupply flights, we used a hypothetical flight from Deadhorse Airport to the northeastern corner of the potential survey area, which would have the greatest potential impact of any flights in the survey area. We conservatively considered landings (which have a larger impact area) to occur within the coastal zone. We buffered all flight segments by 1.6 km (1 mi), which is consistent with aircraft surveys conducted by the FWS and U.S. Geological Survey (USGS) between August and October during most years from 2000 to 2014 (Schliebe et al. 2008; Atwood et al. 2015; Wilson et al. 2017). In these surveys, 99 percent of groups of polar bears that exhibited behavioral responses consistent with Level B harassment were observed within 1.6 km (1 mi) of the aircraft.

To calculate the total number of Level B harassment events estimated due to the specified activities, we calculated the number of flight hours for each flight category (*i.e.,* take-offs, low-altitude travel, mid-altitude travel, high-altitude travel, and landings) for each zone and season combination. We estimated both take-off and landing areas would be impacted for 10 minutes. SAE provided traveling segment flight hours for both archaeological and summer cleanup flights. We divided the above-mentioned hypothetical resupply flight from Deadhorse Airport to the northeast corner of the potential survey area into coastal and inland zones. To avoid counting impacts twice, we subtracted the take-off distance from the coastal end of the flight path, and landing distance from the inland end of the flight path. We then calculated the amount of time that would be spent flying in coastal and inland areas using a conservative flight speed of 129 km per hour (80 mi per hour).

We then used flight hours to calculate the proportion of the season that aircraft occupied impact areas (*i.e.,* take-off, landing, or traveling segment). This proportion-of-season metric is equivalent to the occupancy rate ($r_o$) generated for surface-level interaction harassment estimates. We multiplied the total impact area for each of the flight categories by the zone and season-specific polar bear encounter rates previously described in the 2026–2031 Proposed Beaufort Sea ITR 91 FR 11240, March 9, 2026 to determine the number of polar bears expected in that area for the season (*i.e.,* $B_{es,}$ as seen in equation 1). We then multiplied this number by the proportion of the season to determine the number of polar bears expected in that area when flights are occurring, and the appropriate

harassment rate based on flight altitude to estimate the number of polar bears that may be harassed as a result of the flights (as seen in equation 2).

*Estimated Harassment From Aircraft Activities*

Using the approaches described above, we estimated the total number of polar bears expected to be harassed by the aircraft activities during the proposed regulatory period as a total of six polar bears per year (table 3).

TABLE 3—ESTIMATED LEVEL B HARASSMENT OF POLAR BEARS IN PROJECT AREA FROM AIRCRAFT OPERATIONS ANNUALLY DURING THE PROPOSED REGULATORY PERIOD

| | Archeological surveys | Resupply flights | Summer cleanup activities | Total (rounded up to nearest integer) |
|---|---|---|---|---|
| Estimated Harassment | 2.13 | 0.007 | 3.05 | 6 |

*Denning Analysis*

Below we provide a complete description, and results of the polar bear den simulation model used to assess impacts to denning polar bears from disturbance associated with all phases of the specified activities.

*Den Simulation*

We simulated dens across the entire land portion of the SBS subpopulation range in Alaska on areas identified as potential denning habitat using the method of Durner and Atwood (2018) on available USGS interferometric-synthetic-aperture-radar-generated digital terrain model data across the entire SBS region. To simulate dens on the landscape, we relied on the estimated number of dens in four different regions of northern Alaska provided by Patil et al. (2022). These included the National Petroleum Reserve—Alaska (NPR–A), the area between the Colville and Canning rivers (CC region), the Arctic NWR 1002 area, and ''Other,'' which is composed of the SBS region outside these three main regions. The mean estimated number of dens in each region during a given winter were as follows: 12 dens (95 percent posterior credible interval (CI): 3–26) in the NPRA, 25 dens (95 percent CI: 11–47) in the CC region, 14 dens (95 percent CI: 5–30) in Arctic NWR 1002 area, and 15 dens (95 percent CI: 5–32) in ''Other.'' We further broke down Patil et al. (2022)'s ''Other'' count using empirical proportions from the USGS polar bear den catalog (Durner et al. 2020), to represent dens to the west and south of NPRA, dens in non-1002 areas of Arctic NWR, and the Canadian portion of the SBS region, the latter not used in any subsequent analyses. For each iteration of the model (described below), we drew a random sample from a gamma distribution for each of the regions based on the above parameter estimates, which allowed uncertainty in the number of dens in each area to be perpetuated through the modeling process. Specifically, we used the method of moments (as described in Hobbs and Hooten 2015) to develop the shape and rate parameters for the gamma distributions as follows: NPRA ($12^2/5.8^2$, $12/5.8^2$), CC ($25^2/9.5^2$, $25/9.5^2$), Arctic NWR 1002 area ($14^2/6.3^2$, $14/6.3^2$), and ''Other'' ($15.1^2/7^2$, $15.1/7^2$).

Because not all areas in northern Alaska are equally used for denning and some areas do not contain the requisite topographic attributes required for sufficient snow accumulation for den excavation, we did not simply randomly place dens on the landscape. Instead, we followed a similar approach to the one used by Wilson and Durner (2020) with some additional modifications to account for the differences in denning ecology in the CC region related to a preference to den on barrier islands and a general (but not complete) avoidance of actively used industrial infrastructure. Using the USGS polar bear den catalog (Durner et al. 2020) and two dens that were discovered from Global Positioning System (GPS)-tagged bears collected since the den catalogue was published (*i.e.,* winter 2023/2024 and winter 2024/2025), we identified polar bear dens that occurred on land in the CC region. This approach resulted in a sample of 38 dens, of which 23 (*i.e.,* 61 percent) occurred on barrier islands.

For each iteration of the model, we then determined how many of the estimated dens in the CC region occurred on barrier islands versus the mainland. To make this determination, we first took a random sample from a binomial distribution to determine the expected number of dens from the den catalog (Durner et al. 2020; and the one empirical observation since the den catalogue was published) that should occur on barrier islands in the CC region during that given model iteration; $n_{barrier} \sim Binomial(38, 23/38)$, where 38 represents the total number of dens in the CC region suitable for use (as described above) and 23/38 represents the observed proportion of dens in the CC region that occurred on barrier islands. Next, we divided $n_{barrier}$ by the total number of dens in the CC region suitable for use (*i.e.,* 38) to determine the proportion of dens in the CC region that should occur on barrier islands (*i.e.,* $p_{barrier}$). We then multiplied $p_{barrier}$ with the simulated number of dens in the CC region (rounded to the nearest whole number) to determine how many dens were simulated to occur on barrier islands in the region, with the remainder simulated to occur on the CC mainland.

To account for the potential influence of industrial activities and infrastructure on the distribution of polar bear selection of den sites, we again relied on the subset of dens from the den catalog (Durner et al. 2020) discussed above. We further restricted the dens to only those occurring on the mainland because no permanent infrastructure occurred on barrier islands with identified denning habitat. We then determined the minimum distance to permanent infrastructure that was present during the year when the den was identified.

The proportion of empirical dens ≤5 km (3.1 mi) from infrastructure was 0.25. Thus, for the mainland portion of simulated dens in the CC region, we determined how many should be simulated to occur ≤5 km from infrastructure, and how many should be simulated to occur >5 km from infrastructure at each iteration of the model. The number of mainland dens ≤5 km from infrastructure was modeled as $n_{\leq 5km} \sim Binomial(n_{CC_mainland}, 0.25)$ where $n_{CC_mainland}$ is the number of dens simulated to occur on the mainland portion of the CC region during one iteration of the model. The number of dens >5 km from infrastructure in the mainland portion of the CC region was calculated as: $n_{>5km} = n_{CC_mainland} - n_{\leq 5km}$.

To inform where dens are most likely to occur on the landscape, we developed a kernel density map by using known den locations in northern Alaska identified either by GPS-collared polar bears or through systematic surveys for denning polar bears (Durner et al. 2020). To approximate the distribution of dens, we used a scaled

adaptive kernel density estimator applied to observed den locations, which took the form,

$$f(\mathbf{s}) \propto \frac{\theta}{n}\sum_{i}^{n} k\left(\frac{\mathbf{s}-\mathbf{s_i}}{h(\mathbf{s})}\right)$$

where the adaptive bandwidth

$$h(\boldsymbol{s}) = \left(\beta_0 + \beta_1 I(\boldsymbol{s}_i \in \mathcal{M}) I(\boldsymbol{s} \in \mathcal{M})\right)\beta_2$$

for the location of the ith den and each location $\boldsymbol{s}$ in the study area. The indicator functions allowed the bandwidth to vary abruptly between the mainland *M* and barrier islands. The parameters $\theta$, $B_0$, $B_1$, $B_2$ were chosen so that the density estimate approximated the observed density of dens and our understanding of likely den locations in areas with low sampling effort.

To simulate dens on the landscape, we first created a systematic grid of points every 50 m across the entire SBS region, retaining only those points that fell within potential den habit. We assigned each point a probability based on the kernel density map described above. For each region or subregions outlined above with an assigned den count, we then renormalized probabilities for all points respectively within each region or subregion. We then randomly assigned dens using a multinomial distribution based on relative probabilities and den counts for each region or subregion outlined above.

For each simulated den, we assigned dates of key denning events: den entrance, birth of cubs, when cubs reached 60 days of age, den emergence, and departure from the den site after emergence. These represent the chronology of each den under undisturbed conditions.

We selected the entrance date for each den from a normal distribution parameterized by entrance dates of radio-collared polar bears in the SBS stock that denned on land included in Rode et al. (2018) and published in USGS (2018; *n*=52). The mean entrance date was November 11, with a standard deviation of 18 days. We truncated this distribution to ensure that all simulated dates occurred within the range of observed values (*i.e.,* September 12 to December 22).

We selected a date of birth for each litter from a normal distribution with a mean birth date of December 15 and a Standard Deviation (SD) of 10 days. We then restricted random samples of birth dates to occur between December 1 and January 15, which is believed to be the period of time when most cubs are born (Messier et al. 1994; Van de Velde et al. 2003).

We selected the emergence date as a random draw from an asymmetric Laplace distribution with parameters $\mu$=82.5, $\sigma$=4.11, and *p*=0.81 (location, scale, and skewness respectively) estimated from the empirical emergence dates (*n=72*) in Andersen et al. (2024) and Rode et al. (2018; but published in USGS (2018)) of radio-collared polar bears in the SBS subpopulation that denned on land using the mleALD function from the ald package (Galarzar and Lachos 2018) in the program R (R Core Development Team). We constrained simulated emergence dates to occur within the range of observed emergence dates (January 9 to April 9) and not to occur prior to cubs reaching an age of 60 days.

Finally, we assigned the number of days each family group spent at the den site post-emergence based on values reported in Andersen et al. (2024), which estimated time spent at the den site based on temperature and movement data for dens undisturbed by human activity (*n* = 20 dens examined). Specifically, we used the mean (6.25) and SD (7.25) of the dens monitored in these studies to parameterize a gamma distribution using the method of moments (Hobbs and Hooten 2015) with a shape parameter equal to $6.25^2/7.25^2$ and a rate parameter equal to $6.25/7.25^2$; we selected a post-emergence and pre-departure time for each den from this distribution.

Additionally, we assigned each den a litter size by drawing the number of cubs from a multinomial distribution with probabilities derived from litter sizes (among a total of 43 litters) reported in Smith et al. (2007, 2010, 2013) and Robinson (2014), case studies where the number of cubs were observed at the den site, and a sample from one GPS-tagged bear that had a camera monitoring its den prior to emergence. Because there is some probability that a female naturally emerges with zero cubs, we also wanted to ensure this scenario was captured. It is difficult to parameterize the probability of litter size equal to zero because it is rarely observed. We therefore assumed that dens in the USGS (2018) dataset that had denning durations less than the shortest den duration where a female was later observed with cubs (*i.e.,* 79 days) had a litter size of zero. Only three polar bears in the USGS (2018) data met this criterion, leading to an assumed probability of a litter size of zero at emergence being 0.069. We therefore assigned the probability of zero, one, two, or three cubs as 0.069, 0.232, 0.628, and 0.070, respectively.

*Impact Area of Specified Activities*

The model developed by Wilson and Durner (2020) provides a template for estimating the level of potential impact on denning polar bears during the specified activities while also considering the natural denning ecology of polar bears in the region. The approach developed by Wilson and Durner (2020) also allows for the incorporation of uncertainty in both the metrics associated with denning polar bears and in the timing and spatial patterns of specified activities when precise information on those activities is unavailable. In preparing its Request, SAE coordinated with the FWS, who developed four denning density zones within the specified geographical area to delineate areas of high polar bear denning density within the specific geographical area based on a thousand sets of den simulations (figure 2). Zones 1–4 represent the cumulative proportions 25 percent, 35 percent, 50 percent, and 75 percent of forecasted dens respectively: Where, Zone 4 is equal to 25 percent of the dens simulated for SBS polar bears (25th quantile), Zone 3 is equal to 35 percent% of the dens simulated for SBS polar bears (25th + 35th quantiles), Zone 2 is equal to 50 percent of dens simulated (25th + 35th + 50th quantiles), and Zone 1 is equal to 75 percent of den simulated (25th + 35th + 50th + 75th quantiles) (table 4).

In its Request, SAE submitted confidential spatial files of potential future surveys that may be conducted under this ITR. In any given single year, the proposed surveys would cover no more than 19 $km^2$ (7 $mi^2$) in Zone 4,220 $km^2$ (85 $mi^2$) in Zone 3,470 $km^2$ (181 $mi^2$) in Zone 2, and 515 $km^2$ (199 $mi^2$) in Zone 1 (table 4). These zones were then used to generate a denning density map delineating high and moderate denning density areas, where high density is composed of Zones 3 and 4 plus the coastal zone (2 km (1.2 mi) from the shoreline) and moderate density is composed of Zones 1 and 2 (figure 3). SAE will use the previously described high and moderate denning

density map to determine the number of AIR surveys to conduct in different areas of the proposed project (figure 3). We estimated potential impacts to denning polar bears using the confidential potential future survey areas. We assumed any dens within 0.8 km (0.5 mi) from survey activity would be exposed to disturbance during all denning periods, and dens within 1.6 km (1 mi) would be exposed during the den establishment, late denning, and post-emergence periods.

TABLE 4—CUMULATIVE PROPORTION OF SIMULATED DENS AND INCLUDED QUANTILES BY ZONE; AND MAXIMUM ANNUAL AREA OF EACH ZONE POTENTIALLY INCLUDED IN SAEXPLORATION, INC.'S SPECIFIED ACTIVITIES

| Zone | Cumulative proportions of simulated dens (%) | Included quantiles | Maximum annual area of zone included in the specific activities by SAE ($km^2$) |
|---|---|---|---|
| 1 | 75 | 25th + 35th + 50th + 75th | 515 |
| 2 | 50 | 25th + 35th + 50th | 470 |
| 3 | 35 | 25th + 35th | 220 |
| 4 | 25 | 25th | 19 |

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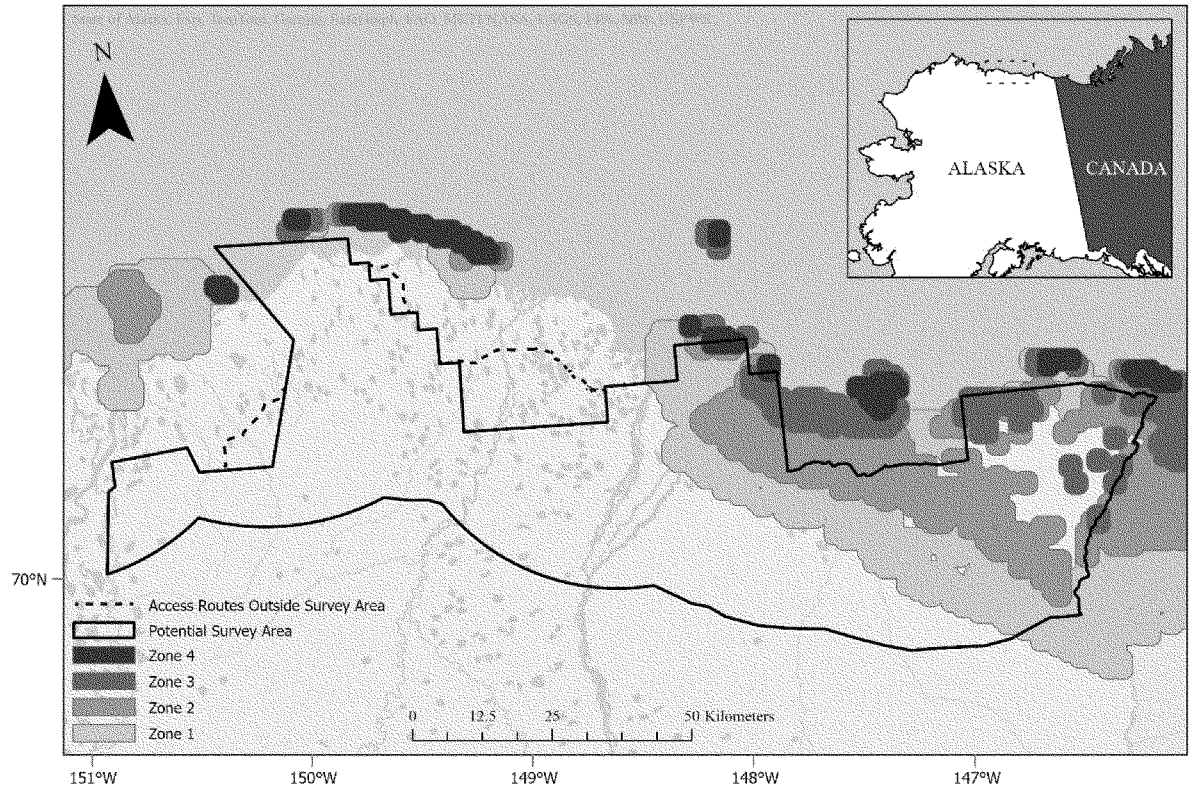


**Figure 2. Zones of Denning Density for Polar Bears Within the Potential Survey Area for the Incidental Take Regulations for SAExploration, Inc., on the North Slope of Alaska**

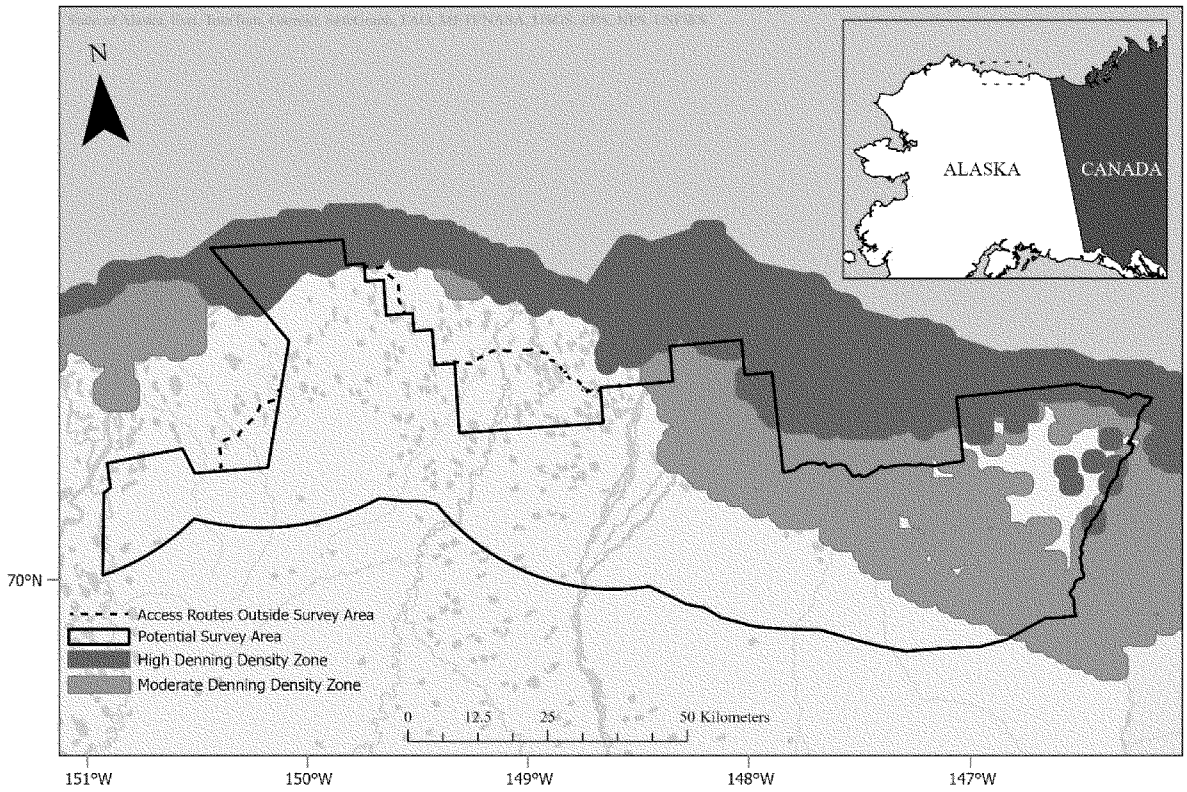


**Figure 3. High and Moderate Denning Density Zones for Polar Bears Within the Potential Survey Area for the Incidental Take Regulations for SAExploration, Inc., on the North Slope of Alaska**

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*AIR Surveys*

We assumed that all project and transit areas in the high denning density zones would have at least three AIR surveys flown, all survey and transit areas in moderate denning density zones would have at least two AIR surveys flown, and everywhere outside of high or moderate denning density zones would have at least one AIR survey flown (figure 3). When either one or two AIR surveys are needed, the first survey would be flown between November 25 and December 25 and the second survey would occur between December 15 and January 15. In an area where three surveys are required, the third survey would occur between December 5 and December 31. A minimum of 24 hours would be required between completion of the previous AIR survey and beginning a new AIR survey. Additionally, surveys would not be conducted during daytime or times when weather conditions significantly hinder visibility (*e.g.,* blowing snow, precipitation, or airborne moisture). A scientist with experience in real-time aerial infrared interpretation would be onboard during all flights and AIR survey videos would be made available to FWS within 48 hours of survey completion.

During each iteration of the model, each AIR survey was randomly assigned a probability of detecting dens. Whereas previous analyses have used the results of Wilson and Durner (2020) to inform this detection probability, two additional studies (Smith et al. 2020; Woodruff et al. 2022b) have been conducted since the Wilson and Durner (2020) study was published that require an updated approach. The study by Woodruff et al. (2022b) considered the probability of detecting heat signatures from artificial polar bear dens. They did not find a relationship between den snow depth and detection and estimated a mean detection rate of 0.24. A recent study by Smith et al. (2020) estimated that the detection rate for actual polar bear dens in northern Alaska was 0.45 and also did not report any relationship between detection and den snow depth. Because the study by Wilson and Durner (2020) reported detection probability only for dens with less than 100 centimeters (cm) snow depth, we needed to correct our model to also include those dens with greater than 100 cm snow depth. Based on the distribution of snow depths used by Wilson and Durner (2020) derived from data in Durner et al. (2003), we determined that 24 percent of dens have snow depths greater than 100 cm. After taking this into account, we estimated the overall detection probability from the Wilson and Durner (2020) study, including dens with snow depths greater than 100 cm, to be 0.54. This led to a mean detection of 0.41 and an SD of 0.15 across the three studies. We used these values, and the method of moments (Hobbs and Hooten 2015), to inform a Beta distribution:

$$p \sim Beta\left(\frac{0.41^2 - 0.41^3 - 0.41 \times 0.154^2}{0.154^2}, \frac{0.41 - 2 \times 0.41^2 + 0.41^3 - 0.154^2 + 0.41 \times 0.154^2}{0.154^2}\right)$$

from which we drew a detection probability (*p*) for each of the simulated AIR surveys during each iteration of the model.

*Model Implementation*

For each iteration of the model, we first determined which dens were exposed to the specified activities. Dens that were simulated to be within 805 m (2,641 ft) of human activity could be disturbed during all denning periods, while dens within 806–1610 m (2,644–5,282 ft) of human activity could only be disturbed during the den establishment, late denning, and post-emergence periods. If a den was detected during a simulated AIR survey, we excluded it from further disturbance in the denning analysis. However, we allowed for simulated dens to be disturbed before AIR occurred. We identified the stage in the denning period when the exposure to human activity occurred based on the date range of the activities the den was exposed to: den establishment (*i.e.,* initial entrance into den until cubs are born), early denning (*i.e.,* birth of cubs until they are 60 days old), late denning (*i.e.,* date cubs are 60 days old until den emergence), and post-emergence (*i.e.,* the date of den emergence until permanent departure from the den site). We then determined whether the exposure elicited a response by the denning polar bear based on probabilities derived from the reviewed case studies (Woodruff et al. 2022a), which we updated with data from the dens monitored from 2022 to 2025 using the methods described in Woodruff et al. (2022a).

Specifically, we divided the number of cases that documented responses associated with either a Level B harassment (*i.e.,* potential to cause a disruption of behavioral patterns), Level A harassment (*i.e.,* potential to injure an animal), or lethal take (*e.g.,* cub abandonment) of polar bears by the total number of cases with that combination of period and exposure type (table 5). Level B harassment was applicable to both adults and cubs, if present, whereas Level A harassment and lethal take were applicable to only cubs. We did not consider AIR surveys to be a source of potential impact. In thousands of hours of AIR surveys conducted in northern Alaska over the last decade, we are not aware of a single instance of a polar bear abandoning its den during the early denning period due to an AIR survey overflight. These responses would be readily observable on the aircraft's thermal cameras, and the fact that none have been observed indicates that den abandonment very likely does not occur given the brief duration of the aircraft overflight and the distance and altitude of the aircraft from the den site. Recent peer-reviewed research further supports the model assumption that AIR surveys are not a source of harassment (Quigley et al. 2024).

For dens exposed to activity, we used a multinomial distribution with the probabilities of different levels of take for that period (table 5) to determine whether a den was disturbed or not. If a den abandonment was simulated to occur, a den was not allowed to be disturbed again during the subsequent denning periods because the outcome of that denning event was already determined.

The level of impact associated with a disturbance varied according to the severity and timing of the exposure (table 5). Exposures that resulted in emergence from dens prior to cubs reaching 60 days of age were considered a den abandonment that results in the lethal take of cubs. If an exposure resulted in a Level A harassment during the late denning period, we first assigned that den a new random emergence date from a uniform distribution that ranged between the first date of exposure during the late denning period and the original den emergence date. We then determined whether that den was disturbed during the post-emergence period, but the probability of disturbance was dependent on whether or not a den was disturbed (*i.e.,* Level A harassment) during the late denning period (table 5). If an exposure resulted in a Level A harassment during the post-emergence period, we assigned the den a new time spent at the den site post-emergence from a uniform distribution that ranged from zero to the original simulated time at the den post-emergence.

Recent research suggests that litter survival is related to the date of den emergence and time spent at the den post-emergence (Andersen et al. 2024), with litters having higher survival rates the later they emerge in the spring, and the longer they spend at the den site after emergence. To determine if dens that were disturbed during the late denning and/or post-emergence period(s) experienced Level A harassment, we relied on estimates of litter survival in the spring following den emergence, derived from the analysis of empirical data on the dates of emergence from the den and departure from the den site (Andersen et al. 2024). These estimates are dependent on the date of emergence and time spent at the den site post-emergence. For each den disturbed during the late denning and/or post-emergence periods, we obtained a random sample of regression coefficients from the posterior distribution and calculated the probability of a litter surviving into the spring post-emergence with the following equation:

$$logit(\boldsymbol{s}) = \beta_0 + \beta_1 emerge + \beta_2 depart$$

**Equation 3**

Where:

*s* is the probability of at least one cub being alive in the spring post-emergence,

$\beta_0$ is the intercept coefficient,

$\beta_1$ is the coefficient associated with the Julian date of emergence (*emerge*), and

$\beta_2$ is the coefficient associated with the number of days the family group stayed at the den site post-emergence before departing (*depart*).

These probabilities are based on estimates of litter survival derived from the analysis of empirical data on the dates of emergence from the den and departure from the den site (Andersen et al. 2024).

We developed the code to run this model in the program R (R Core Development Team 2020) and ran 10,000 iterations of the model (*i.e.,* Monte Carlo simulation) to derive the estimated number of dens disturbed and associated levels of harassment. We then determined the number of cubs that would experience den abandonment, Level A harassment, and Level B harassment, and the number of females that would experience Level B harassment. Table 5 shows the probability of an exposure resulting in the types of harassment of denning polar bears.

TABLE 5—PROBABILITY THAT AN EXPOSURE ELICITED A RESPONSE BY DENNING POLAR BEARS THAT WOULD RESULT IN LEVEL B HARASSMENT, LEVEL A HARASSMENT, DEN ABANDONMENT, OR NO TAKE

| Denning period | None (sow or cub(s)) | Level B (sow) | Level B (cub(s)) | Level A (cub(s)) | Den abandonment (cub(s)) |
|---|---|---|---|---|---|
| Den Establishment | 0.818 | 0.182 | 0.000 | 0.000 | 0.000 |
| Early Denning | 0.941 | 0.059 | 0.000 | 0.000 | 0.059 |
| Late Denning | 0.711 | 0.289 | 0.000 | 0.289 | 0.000 |
| Post Emergence-Previously Undisturbed Den | 0.000 | 1.000 | 0.280 | 0.720 | 0.000 |
| Post Emergence-Previously Disturbed Den | 0.000 | 1.000 | 0.700 | 0.300 | 0.000 |

**Note:** Level B harassment was applicable to both adults and cubs, if present; Level A harassment and lethal take were applicable to cubs only and were not possible during the den establishment period, which ended with the birth of the cubs. During the early denning period, there was no Level A harassment for cubs, only lethal take. We provide two sets of take probabilities for the post-emergence period. The first (Post Emergence-Previously Undisturbed Den) is the set of probabilities when a den has not been disturbed during the late denning period. The second (Post Emergence-Previously Disturbed Den) is the set of probabilities for a den that was disturbed during the late denning period (Rode et al. 2018; Andersen et al. 2024).

*Model Results*

We created multiple scenarios in our analysis by generating a variety of combinations of the different confidential survey blocks while adhering to the previously described maximum area of impact within each of the four zones (see *Den Simulation*). We used the results of the scenario with the highest level of impact for our estimation of annual harassment. We estimated a rounded mean value of 5 (mean = 4.36; median = 4; 95 percent CI: 1–10) land-based dens in the area of specified activity in SAE's request and within a 1.6-km (1-mi) buffer of the activities, annually. Estimates for different levels of take are presented in table 6. The distributions of Level B harassment, Level A harassment, and lethal takes due to den abandonment were non-normal and heavily skewed, as indicated by markedly different mean and median values. The heavily skewed nature of these distributions has led to a mean value that is not representative of the most common model result.

The median number, which is the midpoint value of a frequency distribution of all model results, of Level B and Level A harassments is both two, and the median number of lethal takes is zero. The probability of one or more takes of denning polar bears occurring in any given year of the proposed ITR by Level B harassment, Level A harassment, or lethal take was 0.73, 0.64, and 0.10, respectively. However, in aggregate across all 5 years of the proposed ITR, the median value for takes of denning polar bears by Level B harassment and by Level A harassment were 11 and 8 respectively.

The median value for lethal take in aggregate remained zero. The probabilities of one or more takes of denning polar bears occurring across the entire 5-year duration of this proposed ITR by Level B harassment, Level A harassment, and lethal take were 0.99, 0.99, and 0.35, respectively. Our estimated number of possibly exposed dens in the area across all 5-years was 19 (mean = 18.99; median = 19, 95 percent CI: 10–30). The activities analyzed for this proposed ITR represent the maximum number of activities that may occur within each year of the 5-year ITR period. Therefore, the actual activity footprint will likely be smaller during each year, which would reduce the probability of take. Due to the low probability of one or more lethal takes occurring either annually (0.09) or in 5-year aggregate (0.35), along with a median value of zero for either time period, we do not anticipate the specified activities will result in lethal take of polar bears. Additionally, mitigation measures, such as the use of handheld and vehicle-mounted forward looking infrared cameras when SAE crews are traversing areas of relief and snow drifts, will be implemented to further reduce the probability of take and minimize impacts to denning polar bears.

TABLE 6—RESULTS OF THE DEN ANALYSIS FOR ANY GIVEN WINTER OF SPECIFIED ACTIVITY

| Type of take | Probability | Mean | Median | 95% CI |
|---|---|---|---|---|
| Level B harassment | 0.73 | 2.84 | 2 | 1–11 |
| Level A harassment | 0.64 | 2.11 | 2 | 0–10 |
| Lethal | 0.09 | 0.17 | 0 | 0–2 |

**Note:** Estimates are provided for the probability, mean, median, and 95% CI for Level B harassment, Level A harassment, and Lethal take. The probabilities represent the probability of ≥1 take of a polar bear occurring during a given winter.

*Critical Assumptions*

In order to conduct this analysis and estimate the potential amount of Level B harassment and Level A harassment, we made several critical assumptions.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance, however some portion of animals whose behavioral response indicates disturbance will not experience significant biological consequences. Our estimates do not account for variable responses by polar bear age and sex; however, sensitivity of denning polar bears was incorporated into the analysis. The available information suggests that polar bears are generally resilient to low levels of disturbance. Females with dependent young and juvenile polar bears are physiologically the most sensitive (Andersen and Aars 2008) and most likely to experience harassment from disturbance. Not enough information on composition of the SBS polar bear stock in the specified project area is available to incorporate individual variability based on age and sex or to predict its influence on harassment estimates. Our estimates are derived from a variety of sample populations with various age and sex structures, and we assume the exposed population will have a similar composition and, therefore, the response rates are applicable.

The estimates of behavioral response presented here do not account for the individual movements of animals in response to the specified activities. Our assessment assumes animals remain stationary (*i.e.,* density does not change). Not enough information is available about the movement of polar bears in response to specific disturbances to refine this assumption.

SBS polar bears create maternal dens on the sea ice as well as on land, and the specified activities may occur on sea ice close to the shoreline. The den simulation used in our analysis does not simulate dens on the sea ice. However, the portions of the sea ice that may be impacted by the specified activities are shore-fast ice, which does not move in a way that creates pressure ridges needed to create sufficient denning habitat.

*Sum of Harassment From All Sources*

SAE will conduct archeological surveys, AIR surveys for maternal polar bear dens, seismic surveys, and summer cleanup activities on the North Slope of Alaska for a period of 5 years. A summary of total number of estimated takes by Level B harassment and Level A harassment in any given single year of the total 5-year proposed authorization period is provided in table 5. We used the most impactful take scenarios when generating annual take estimates to provide conservative values. We also explored the potential for lethal take. Lethal take or Level A harassment would not occur outside of denning polar bears because the level of sound and visual stimuli on a polar bear on the surface would not be significant enough to result in injury or death. Denning polar bears, however, may be subject to repeated exposures, significant energy expenditure from den abandonment or departure, or potential impacts to a cub if the den is abandoned or departed prematurely. The probability of greater than or equal to one lethal take of denning polar bears is 0.16 under the most impactful operations scenario in a single year. In addition to annual estimates of take, we estimated the amount and probability of take aggregated across the 5-year period of this proposed ITR. The total 5-year aggregate estimates are provided in table 8. Across the 5-year period of the proposed ITR, the probability of greater than or equal to one lethal take of polar bears is 0.35.

TABLE 7—TOTAL ANNUAL ESTIMATED TAKES BY LEVEL B AND LEVEL A HARASSMENT OF POLAR BEARS BY SOURCE

| Source | Number of Level B harassment events | Number of Level A harassment events |
|---|---|---|
| Surface Interactions | 5 | 0 |
| Impacts to Denning Bears | 2 | 2 |
| Aircraft Overflights | 6 | 0 |
| Annual Total | 13 | 2 |

**Note:** Estimated takes are provided for single-year operations under most impactful scenarios.

*Evaluation of Impacts of Oil Spills on Polar Bears*

The specified activities evaluated here do not involve production and transportation of large quantities of oil. The FWS previously evaluated the impacts of oil spills on SBS polar bears in the specified geographic region and concluded that only small numbers of polar bears are likely to be affected if a large oil spill occurred and there would be only a negligible impact to the SBS polar bears (2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021)). Additionally, SAE will implement protocols to contain and cleanup spills from oil, fuel, and other hazardous materials to minimize potential impacts to polar bears and their habitat. Therefore, the FWS concludes that the likelihood of a large oil spill occurring due to the specified activities is negligible. If a small spill occurs, the likelihood that it would contaminate areas occupied by large numbers of polar bears is low. If an oil spill does occur, we conclude that only small numbers of polar bears are likely to be affected, and there would be only a negligible impact to SBS polar bears.

TABLE 8—TOTAL 5-YEAR AGGREGATED ESTIMATED TAKES BY LEVEL B AND LEVEL A HARASSMENT OF POLAR BEARS BY SOURCE

| Source | Number of Level B harassment events | Number of Level A harassment events |
|---|---|---|
| Surface Interactions | 25 | 0 |
| Impacts to Denning Bears | 11 | 8 |
| Aircraft Overflights | 30 | 0 |
| 5-year aggregated total | 66 | 8 |

**Determinations and Findings**

*Small Numbers*

For our small numbers determination, we provide a qualitative discussion and incidental take estimates when we consider whether the number of polar bears to be subjected to incidental take is respectively small relative to the population size of the species or stock.

1. The footprint of the specified activities within the specified geographic region is small relative to the range of the SBS stock of polar bears. SBS polar bears range well beyond the boundaries of the proposed ITR region. As such, the ITR region itself represents only a subset of the potential area in which these species may occur. Thus, the FWS concludes that a small portion of the SBS polar bear populations may be present in the specified geographic region during the time of the specified activities.

2. We estimate SAE's specified activities in the specified geographic region will take no more than 15 polar bears during any given year of this proposed ITR, which includes the annual estimated Level B harassment of

11 polar bears on the surface and 2 denning polar bears and Level A harassment of 2 denning polar bears, and no more than a total of 66 polar bears by Level B harassment and 8 polar bears by Level A harassment over the five-year duration of this ITR (see *Sum of Harassment from All Sources*). Annual take of 15 animals is approximately 1.7 percent of the best available estimate of the current SBS stock size of 907 animals (Bromaghin et al. 2015, 2021; Atwood 2020) and represents a ''small number'' of polar bears of that stock. The FWS released a draft stock assessment report (SAR) for the SBS polar bear population on January 2, 2025 (90 FR 114), in which the SBS polar bear stock has changed to 819 bears, largely due to a shift in the border between the SBS and North Beaufort Sea stock. Should this draft SAR be finalized, 15 bears constitute 1.8 percent of the SBS stock. These estimates indicate that the number of polar bears that would be incidentally taken is small relative to the size of the SBS stock.

*Small Numbers Conclusion*

We propose a finding that take of up to 15 SBS polar bears in any given year by Level B harassment, with a total 74 SBS polar bears in aggregate across the 5-year duration (66 by Level B harassment and 8 by Level A harassment) of this proposed ITR represents a small number of the SBS polar bear stock.

*Negligible Impact*

For our negligible impacts determination, we consider the following:

1. The documented impacts of previous activities similar to the specified activities on polar bears, and, taking into consideration the baseline of existing impacts from factors such as oil and gas activities in the area and other ongoing or proposed incidental take authorizations, suggest that the types of specified activities will have minimal effects on polar bears. Additionally, the effects will be limited to short-term, temporary behavioral changes, or minor injury. Furthermore, our analyses do not indicate, nor do we anticipate, any lethal take of polar bears during the 5-year period of this proposed ITR. While we do estimate that up to two cubs may experience a short-term fitness decline in the period immediately following den departure, we also do not anticipate that they will experience long lasting impacts that could significantly impact their health, reproduction, or survival. The limited extent of anticipated impacts on polar bears is unlikely to adversely affect annual rates of polar bear survival or recruitment.

2. The distribution and habitat use patterns of polar bears indicate that relatively few polar bears will occur in the specified areas of activity at any time and, therefore, few polar bears are likely to be affected.

3. SAE has proposed, and would be required to implement, mitigation measures and monitoring designed to reduce the potential impacts of their operations on polar bears. Den detection surveys for polar bears, along with adaptive mitigation and management responses based on real-time monitoring information (described in this proposed authorization), will be used to avoid or minimize interactions with polar bears and, therefore, limit potential disturbance of these species.

We also consider the conjectural or speculative impacts associated with these specified activities. The specific congressional direction described below justifies balancing the probability of such impacts with their severity: If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low, but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the FWS will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (54 FR 40338, September 29, 1989, quoting 53 FR 8473, March 15, 1988, and 132 Cong. Rec. S 16305 (October 15, 1986)).

We reviewed the effects of the seismic exploration activities on polar bears, including impacts from surface interactions, aircraft overflights, and den disturbance. Based on our review of these potential impacts, past monitoring reports, and the biology and natural history of polar bears, we conclude that any incidental take reasonably likely to occur as a result of specified activities will be limited to short-term behavioral disturbances that would not affect the rates of recruitment or survival for the SBS stock of polar bears.

The potential effects of most concern here, specific to polar bears, is the mortality of polar bear cubs that could result from disturbances during certain periods of the denning season. The FWS estimated that the probability of greater than or equal to one lethal take is 0.09 annually and 0.35 across the 5-year duration of this proposed ITR. Therefore, the FWS does not anticipate any lethal take will occur during the ITR period. If a den is disturbed and lethal take were to occur, this take would be limited to only cubs during the denning period. Impacts to denning females, the demographic group most important to annual recruitment, are limited to take by Level B or Level A harassment. Therefore, the number of potentially available reproductive females that would contribute to recruitment for the SBS stock would remain unaffected if a den disturbance were to result in the mortality of the cubs.

Cub mortality occurs naturally each year. Cub litter survival was estimated at 50 percent (90 percent CI: 33–67 percent) for the SBS stock during 2001–2006 (Regehr et al. 2010), indicating a female may lose her litter for several reasons separate from den disturbance. The SBS stock of polar bears is currently estimated as 907 polar bears (Bromaghin et al. 2015, 2021; Atwood et al. 2020). The loss of one litter ranges from 0 percent (0 cubs) to approximately 0.33 percent (3 cubs) of the annual SBS stock size of polar bears (((0 cubs to 3 cubs) $\div 907) \times 100 \approx 0$ to 0.33). The determining factor for polar bear stock growth is adult female survival (Eberhardt 1990). Consequently, the loss of female cubs has a greater impact on annual recruitment rates for the SBS stock of polar bears compared to male cubs. If a den disturbance were to result in the mortality of the entire litter, the female would be available to breed during the next mating season and could produce another litter during the next denning season.

Based on the projection that zero cub mortality would be associated with these specified activities, and the recognition that even if a den is disturbed, the number of potentially affected cubs would be minimal and the number of reproductive females in the stock would remain the same, the FWS does not anticipate that the conjectural or speculative impacts associated with these specified activities warrant a finding of non-negligible impact or otherwise preclude issuance of this proposed ITR.

We have evaluated the effects of climate change on polar bears as part of the environmental baseline. Climate change is considered as the overall driver of effects that could alter polar bear habitat and behavior. The FWS is currently involved in research to understand how climate change may affect polar bears. As we gain a better understanding of climate change effects,

we will incorporate the information in future authorizations.

We find that the impacts of these specified activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect SBS polar bears through effects on annual rates of recruitment or survival. Therefore, the FWS proposes that the total of the taking estimated above and proposed for authorization will have a negligible impact on SBS polar bears.

*Impact on Subsistence Use*

Based on past community consultations, locations of hunting areas, no anticipated overlap of hunting areas and the specified activities, and the best scientific information available, including monitoring data from similar activities, we propose a finding that take caused by the specified seismic exploration activities in the specified geographic region will not have an unmitigable adverse impact on the availability of polar bears for taking for subsistence uses during the specified timeframe.

While polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the Kaktovik and Nuiqsut communities, the harvest of these species is important to Alaska Natives. SAE will contact subsistence communities that may be affected by its activities to discuss potential conflicts caused by location, timing, and methods of the specified activities. SAE will make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of polar bears are minimized. The FWS is not aware of any concerns having been voiced by the Alaska Native communities regarding the specified activities limiting availability of polar bears for subsistence uses. However, should such a concern be voiced, SAE's POC, which will identify measures to minimize any adverse effects, will be implemented. The POC will ensure that the specified activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The POC provides the procedures addressing how SAE will work with the affected Alaska Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bears, as warranted.

The FWS has not received any reports and is not aware of information that indicates that polar bears are being or will be deterred from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of seismic exploration activity. If there is evidence that these activities are affecting the availability of polar bears for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

*Least Practicable Adverse Impacts*

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of the specified activities; the best available scientific information; and monitoring data during industry activities in the specified geographic region. We propose a finding that the mitigation measures included within SAE's request will ensure least practicable adverse impacts on polar bears.

Polar bear den surveys at the beginning of each well survey season, the resulting 1.6-km (1-mi) operational exclusion zone around all known polar bear dens, and restrictions on the timing and types of activities in the vicinity of dens and females with cubs of the year observed during the den emergence period will ensure that impacts to denning females and their cubs are minimized during this critical period. Minimum flight elevations over polar bear areas and flight restrictions around observed polar bears and known polar bear dens will reduce the potential for aircraft disturbing polar bears. Finally, SAE will implement mitigation measures to prevent the presence and impact of attractants in camps such as the use of wildlife-resistant waste receptacles, daily food waste incineration, and storing hazardous materials in drums or other secure containers. These measures are outlined in a polar bear interaction plan that was developed in coordination with the FWS and is part of SAE's application for this ITR. Based on the information we currently have regarding den and aircraft disturbance and polar bear attractants, we concluded that the mitigation measures outlined in SAE's Request (SAE 2025) and incorporated into this proposed authorization will minimize impacts from the specified seismic exploration activities to the extent practicable.

A number of mitigation measures were considered but determined to be not practicable. These measures are listed below:

- *Require use of helicopters for AIR surveys*—Use of helicopters to survey active dens might lead to greater levels of disturbance and take compared to fixed-wing aircraft. This statement is supported by greater harassment rates for helicopter overflights compared to fixed-wing overflights determined in the aircraft take estimate analysis. Additionally, there is no published data to indicate increased den detection efficacy of helicopter AIR.
- *Require optimal weather conditions for AIR surveys*—Some restrictions on weather conditions for AIR surveys were included as mitigation measures; however, additional restrictions would not be practicable for the specified activities due to the available timeframe to complete AIR surveys to affect the least practicable adverse impact on polar bears.
- *Ground all flights if they must fly below 457 m (1,500 ft)*—Requiring all aircraft to maintain an altitude of 457 m (1,500 ft) at all times is not practicable as some operations may require flying below 457 m (1,500 ft) to perform necessary inspections or maintain safety of flight crew. Aircraft are required to fly above 457 m (1,500 ft) at all times within 805 m (0.5 mi) of an observed polar bear unless there is an emergency.
- *Require speed restrictions for aircraft operations*—Requiring aircraft to operate below a specific speed limit is not practicable as some operations may require speeds above the specified speed limit to maintain safety of the flight crew during various weather conditions. Additionally, aircraft operating at lower speeds may increase the duration of impact and potentially result in greater levels of disturbance to polar bears.
- *Spatial and temporal restrictions on surface activity*—Some spatial and temporal restrictions of operations were included in SAE's Request; however, additional restrictions would not be practicable for the specified activities based on other regulatory and safety requirements, and the need to acquire enough data to meet project objectives.
- *One-mile buffer around all known polar bear denning habitat*—One-mile (1.6-km) buffer around all known polar bear denning habitat is not practicable as much of SAE's specified survey area occurs within 1.6 km (1 mi) of denning habitat; thus, to exclude all areas within 1.6 km (1 mi) of denning habitat would preclude surveys from occurring.
- *Prohibit driving over high relief areas, embankments, or stream and river crossings*—In their request, SAE has committed to avoiding the leeward side of river banks and bluffs, where snow can accumulate and create polar bear denning habitat. Additionally, SAE would use handheld or truck-mounted infrared units to check of polar bears or dens prior to crossing suitable habitat and will place all river crossing at the lowest possible relief point to reduce

the possibility of suitable denning habitat being present. To completely avoid these types of areas would likely cause personnel to drive further away from established operational areas and unnecessarily create additional safety concerns. Furthermore, other mitigation measures to minimize impact to denning habitats are included and will minimize the risk imposed by driving over high relief areas, embankments, or stream and river crossings. Lastly, the probability of a den being run over by equipment during the specified activities is exceedingly low each year of the proposed ITR, and this probability will be further mitigated by AIR surveys during the beginning of the specified activities to detect dens within 1.6 km (1 mi) of the activities.

• *Use of a broader definition of ''denning habitat'' for operational offsets*—No data are available to support broadening the defining features of denning habitat beyond that established by USGS.

• *Prohibit activities within designated critical habitat for polar bears*—Critical habitat for polar bears must be considered during the specified activities; however, complete prohibition is not practicable due to the large spatial extent of critical habitat and project objectives.

• *Establish corridors for female and cub transit to the sea ice*—As no data support the existence of natural transit corridors to the sea ice, establishment of corridors in the proposed ITR area would be highly speculative. Therefore, no mitigative benefit would be realized by their establishment.

• *Require third-party neutral marine mammal observers*—SAE has committed to conducting polar bear training that meets FWS standards and will use bear guards to monitor for polar bears during project activities. These bear guards will be fully incentivized to diligently monitor for polar bears given inherent safety considerations.

• *Require all activities to cease if a polar bear is injured or killed until an investigation is completed*—The FWS has incorporated into this proposed authorization reporting requirements for all polar bear interactions. While ceasing all activities may aid in any subsequent investigation, doing so may not be practicable or safe in certain circumstances and, thus, will not be mandated prospectively.

• *Require use of den detection dogs*—Requiring scent-trained dogs to detect dens is not practicable or safe for this project due to the large spatial extent that would need to be surveyed within seismic survey areas. Additional crew may require additional transit vehicles and accommodations, which could increase disturbance to polar bears.

• *Construct safety gates, fences, and enclosures to prevent polar bears from accessing facilities*—Constructing safety gates, fences, and enclosures to prevent polar bears from accessing facilities is not practicable due to the short-term and relatively mobile project activities and temporary facilities. SAE will place skirting around elevated facilities to prevent polar bears from accessing these areas.

• *Require the use of handheld or vehicle-mounted forward-looking infrared equipment*—The efficacy rates for AIR surveys have been found to be four times more likely to detect dens versus ground-based forward-looking infrared (handheld or vehicle-mounted) equipment due to impacts of blowing snow on detection. SAE has incorporated into their mitigation measures the use of handheld or vehicle-mounted forward-looking infrared units when transiting rivers occurring in suitable denning habitat, but it is not practicable to use the equipment during all transit.

• *Temporal restrictions after July 1*—While SAE has committed to prioritizing cleanup in coastal areas first to complete them prior to July 1, the overall timing of cleanup activities is dependent upon snow-free conditions, which vary yearly and may not occur before July 1.

**Monitoring and Reporting**

The purpose of monitoring requirements is to assess the effects of the specified activities on polar bears, continual verification of ITR compliance, ensure take does not have more than a negligible impact on species stocks, and detect any unanticipated effects on the species or stock. Monitoring plans document when and how polar bears are observed, the number of polar bears, and their behavior during the observation. This information allows the FWS to measure encounter rates, examine trends in polar bear activity and distribution in the industrial areas, and estimate the number of polar bears potentially affected by industrial activities. SAE would report all observations of polar bears. To the extent possible, personnel that encounter polar bears will record group size, age, sex, behavior, duration of observation, and closest approach to human activity.

The FWS would provide SAE with the most recent and up-to-date Polar Bear Observation Form in which to record observations of polar bears. Observations must be reported to the FWS's Marine Mammals Management Office within 48 hours of the observation and submitted to *fw7_mmm_reports@fws.gov*. Details on monitoring guidelines and reporting requirements can be read below in the rule portion of this document in proposed § 18.172 Monitoring and § 18.173 Reporting Requirements.

**Request for Public Comments**

If you wish to comment on these proposed regulations or the associated draft environmental assessment, you may submit your comments by any of the methods described in **ADDRESSES**. Please identify if you are commenting on the proposed regulations, the draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed regulations, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The FWS will consider all comments that are received by the close of the comment period (see **DATES**).

*Clarity of This Proposed 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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) 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 you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Required Determinations**

*National Environmental Policy Act (NEPA)*

We have prepared a draft environmental assessment in accordance with the NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that the proposed action of issuing an ITR would not significantly affect the quality of the human environment, and, thus, preparation of

an environmental impact statement for this incidental take regulation is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

*Endangered Species Act (ESA)*

Under the ESA (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. Prior to finalizing this ITR, if warranted, the FWS will complete intra-Service consultation under section 7 of the ESA on our proposed issuance of an ITR. These evaluations and findings would be made available on the FWS's website at *https://ecos.fws.gov/ecp/report/biological-opinion.*

*Government-to-Government Consultation*

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes and organizations in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture and to make information available to Alaska Natives. Our efforts are guided by *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments,* 512 DM 5—*Procedures for Consultation with Indian Tribes,* 512 DM 6—*Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations,* 510 FW 1, *The Service's Native American Policy,* and 510 FW 2, *The Service's Alaska Native Relations Policy.* We have evaluated possible effects of the specified activities on federally recognized Alaska Native Tribes and organizations. Through the ITR process identified in the MMPA, the applicant has presented a communication process, culminating in a POC if needed, with the Native organizations and communities most likely to be affected by their work. The FWS does not anticipate impacts to Alaska Native Tribes or Alaska Native Claims Settlement Act corporations and does not anticipate requesting consultation; however, we invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the ITR/POC process.

*Regulatory Planning and Review—Executive Orders 12866 and 13563*

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. OIRA has determined that this proposed rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

OIRA bases its determination of significance upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) whether the rule will create inconsistencies with other Federal agencies' actions; (c) whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; and (d) whether the rule raises novel legal or policy issues.

Expenses will be related to, but not necessarily limited to: the development of requests for LOAs; monitoring, recordkeeping, and reporting activities conducted during archeological surveys, AIR maternal polar bear den surveys, seismic surveys, and aircraft-supported cleanup activities; development of activity- and species-specific marine mammal monitoring and mitigation plans; and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Realistically, costs of compliance with this proposed rule, if finalized, are minimal in comparison to those related to actual archeological surveys, AIR maternal polar bear den surveys, seismic surveys, and aircraft-supported cleanup activities. The actual costs to develop the petition for promulgation of regulations and LOA requests fall short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis.

*Small Business Regulatory Enforcement Fairness Act*

We have determined that this proposed rule, if finalized, is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Regulatory Flexibility Act*

We have determined that this proposed rule, if finalized, will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). SAE and their contractors conducting archeological survey, AIR maternal polar bear den surveys, seismic surveys, and summer cleanup activities on the North Slope are the only entities subject to this proposed ITR. Therefore, neither a regulatory flexibility analysis nor a small entity compliance guide is required.

*Takings Implications*

This proposed rule, if finalized, does not have takings implications under Executive Order 12630 because it authorizes the incidental, but not intentional, take of polar bears by seismic exploration activities and, thereby, exempts SAE from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

*Federalism Effects*

This proposed rule, if finalized, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The MMPA gives the FWS the authority and responsibility to protect polar bears.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule, if finalized, will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. The FWS has determined and certifies pursuant to the Unfunded Mandates

Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule, if finalized, will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Civil Justice Reform*

The Departmental Solicitor's Office has determined that this proposed rule, if finalized, will not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Paperwork Reduction Act*

This proposed rule contains new information collections subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). All information collections under the PRA require OMB approval. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. We are requesting a new control number for the information collection requirements in this subpart. OMB previously approved the information collection requirements associated with incidental take in the identified subparts and assigned the following control numbers:

- 1018–0070, Incidental Take of Marine Mammals During Specified Activities (50 CFR 18.27 and 50 CFR 18, Subpart J) (expires 08/31/2028), and
- 1018–0203, Incidental Take of Marine Mammals During Specified Activities (50 CFR 18.27 and 50 CFR 18, Subpart L) (expires 08/31/2028).

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to request OMB approval of the information collections in this proposed rule. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) 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, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This is a nonform collection. Respondents must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine if it is appropriate to issue specific regulations and, subsequently, LOAs. The FWS's proposed rule (RIN 1018–BG75) would create a new subpart, 50 CFR part 18, subpart N (SAExploration, Inc., valid for a period of 5 years), which addresses the incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) during seismic exploration activities on the North Slope of Alaska.

We will use the information collected to verify the findings required to issue incidental take regulations, to decide if we should issue an LOA, and (if an LOA is issued) what conditions should be included in the LOA. In addition, we will analyze the information to determine impacts to polar bears, and the availability of those marine mammals for subsistence purposes of Alaska Natives.

The information collections contained in the newly proposed subpart N described below require approval by OMB:

(1) *Application For Regulations (50 CFR 18.27(d))*—Regulations at 50 CFR part 18 require the applicant to provide information on the activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity. Applicants can find specific requirements in 50 CFR part 18, subparts N. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine whether to issue specific regulations and, subsequently, LOAs. The required information includes:

- A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals.
- The dates and duration of such activity and the specific geographical region where it will occur.
- Based on the best available scientific information, each applicant must also provide:

—An estimate of the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions;

—The type of taking (*e.g.,* disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

—A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

—The anticipated impact of the activity upon the species or stocks; and

—The anticipated impact of the activity on the availability of the species or stocks for subsistence uses.

- The anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat.
- The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.)
- Suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge

of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity.

- Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects.
- Applicants must develop and implement a site-specific (or umbrella plan addressing site-specific considerations), FWS-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on marine mammals and the subsistence use of these species.
- Applicants must also provide trained, qualified, and FWS-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

This information is necessary so that we can anticipate the impact of the activity on the species or stocks and on the availability of the species or stocks for subsistence uses. Under requirements of the MMPA, we cannot authorize a take unless the total of all takes will have a negligible impact on the species or stocks and, where appropriate, will not have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses. These requirements ensure that applicants are aware of related monitoring and research efforts they can apply to their situation, and that the monitoring and reporting that we impose are the least burdensome to the applicant.

(2) *Final Monitoring Report (50 CFR 172(c))*—The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the FWS for review within 90 days of the expiration of an LOA. Upon request, final report data must be provided in a common electronic format (to be specified by the FWS). Information in the final (or annual) report must include, but is not limited to:

- Copies of all observation reports submitted under the LOA;
- A summary of the observation reports;
- A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;
- Analysis of factors affecting the visibility and detectability of polar bears during monitoring;
- Analysis of the effectiveness of mitigation measures;
- Analysis of the distribution, abundance, and behavior of polar bears observed; and
- Estimates of take in relation to the specified activities.

(3) *Requests for Letters of Authorization (LOA) (50 CFR 18.27(f) and 18.167)*—LOAs, which may be issued only to U.S. citizens, are required to conduct activities pursuant to any specific regulations established. Once specific regulations are effective, the FWS will, to the maximum extent possible, process subsequent requests for LOAs within 30 days after receipt of the request by the FWS. All LOAs will specify the period of validity and any additional terms and conditions appropriate for the specific request. Issuance of LOAs will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

(4) *Polar Bear Den Detection Report (50 CFR 18.170(b)(1)(iv))*—Holders of an LOA seeking to carry out onshore activities in known or suspected polar bear denning habitat during the denning season must make efforts to locate occupied polar bear dens within and near proposed areas of operation. They may use any appropriate tool, such as forward-looking infrared imagery and/or polar bear scent-trained dogs, in concert with denning habitat maps along the Alaskan coast. In accordance with 50 CFR 18.172(b)(1) and (b)(2), LOA holders must report all observed or suspected polar bear dens to us prior to the initiation of activities. We use this information to determine the appropriate terms and conditions in an individual LOA in order to minimize potential impacts and disturbance to polar bears.

Holders of an LOA seeking to carry out onshore activities during the denning season (November–April) must conduct one to three separate surveys for occupied polar bear dens in all denning habitat within 1.6 km (1 mi) of proposed activities using aerial infrared (AIR) imagery. Project areas located in high denning density zones must be AIR surveyed at least three times, project areas in moderate denning density zones must be AIR surveyed at least twice, and anywhere outside of either the moderate or high denning density zones must be AIR surveys at least once. When either one or two AIR surveys are needed the first survey must be flown between November 25 and December 25 and the second survey occurring between December 15 and January 15. In an area where three surveys are required, the additional survey must occur between December 5 and December 31. A minimum of 24 hours is required between completion of previous AIR survey and beginning a new AIR survey.

Flight crews will record and report environmental parameters including air temperature, dew point, wind speed and direction, cloud ceiling, and percent humidity, and a flight log will be provided to the FWS within 48 hours of the flight.

(5) *Onsite Monitoring and Observation Reports*—The regulations also require that each holder of an LOA submit a monitoring report indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specific activity. Since the inception of incidental take authorizations for polar bears (*Ursus maritimus*), Pacific walruses (walruses) (*Odobenus rosmarus divergens*), and northern sea otters (otters) (*Enhydra lutris kenyoni*), we have required monitoring and reporting during oil and gas industry activities. The purpose of monitoring and reporting requirements is to assess the effects of industrial activities on polar bears, walruses, and otters to ensure that take is minimal to marine mammal populations, and to detect any unanticipated effects of take. The monitoring focus has been site-specific, area-specific, or population-specific. Site-specific monitoring measures animal-human encounter rates, outcomes of encounters, and trends of animal activity in the industrial areas, such as polar bear numbers, behavior, and seasonal use. Area-specific monitoring includes analyzing animal spatial and temporal use trends, sex/age composition, and risk assessment to unpredictable events, such as oil spills. Population-specific monitoring includes investigating species' life-history parameters, such as population size, recruitment, survival, physical condition, status, and mortality.

A. *In-Season Monitoring (Activity Progress Reports)* (50 CFR 18.172(a)(1))—Activity progress reports. Holders of an LOA must:

- Notify the FWS at least 48 hours prior to the onset of activities;
- Provide the FWS weekly progress reports of any significant changes in activities and/or locations; and
- Notify the FWS within 48 hours after ending of activities.

B. *In-Season Monitoring (Polar Bear Observation Reports)* (50 CFR 18.172(a)(2))—Holders of an LOA must

report, within 48 hours, all observations of polar bears and potential polar bear dens, during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the FWS). Information in the observation report must include, but is not limited to:

- Date, time, and location of observation;
- Number of bears;
- Sex and age of bears (if known);
- Observer name and contact information;
- Weather, visibility, sea state, and sea-ice conditions at the time of observation;
- Estimated closest distance of bears from personnel and facilities;
- Industry activity at time of sighting;
- Possible attractants present;
- Bear behavior;
- Description of the encounter;
- Duration of the encounter; and
- Mitigation actions taken.

(6) *Notification of LOA Incident Report* (50 CFR 18.172(b))—Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a marine mammal occurs. Reports must include:

- All information specified for an observation report;
- A complete detailed description of the incident; and
- Any other actions taken.

(7) *Mitigation—Interaction Plan* (50 CFR 18.170(a)(3) and 50 CFR 18.167(c)(4))—All holders of an LOA must have an approved polar bear safety, awareness, and interaction plan on file with the FWS's Marine Mammals Management Office and onsite and provide polar bear awareness training to certain personnel. Interaction plans must include:

- The type of activity and where and when the activity will occur (*i.e.,* a summary of the plan of operation);
- A food, waste, and other ''bear attractants'' management plan;
- Personnel training policies, procedures, and materials;
- Site-specific polar bear interaction risk evaluation and mitigation measures;
- Polar bear avoidance and encounter procedures; and
- Polar bear observation and reporting procedures.

(8) *Mitigation—3rd—Party Notifications* (50 CFR 18.170(d)(1))—All applicants for an LOA must contact affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the FWS documentation of communications as described in § 18.167.

(9) *Mitigation—Plan of Cooperation* (50 CFR 18.170(d)(2))—When appropriate, a holder of an LOA will be required to develop and implement a FWS-approved plan of cooperation (POC). The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of polar bears and to ensure continued availability of the species for subsistence use. The FWS will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The FWS will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of polar bears for subsistence use.

(10) *Community Consultation* (50 CFR 18.170(d)(1))—Community consultation. Prior to receipt of an LOA, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence polar bear hunting caused by the location, timing, and methods of operations and support activities. If community concerns suggest that the activities may have an adverse impact on the subsistence uses of this species, the applicant must address conflict avoidance issues through a POC.

*Title of Collection:* Incidental Take of Marine Mammals During Specified Activities, 50 CFR 18.27 and 50 CFR part 18, subpart N.

*OMB Control Number:* 1018–New.

*Form Numbers:* None.

*Type of Review:* Revision of a currently approved collection.

*Respondents/Affected Public:* Individuals/households, private sector (oil and gas industry companies), State/local/Tribal governments, and Federal Government.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion for applications; annually or on occasion for reports.

*Total Estimated Annual Nonhour Burden Cost:* $50,000 (associated with the polar bear den detection survey and report).

| Type of action | Number of annual respondents | Number of responses each | Total annual responses | Average completion time (hours) | Total annual burden hours |
|---|---|---|---|---|---|
| *Incidental Take of Marine Mammals—Application for Regulations (50 CFR § 18.27(d)):* | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 20 | 150 |
| Recordkeeping—Private Sector | | | | 130 | |
| *Final Monitoring Report* (50 CFR § 18.172(c)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 6 | 22 |
| Recordkeeping—Private Sector | | | | 16 | |
| *Requests—Letters of Authorization (50 CFR § 18.27(f) and 18.167):* | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 6 | 22 |
| Recordkeeping—Private Sector | | | | 16 | |
| *Polar Bear Den Detection Report* (50 CFR 18.170(b)(1)(iv)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 8 | 50 |
| Recordkeeping—Private Sector | | | | 42 | |
| *In-season Monitoring—Activity Progress Reports* (50 CFR 18.172(a)(1)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | .5 | 1 |
| Recordkeeping—Private Sector | | | | .5 | |
| *In-season Monitoring—Polar Bear Observation Reports* (50 CFR 18.172(a)(2)): | | | | | |
| Reporting—Private Sector | 10 | 1 | 10 | .25 | 13 |
| Recordkeeping—Private Sector | | | | 1 | |

| Type of action | Number of annual respondents | Number of responses each | Total annual responses | Average completion time (hours) | Total annual burden hours |
|---|---|---|---|---|---|
| *Notification of LOA Incident Report* (50 CFR 18.172(b) and 18.170(a)(3)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | .25 | 1 |
| Recordkeeping—Private Sector | | | | .5 | |
| *Mitigation—Interaction Plan* (50 CFR 18.170(a)(3) and 18.167(c)(4)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 2 | 8 |
| Recordkeeping—Private Sector | | | | 6 | |
| *Mitigation—(Amendment) Interaction Plan* (50 CFR 18.170(a)(3) and 18.167(c)(4)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 1 | 4 |
| Recordkeeping—Private Sector | | | | 3 | |
| *Mitigation—3rd Party Notifications* (50 CFR 18.170(d)(1)): | | | | | |
| Reporting—Private Sector | 3 | 1 | 3 | 1 | 6 |
| Recordkeeping—Private Sector | | | | 1 | |
| *Mitigation—Plan of Cooperation* (50 CFR 18.170(d)(2)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 10 | 40 |
| Recordkeeping—Private Sector | | | | 30 | |
| *Mitigation—(Amendment) Plan of Cooperation* (50 CFR 18.170(d)(2)(ii)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 5 | 20 |
| Recordkeeping—Private Sector | | | | 15 | |
| *Community Consultation* (50 CFR 18.170(d)(1)): | | | | | |
| Reporting—Private Sector | 1 | 1 | 1 | 10 | 40 |
| Recordkeeping—Private Sector | | | | 30 | |
| Totals | 24 | ..... | 24 | ..... | 341 |

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to OMB, with a copy to the FWS Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov*. Please reference ''1018–New/1018–BG75) in the subject line of your comments.

*Energy Effects*

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This proposed rule provides exceptions from the MMPA's taking prohibitions for entities engaged in specified seismic exploration activities in the specified geographic region. By providing certainty regarding compliance with the MMPA, this proposed rule will have a positive effect on the seismic exploration activities. Although the proposed rule requires an applicant to take a number of actions, these actions have been undertaken by seismic exploration activities for many years as part of similar past regulations. Therefore, this proposed rule is not expected to significantly affect energy supplies, distribution, or use, and does not constitute a significant energy action. No statement of energy effects is required.

**References**

For a list of the references cited in this proposed rule, see Docket No FWS–R7–ES–2023–0086, available at *https://www.regulations.gov*.

**List of Subjects in 50 CFR Part 18**

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons set forth in the preamble, the FWS proposes to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

## PART 18—MARINE MAMMALS

■ 1. The authority citation of 50 CFR part 18 continues to read as follows:

**Authority:** 16 U.S.C. 1361 et seq.

■ 2. Amend part 18 by adding and reserving subpart M and adding subpart N. These additions read as follows.

### Subpart M [Reserved]

### Subpart N—Taking of Polar Bears Incidental to Seismic Survey Exploration Activities on the North Slope of Alaska

18.164 Specified activities covered by this subpart.
18.165 Specified geographic region where this subpart applies.
18.166 Dates this subpart is in effect.
18.167 Procedure to obtain a letter of authorization (LOA).
18.168 Authorized take allowed under an LOA.
18.169 Prohibited take under an LOA.
18.170 Mitigation.
18.171 Monitoring.
18.172 Reporting requirements.
18.173 Information collection requirements.

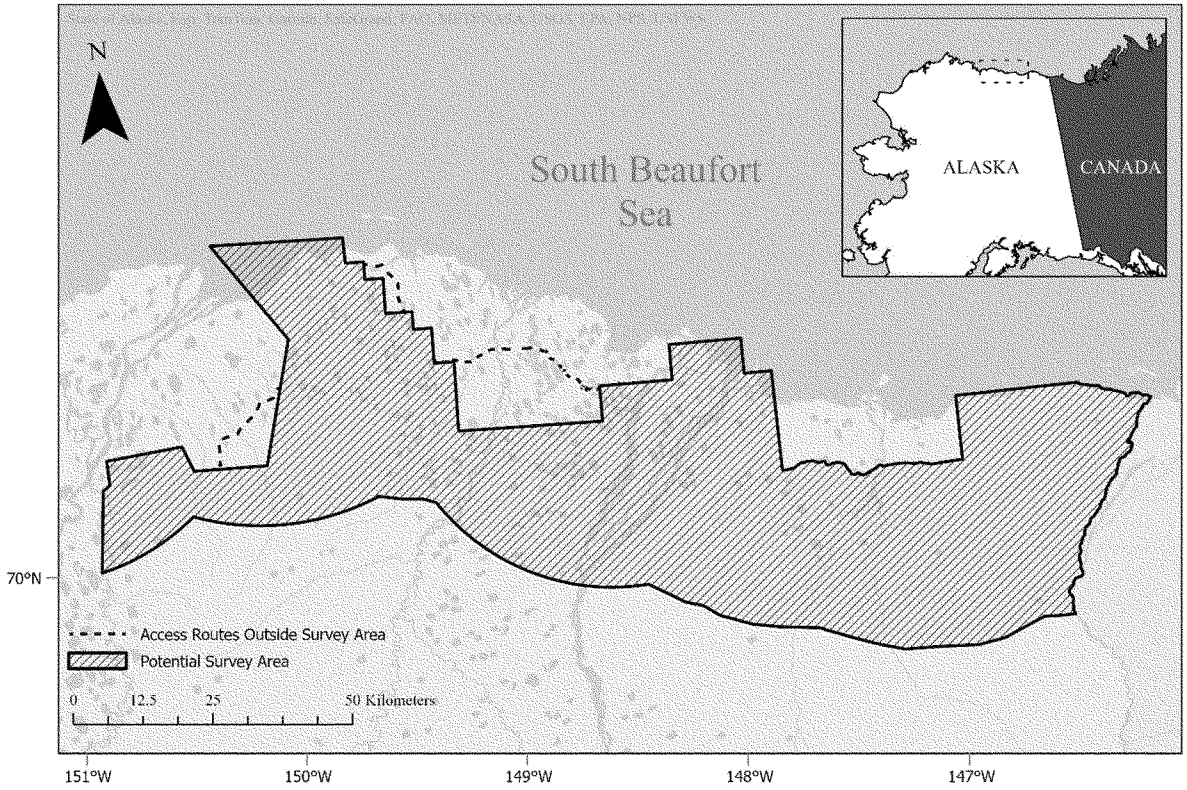
#### § 18.164 Specified activities covered by this subpart.

Regulations in this subpart apply to the incidental, but not intentional, take of small numbers of polar bears by certain entities while engaged in seismic exploration surveys and associated activities on the North Slope of Alaska. A letter of authorization (LOA) from the FWS is required to authorize incidental take that may occur during the specified activities. The entities described in § 18.167 may request an LOA pursuant to the regulations in this subpart.

**§ 18.165 Specified geographic region where this subpart applies.**

This subpart applies to the area where the seismic exploration activities will occur in Alaska and includes the specified geographic region that extends from the Colville River (150.85° W) in the west to the Canning River (145.98° W) in the east and south approximately 40 km (25 mi) inland. Figure 1 shows the area where this subpart applies.

**Figure 1 to § 18.165—Map of the North Slope, Alaska, Region Where The Activities Covered by This Subpart Will Occur**




**§ 18.166 Dates this subpart is in effect.**

The regulations in this subpart are effective until June 30, 2031.

**§ 18.167 Procedure to obtain a letter of authorization (LOA).**

(a) An applicant for an LOA under the regulations in this subpart must be from:

(1) SAExploration, Inc.;

(2) Any of their corporate affiliates; or

(3) Any of their respective contractors, subcontractors, partners, owners, co-lessees, designees, or successors-in-interest.

(b) The applicant must submit the request for an LOA to the U.S. Fish and Wildlife Service (FWS) Alaska Region Marine Mammals Management (MMM) Office, MS 341, 1011 East Tudor Road, Anchorage, Alaska 99503, at least 90 days prior to the start of the specified activity.

(c) The request for an LOA must comply with the requirements set forth in §§ 18.170 through 18.172 and must include the following information:

(1) An operational plan that describes in detail the activity (*e.g.,* type of project, methods, and types and numbers of equipment and personnel), the dates and duration of the activity, and the specific locations affected by the activity;

(2) A digital geospatial file of the project footprint;

(3) Estimates of monthly human occupancy of project locations;

(4) An interaction plan for polar bears that describes the policies and procedures that will provide for the safety and awareness of personnel, avoid interactions with polar bears, and minimize impacts to polar bears;

(5) A marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on polar bears, including frequency and dates of aerial infrared (AIR) surveys; and

(6) If necessary, a plan of cooperation (POC) to mitigate potential conflicts between the activity and subsistence hunting.

(i) Applicants must provide documentation of communication with potentially affected subsistence communities along the Beaufort Sea coast (*i.e.,* Kaktovik and Nuiqsut) and appropriate subsistence user organizations to discuss the location, timing, and methods of activities and identify and mitigate any potential conflicts with subsistence polar bear hunting activities. Applicants must specifically inquire of relevant communities and organizations if the activity will interfere with the availability of polar bears for the subsistence use of those groups.

(ii) Documentation must include a summary of any concerns identified by community members and hunter organizations and the applicant's responses to identified concerns.

**§ 18.168 Authorized take allowed under an LOA.**

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the applicant must apply for and obtain an LOA in accordance with §§ 18.27(f) and § 18.167.

(b) An LOA issued under this subpart allows for the incidental take, as defined under section 3 of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1362), of polar bears during activities specified in § 18.164 within the North Slope region of Alaska described in § 18.165.

(c) Each LOA will set forth:

(1) Permissible methods of incidental take;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

**§ 18.169 Prohibited take under an LOA.**

(a) Any incidental take that fails to comply with the regulations in this subpart or with the terms and conditions of an LOA remain prohibited. The regulations in this subpart do not authorize any intentional take.

(b) If specified activities cause unauthorized take, the holder of an LOA must:

(1) Cease activities immediately (or reduce activities to the minimum level necessary to maintain safety) and report the details of the incident within 48 hours to the FWS MMM at 1–800–362–5148 (business hours); and

(2) Suspend further activities until the FWS has reviewed the circumstances, determined whether additional mitigation measures are necessary to avoid further unauthorized taking, and notified the LOA holder that project activities may resume.

**§ 18.170 Mitigation.**

(a) *Mitigation measures for all LOAs.* Holders of an LOA must implement policies and procedures to conduct activities in a manner that effects the least practicable adverse impact on polar bears, their habitat, and the availability of these marine mammals for subsistence uses. Adaptive management practices, such as temporal or spatial activity restrictions in response to the presence of polar bears at a particular time or location or the occurrence of polar bears engaged in a biologically significant activity (*e.g.,* resting, feeding, denning, or nursing, among others), must be used to avoid interactions with and minimize impacts to these animals and their availability for subsistence uses. All holders of an LOA must:

(1) Cooperate with the FWS's MMM Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of activities on polar bears. Where information is insufficient to evaluate the potential effects of activities on polar bears and the subsistence use of this species, holders of an LOA may be required to participate in joint monitoring and/or research efforts to address these information needs and ensure the least practicable adverse impact to these resources.

(2) Designate trained and qualified personnel to monitor for the presence of polar bears, initiate mitigation measures, and monitor, record, and report the effects of the activities on polar bears.

(3) Have an approved polar bear safety, awareness, and interaction plan on file with the FWS's MMM Office and onsite and provide polar bear awareness training to certain personnel prior to their participation in the activities. Interaction plans must include:

(i) The type of activity and where and when the activity will occur (*i.e.,* a summary of the plan of operation);

(ii) A food, waste, and other ''bear attractants'' management plan;

(iii) Personnel training policies, procedures, and materials;

(iv) Site-specific polar bear interaction risk evaluation and mitigation measures;

(v) Polar bear avoidance and encounter procedures; and

(vi) Polar bear observation and reporting procedures.

(b) *Mitigation measures for onshore activities.* Holders of an LOA must undertake the following activities to limit disturbance around known polar bear dens:

(1) *Attempt to locate polar bear dens.* In coordination with the FWS, the applicant adopted the high and moderate denning zones developed by the FWS within the specified geographical area where this subpart applies to delineate areas of polar bear denning density. Holders of an LOA seeking to carry out onshore activities during the denning season (November–April) must conduct surveys for occupied polar bear dens in all denning habitat within 1.6 km (1 mi) of specified activities using AIR imagery. The applicant must conduct at least three separate surveys for occupied polar bear dens in high density denning zones, at least two surveys for occupied polar bear dens in moderate density denning zones, and one survey for occupied polar bear dens in other onshore project areas.

(i) The first survey must occur between the dates of November 25 and December 25 and the second survey must occur between December 15 and January 15. If activities will occur within the high density polar bear denning zone, a third forward-looking infrared survey must occur between December 5 and December 31. At least 24 hours must pass between the completion of the surveys.

(ii) AIR surveys will be conducted during darkness or civil twilight and not during daylight hours. Ideal environmental conditions during surveys would be clear, calm, and cold; AIR detection should not be attempted if there is blowing snow, any form of precipitation, or other sources of airborne moisture. Flight crews will record and report environmental parameters including air temperatures, dew point, wind speed and direction, cloud ceiling, and percent humidity, and a flight log will be provided to the FWS within 48 hours of the flight.

(iii) A scientist experienced in interpreting AIR imagery will be on board the survey aircraft to analyze the AIR data in real-time. The data (infrared video) will be made available for viewing by the FWS immediately upon return of the survey aircraft to the base of operations.

(iv) All observed or suspected polar bear dens must be reported to the FWS prior to the initiation of activities.

(2) *Observe 1-mile operational exclusion zone around known polar bear dens.* Operators must observe a 1.6-km (1-mi) operational exclusion zone around all known or suspected polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should previously unknown occupied dens be discovered within 1 mile of activities, work must cease, and the FWS must be contacted for guidance. The FWS will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the LOA must comply with any additional measures specified.

(3) *Use the den habitat map developed by the U.S. Geological Survey (USGS).* To determine the areas that require surveys, operators must use the map of suitable coastal polar bear denning habitat developed by USGS: *https://data.usgs.gov/datacatalog/search?otherKeyword=%5B%22Denning%20habitat%22%5D.* Doing so will inform LOA holders of the potential locations of polar bear dens for consideration when conducting activities in the coastal areas. Geographical data defining suitable denning habitat will be entered into the navigation system that allows vehicles to display the program area, hazards, and avoidance areas.

(4) *Use vehicle-mounted or handheld forward-looking infrared and thermal scopes.* When transiting or entering new terrain within the project area, operators must use vehicle-mounted or handheld forward-looking infrared units and thermal scopes to enhance detection of dens and/or traveling family units (female with cubs) following den

emergence. Areas along any major drainages, snow drifts greater than 1.5 m (5 ft) in height, snow piles, and any other areas that may provide suitable snow buildup for denning polar bears during seismic surveys should be surveyed.

(5) *Restrict activity in denning habitat.* To reduce the risk of den disturbance, operators must restrict activity and travel that would occur over polar bear denning habitat and avoid steep terrain and areas with pressure ridges that may support polar bear dens.

(6) *Observe polar bear den restrictions.* Restrict the timing of the activity to limit disturbance around dens, including known or suspected dens.

(7) *Observe den emergence restrictions.* If a female and cubs of the year are observed during the den emergence period (February–April), LOA holders must immediately halt or delay activities in a manner that provides the female and cubs a clear and unimpeded path to the sea ice. LOA holders must also notify the FWS and personnel conducting operations between the female and cubs and the coastline.

(8) *Restrict activities during open-water season.* Operators must conclude specified cleanup activities no later than the end of August to reduce the likelihood of disturbance to polar bears and potential for human–polar bear interactions.

(c) *Mitigation measures for aircraft to avoid disturbance.* Holders of an LOA must undertake the following activities to minimize the impact of aircraft activities on polar bears:

(1) *Follow aircraft elevation and flight path restrictions.* Operators of support aircraft shall, at all times, conduct their activities at the maximum distance practicable from concentrations of polar bears.

(i) Aircraft operations within the project area will maintain a minimum altitude of 457 m (1,500 ft) above ground level when safe and operationally possible.

(ii) Under no circumstances, other than an emergency, will aircraft operate at an altitude lower than 457 m (1,500 ft) within 805 m (0.5 mi) of a polar bear observed on ice or land measured in a straight line between the polar bear and the ground directly underneath the aircraft. Helicopters may not hover or circle above such areas or within 805 m (0.5 mi) of such areas. Aircraft may be operated below 457 m (1,500 ft) only when necessary to avoid adverse weather conditions. However, when weather conditions necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mi) of these areas.

(iii) Operators must plan all aircraft routes to minimize any potential conflict with active or anticipated polar bear hunting activity as determined through community consultations.

(2) *Follow aircraft landing and take-off spatial restrictions.* Aircraft will not land within 805 m (0.5 mi) of a polar bear. If a polar bear is observed while the aircraft is grounded in remote areas, personnel will board the aircraft and leave the area. The aircraft operator will also avoid flying over the polar bear if possible. Operators should avoid making any sudden maneuvers, especially when traveling at lower altitudes, even if such maneuvers are intended to avoid polar bears. If a polar bear is observed within the landing zone or work area, operators should travel away from the site, and slowly increase altitude to 457 m (1,500 ft) or a level that is safest and viable given current traveling conditions. Aircraft may not be operated in such a way as to separate individual polar bears from a group (*i.e.,* two or more polar bears).

(d) *Mitigation measures for the subsistence use of polar bears.* Holders of an LOA must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of polar bears for subsistence uses.

(1) *Community consultation.* Prior to receipt of an LOA, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence polar bear hunting caused by the location, timing, and methods of operations and support activities (see § 18.167 for details). If community concerns suggest that the activities may have an adverse impact on the subsistence uses of this species, the applicant must address conflict avoidance issues through a POC as described in paragraph (d)(2) of this section.

(2) *Plan of cooperation.* Based on community consultations, the holder of an LOA will be required to modify their POC as directed by the FWS.

(i) The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of polar bears and to ensure continued availability of the species for subsistence use.

(ii) The FWS will review the POC to ensure that any potential adverse effects on the availability of polar bears are minimized. The FWS will reject or require modification of POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of polar bears for subsistence use.

### § 18.171 Monitoring.

Holders of an LOA must develop and implement a site-specific, FWS-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on polar bears and the subsistence use of this species and provide trained, qualified, and FWS-approved onsite observers to carry out the activities identified in the marine mammal monitoring and mitigation plan.

### § 18.172 Reporting requirements.

Holders of an LOA must report the results of monitoring and mitigation activities to the FWS's MMM Office via email at: *fw7_mmm_reports@fws.gov.*

(a) *In-season monitoring reports.*

(1) *Activity progress reports.* Holders of an LOA must:

(i) Notify the FWS at least 48 hours prior to the onset of activities;

(ii) Provide the FWS weekly progress reports of any significant changes in activities and/or locations; and

(iii) Notify the FWS within 48 hours after ending of activities.

(2) *Polar bear observation reports.* Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the FWS). Information in the observation report must include, but is not limited to:

(i) Date and time of the observation;

(ii) Locations of the observer and polar bears (GPS coordinates if possible);

(iii) Number of polar bears;

(iv) Sex and age class of polar bears (if known);

(v) Observer name and contact information;

(vi) Weather, visibility, and if at sea, sea state, and sea-ice conditions at the time of the observation;

(vii) Estimated closest distance of polar bears from personnel and facilities;

(viii) Industry activity at time of the observation;

(ix) Possible attractants present;

(x) Polar bear behavior;

(xi) Description of the observation;

(xii) Duration of the observation; and

(xiii) Mitigation actions taken.

(b) *Notification of LOA incident report.* Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any industry activity. An LOA incident is any situation in which specified activities exceed the authority of an LOA, a mitigation measure was required but not enacted, or injury or death of a polar bear occurs.

(1) Reports must include all information specified for an observation report, a complete detailed description of the incident, and any other actions taken.

(2) Injured, dead, or distressed polar bears that are clearly not associated with the specified activities (*e.g.,* animals found outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must also be reported to the FWS immediately, and not later than 48 hours after discovery. Photographs, video, location information, or any other available documentation must be included.

(c) *Final report.* The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the FWS for review within 90 days of the expiration of an LOA. Upon request, final report data must be provided in a common electronic format (to be specified by the FWS). Information in the final report must include, but is not limited to:

(1) Copies of all observation reports submitted under the LOA;

(2) A summary of the observation reports;

(3) A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

(4) Analysis of factors affecting the visibility and detectability of polar bears during monitoring;

(5) Analysis of the effectiveness of mitigation measures;

(6) Analysis of the distribution, abundance, and behavior of polar bears observed; and

(7) Estimates of take in relation to the specified activities.

### § 18.173 Information collection requirements.

OMB has approved the collection of information contained in this subpart and assigned OMB control number 1018–NEW. We 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. Direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed in 50 CFR part 2.1.

**Kevin Lilly,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2026–09885 Filed 5–15–26; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register
Vol. 91, No. 95
Monday, May 18, 2026

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) 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; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by May 18, 2026. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### National Agricultural Statistics Service

*Title:* Agricultural Resource Management Phase 3 Economic Surveys.

*OMB Control Number:* 0535–0275.

*Summary of Collection:* The Agricultural Resource Management Surveys (ARMS) are the primary source of information for the U.S. Department of Agriculture on a broad range of issues related to production practices, costs and returns, and contractor expenses. Data are collected at both the whole-farm level and for selected commodities.

Data from ARMS are used to produce estimates of net farm income by type of commercial producer as required in 7 U.S.C. 7998, as amended, and estimates of enterprise production costs as required in 7 U.S.C. 1441(a), as amended. ARMS data are also used to develop the Prices Paid Index, a component of the Parity Index referenced in the Agricultural Adjustment Act of 1938, as amended. These indexes are used to calculate the annual federal grazing fee rates under the Public Rangelands Improvement Act of 1978 and Executive Order 12548, and as promulgated in regulations at 36 CFR 222.51, as amended. The National Agricultural Statistics Service (NASS) is requesting a three-year renewal for continued authority to conduct the Agricultural Resources Management Survey (ARMS) Phase 3 survey.

*Need and Use of the Information:* The ARMS Phase 3 Economic Surveys are the only annual source of information available for objective evaluation of many critical issues related to agriculture and the rural economy. These include annual whole-farm financial data sufficient to estimate income by type of operation, loan commodities, operator household income, credit, farm structure and organization; as well as marketing information and other economic data related to input usage, production practices, and crop substitution possibilities..

*Description of Respondents:* Farms; Business or other for-profit

*Number of Respondents:* An average of 49,417 annually.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* An average of 76,175 annually.

**Levi S. Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2026–09870 Filed 5–15–26; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request–Supplemental Nutrition Assistance Program (SNAP) Form FNS–380, Worksheet for Quality Control Reviews

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on this proposed information collection. This collection is a reinstatement with revision of a currently expired information collection. This information collection, the FNS–380, Worksheet for Quality Control Reviews, is a form designed to collect quality control (QC) data and serve as the data entry form for QC case reviews in the active sampling frame for the Supplemental Nutrition Assistance Program (SNAP). Revisions to the form, its instructions, and burden hours are within.

**DATES:** Written comments must be received on or before July 17, 2026.

**ADDRESSES:** Comments may be sent to: John McCleskey, QC Branch Chief, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted to *SM.FN.SNAPQCRules-ICR@usda.gov* or may also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection

should be directed to John McCleskey at 703–457–7747.

**SUPPLEMENTARY INFORMATION:** *Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Title:* Worksheet for Supplemental Nutrition Assistance Program Quality Control Reviews

*Form Number:* FNS–380

*OMB Control Number:* 0584–0074

*Expiration Date:* July 31, 2025

*Type of Request:* Reinstatement with a revision of an expired information collection.

*Abstract:* Section 16 of the Food and Nutrition Act of 2008, as amended, (the Act) provides the legislative basis for the operation of the QC system. Part 275, Subpart C, of SNAP regulations implements the legislative mandates found in Section 16. Regulations at 7 CFR 275.1, 275.14(d) and 275.21(a) and (b)(1) provide the regulatory basis for the QC reporting requirements.

Section 11(a) of the Act provides the legislative basis for the recordkeeping requirements. SNAP regulations, at 7 CFR 272.1(f)(1), specify that program records must be retained for three years from fiscal closure. Regulations at 7 CFR 275.4 specifically address the record retention requirement for form FNS–380.

Form FNS–380 is a SNAP worksheet used to determine eligibility and benefits for households selected for QC review in the active sampling frame—see 7 CFR 275.11(e)(1). The form provides a systematic means of aiding State QC reviewers in analyzing a SNAP household's case record (7 CFR 275.12(b)), planning and conducting a field investigation (7 CFR 275.12(c)), as well as gathering, comparing, analyzing, and evaluating the information from both (7 CFR 275.12(d) and (e)).

SNAP estimates the total reporting burden for this information collection is 414,216 hours. *These hours include approximately:* (1) 139,254 hours for reviewing a SNAP household's case record, an increase of 2,763.63 hours; (2) 162,463 hours for conducting the field investigation, an increase of 3,224.24 hours; (3) 23,209 hours to meet with 46,418 households for a QC interview, an increase of 460.61 hours; (4) zero hours for notification to discuss individual cases, a decrease of .4 hour; (5) 41,776.20 hours to identify variances in the case review, an increase of 829.09 hours; and (6) 23,209 hours to do an error analysis of the case, an increase of 460.61 hours for State agencies. The total also includes approximately 23,209 burden hours for 46,418 individual households to be interviewed by State agencies, an increase of 460.50 hours.

SNAP estimates a total State agency annual recordkeeping burden of 1,095.47 hours, an increase of 21.74 hours from the previous submission. SNAP estimates the grand total reporting and recordkeeping burden for this collection as approximately 414,216 hours, an increase of 8,220 hours. SNAP also estimates an annual total of 278,508 responses for State agencies and 46,418 responses for households for this information collection.

*Updates to the FNS 380 form include:* (1) in Section A, the addition of a row to identify the type of conferment used for categorical eligibility; (2) in Section C of the face sheet, replacement of the social security number field with an email address field; (3) a new Section E, for a case review narrative summary; (4) renaming the worksheet narrative to be Section F; (5) removal of all existing bold sub headers from the elements list; (6) specification that element 212 includes non-substantial lottery or gambling winnings; (7) adding a row for element 214—substantial lottery and gambling winnings; (8) addition of a row for new element 362—homeless shelter deduction; (9) addition of a row for new element 540—missing reports; and (10) addition of a row for new element 542—expired certification periods.

*Updates to the instructions for form FNS 380 include:* (1) instructions for new section E—case review narrative summary; (2) revised introductory instructions for new section F; and (3) revised formatting for the instructions for section F and the computation sheets.

Based on fiscal year 2024 complete active case sample sizes available, SNAP estimates 46,418 FNS–380 worksheets and interviews will be completed annually for the active sampling frame. SNAP is requesting a three-year approval from OMB for this information collection. Below is a list of the burden associated with this information collection as well as a table with details on its makeup.

**Reporting**

*Affected Public:* State, Local and Tribal Government and individuals or households.

*Estimated Number of Respondents:* 53 State agencies, 46,418 individuals or households.

*Estimated Number of Responses per Respondent:* 4,379.06 per State agency and one per household.

*Estimated Total Annual Responses:* 232,090 State agency responses and 46,418 household responses.

*Estimated Time per Response:* 8.48 hours for State agencies and .5 hours per household.

*Estimated Total Annual Reporting Burden on Respondents:* 413,120 hours *(*391,007 hours for State agencies and 23,209 hours for households.)

**Recordkeeping**

*Affected Public:* State, Local and Tribal Government.

*Estimated Number of Respondents:* 53 State agencies.

*Estimated Number of Responses per Respondent:* 875.81 responses.

*Estimated Total Annual Responses:* 46,418 responses.

*Estimated Time per Response:* 0.0236 hour.

*Estimated Total Annual Burden on Respondents:* 1,095 hours.

*Grand Total Reporting and Recordkeeping Annual Burden:* 414,216 hours.

| Reg. Section | Description of Activity | Estimated number of respondents | Estimated responses per respondent | Revised total annual responses | Revised number of burden hours per response | Revised estimated total burden hours | Previous submission total hours | Difference due to program changes | Difference due to adjustments |
|---|---|---|---|---|---|---|---|---|---|
| **Reporting Burden for State Agencies FNS 380, OMB 0584–0074** | | | | | | | | | |
| 275.12 (b) ..... | Household Case Record Review. | 53 | 875.8113 | 46,418 | 3 | 139,254.00 | 136,490.37 | ..... | 2,763.6300 |
| 275.12 (c) ..... | Field investigation ..... | 53 | 875.8113 | 46,418 | 3.5 | 162,463.00 | 159,238.77 | ..... | 3,224.2350 |

| Reg. Section | Description of Activity | Estimated number of respondents | Estimated responses per respondent | Revised total annual responses | Revised number of burden hours per response | Revised estimated total burden hours | Previous submission total hours | Difference due to program changes | Difference due to adjustments |
|---|---|---|---|---|---|---|---|---|---|
| 275.12 (c)(1) ... | Personal interviews ... | 53 | 875.8113 | 46,418 | 0.5 | 23,209.00 | 22,748.40 | ..... | 460.6050 |
| 275.2(c)(1)(v) .. | Notification to discuss individual cases. | 0 | 0.0000 | 0 | 0.08 | 0.00 | 0.40 | ..... | -0.4000 |
| 275.12 (d)(1) ... | Variance identification | 53 | 875.8113 | 46,418 | 0.9 | 41,776.20 | 40,947.11 | ..... | 829.0890 |
| 275.12 (e) ..... | Error analysis ..... | 53 | 875.8113 | 46,418 | 0.5 | 23,209.00 | 22,748.40 | ..... | 460.6050 |
| Sub Total Reporting Burden ..... | | 53 | 4379.0566 | 232,090 | 1.68 | 389,911 | 382,173 | 0 | 7,738 |
| **Reporting Burden for Households FNS 380, OMB 0584–0074** | | | | | | | | | |
| 275.12 (c)(1) ... | Personal Interviews-Individuals or Households. | 46,418.00 | 1 | 46418.00 | 0.5 | 23,209.00 | 22,748.50 | ..... | 460.5000 |
| **Recordkeeping Burden for State Agencies FNS 380, OMB 0584–0074** | | | | | | | | | |
| 275.4 ..... | Record Retention ..... | 53 | 875.8113 | 46,418 | 0.0236 | 1,095.46 | 1,073.73 | ..... | 21.74 |
| **Grand Total State & HH Reporting & Recordkeeping Burden FNS 380, OMB 0584–0074** | | | | | | | | | |
| Grand Total State & HH Reporting & Recordkeeping Burden. | | 46471.00 | ..... | 324,926 | ..... | 414,216 | 405,996 | 0 | 8,220 |

**Patrick A. Penn,**

*Deputy Under Secretary, Food and Nutrition Service.*

[FR Doc. 2026–09935 Filed 5–15–26; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers Used for Publication of Legal Notices by the Alaska, Pacific Northwest, and Pacific Southwest Regions, Alaska, California, Oregon, Washington, and Parts of Idaho and Nevada

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of newspapers of record.

**SUMMARY:** This notice lists the newspapers that will be used by ranger districts, national forests and grasslands, and the regional offices of the Alaska, Pacific Northwest, and Pacific Southwest Regions to publish legal notices. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions, notices of decision, and notices of opportunity to file an objection. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or object, and establish the date that the Forest Service will use to determine if comments or objections were timely.

**DATES:** Publication of legal notices in the listed newspapers will begin on the date of this publication and continue until further notice.

**ADDRESSES:** Sasha Bertel, Regional Environmental Coordinator, Pacific Northwest Region, 1220 Southwest Third Avenue, Portland, OR 97204.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Markovich, Regional Environmental Coordinator, Alaska Region, by email at *jonathan.markovich@usda.gov.* Sasha Bertel, Regional Environmental Coordinator, Pacific Northwest Region, by email at *sasha.bertel@usda.gov* or by phone at (541) 383–4758. Laura Hierholzer, Regional Environmental Coordinator, Pacific Southwest Region, by email at *laura.hierholzer@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The administrative procedures at 36 Code of Federal Regulations (CFR) 218 and 219 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 218 and 219. In general, the notices will identify: the decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or objections. The date the notice is published will be used to establish the official date for the beginning of the comment or objection period. The newspapers to be used are as follows:

#### Regional Forester

Regional Forester notices affecting National Forests in the Alaska Region: *Juneau Empire* (Juneau, AK) and *Anchorage Daily News* (Anchorage, AK).

Regional Forester notices affecting National Forests in the Pacific Northwest Region (Oregon and parts of California and Idaho): *The Oregonian* (Portland, OR).

Regional Forester notices affecting National Forests in the Pacific Northwest Region (Washington): *The Seattle Times* (Seattle, WA).

Regional Forester notices affecting National Forests in the Pacific Southwest Region (California and parts of Nevada): *Sacramento Bee* (Sacramento, CA).

#### Alaska Region

*Chugach National Forest, Alaska*

Chugach Forest Supervisor, Glacier District Ranger, and Seward District Ranger notices: *Anchorage Daily News* (Anchorage, AK).

Cordova District Ranger notices: *Cordova Times* (Cordova, AK).

*Tongass National Forest, Alaska*

Tongass Forest Supervisor, Craig District Ranger, Ketchikan District Ranger, Misty Fjords National Monument, and Thorne Bay District Ranger notices: *Ketchikan Daily News* (Ketchikan, AK).

Admiralty Island National Monument, Juneau District Ranger, Hoonah District Ranger, and Yakutat District Ranger notices: *Juneau Empire* (Juneau, AK).

Petersburg District Ranger notices: *Petersburg Pilot* (Petersburg, AK).

Sitka District Ranger notices: *Daily Sitka Sentinel* (Sitka, AK).

Wrangell District Ranger notices: *Wrangell Sentinel* (Wrangell, AK).

#### Pacific Northwest Region

*Columbia River Gorge Scenic Area, Oregon and Washington*

Columbia River Gorge Area Manager/Forest Supervisor notices: *Columbia Gorge News* (Hood River, OR).

*Colville National Forest, Washington*

Colville Forest Supervisor and Three Rivers District Ranger notices: *Statesman-Examiner* (Colville, WA).

Republic District Ranger notices: *Ferry County View* (Republic, WA).

Sullivan Lake District Ranger notices: *The Newport Miner* (Newport, WA).

Tonasket District Ranger notices: *The Omak-Okanogan County Chronicle* (Omak, WA).

*Deschutes National Forest, Oregon*

Deschutes Forest Supervisor, District Ranger, and Redmond Air Center Manager notices: *The Bulletin* (Bend, OR).

*Fremont-Winema National Forest, Oregon*

Fremont-Winema Forest Supervisor and District Ranger notices: *Herald and News* (Klamath Falls, OR).

*Gifford Pinchot National Forest, Washington*

Gifford Pinchot Forest Supervisor, Mount Adams District Ranger, and Mount Saint Helens National Volcanic Monument notices: *The Columbian* (Vancouver, WA).

Cowlitz Valley District Ranger notices: *The Chronicle* (Centralia, WA).

*Malheur National Forest, Oregon*

Malheur Forest Supervisor, Blue Mountain District Ranger, and Prairie City District Ranger notices: *East Oregonian* (Pendleton, OR).

Emigrant Creek District Ranger notices: *Burns Times Herald* (Burns, OR).

*Mt. Baker-Snoqualmie National Forest, Washington*

Mt. Baker-Snoqualmie Forest Supervisor, Darrington District Ranger, and Skykomish District Ranger notices: *Everett Herald* (Everett, WA).

Mt. Baker District Ranger notices (northern half of the district): *Bellingham Herald* (Bellingham, WA).

Mt. Baker District Ranger notices (southern half of the district): *Skagit Valley Herald* (Mount Vernon, WA).

Snoqualmie District Ranger notices (northern half of the district): *Snoqualmie Valley Record* (Snoqualmie, WA).

Snoqualmie District Ranger notices (southern half of the district): *Enumclaw Courier Herald* (Enumclaw, WA).

*Mt. Hood National Forest, Oregon*

Mt. Hood Forest Supervisor and District Ranger notices: *The Oregonian* (Portland, OR).

*Ochoco National Forest and Crooked River National Grassland, Oregon*

Ochoco Forest Supervisor and District Ranger notices: *The Bulletin* (Bend, OR).

*Okanogan-Wenatchee National Forest, Washington*

Okanogan-Wenatchee Forest Supervisor, Chelan District Ranger, Entiat District Ranger, and Wenatchee River District Ranger notices: *The Wenatchee World* (Wenatchee, WA).

Cle-Elum District Ranger notices: *Ellensburg Daily Record* (Ellensburg, WA).

Methow Valley District Ranger notices: *Methow Valley News* (Twisp, WA).

Naches District Ranger notices: *Yakima Herald* (Yakima, WA).

*Olympic National Forest, Washington*

Olympic Forest Supervisor and District Ranger notices: *The Olympian* (Olympia, WA).

*Rogue River-Siskiyou National Forest, Oregon and California*

Rogue River-Siskiyou Forest Supervisor, High Cascades District Ranger, J. Herbert Stone Nursery Manager, and Siskiyou Mountains District Ranger notices: *Rogue Valley Times* (Medford, OR).

Gold Beach District Ranger notices: *Curry Pilot* (Brookings, OR).

Powers District Ranger notices: *The World* (Coos Bay, OR).

Wild Rivers District Ranger notices: *Grants Pass Daily Courier* (Grants Pass, OR).

*Siuslaw National Forest, Oregon*

Siuslaw Forest Supervisor notices: *Corvallis Gazette-Times* (Corvallis, OR).

Central Coast District Ranger and Oregon Dunes National Recreation Area District Ranger notices: *The Register-Guard* (Eugene, OR).

Hebo District Ranger notices: *Tillamook Headlight Herald* (Tillamook, OR).

*Umatilla National Forest, Oregon and Washington*

Umatilla Forest Supervisor and District Ranger notices: *East Oregonian* (Pendleton, OR).

*Umpqua National Forest, Oregon*

Umpqua Forest Supervisor and District Ranger notices: *The Register-Guard* (Eugene, OR).

*Wallowa-Whitman National Forest, Oregon and Idaho*

Wallowa-Whitman Forest Supervisor and District Ranger notices: *East Oregonian* (Pendleton, OR).

*Willamette National Forest, Oregon*

Willamette Forest Supervisor, McKenzie River District Ranger, Middle Fork District Ranger, and Sweet Home District Ranger notices: *The Register-Guard* (Eugene, OR).

Detroit District Ranger notices: *Statesman Journal* (Salem, OR).

**Pacific Southwest Region**

*Angeles National Forest, California*

Angeles Forest Supervisor notices: *Los Angeles Times* (Los Angeles, CA).

Los Angeles District Ranger notices: *Daily News* (Los Angeles, CA). Newspapers providing additional notice for Los Angeles Ranger District: *Pasadena Star News* (Pasadena, CA) and *Foothill Leader* (Glendale, CA).

San Gabriel River District Ranger notices: *Inland Valley Bulletin* (Los Angeles, CA).

Newspapers providing additional notice: *San Gabriel Valley Tribune* (West Covina, CA).

Santa Clara/Mojave Rivers District Ranger notices: *Daily News* (Los Angeles, CA). Newspapers providing additional notice: *Antelope Valley Press* (Palmdale, CA) and *Mountaineer Progress* (Wrightwood, CA).

*Cleveland National Forest, California*

Forest Supervisor and Descanso District Ranger notices: *San Diego Union-Tribune* (San Diego, CA).

Palomar District Ranger notices: *San Diego Union-Tribune* (San Diego, CA). Newspaper providing additional notice: *Riverside Press Enterprise* (Riverside, CA).

Trabuco District Ranger notices: *Riverside Press Enterprise* (Riverside, CA). Newspaper providing additional notice: *Orange County Register* (Santa Ana, CA).

*Eldorado National Forest, California*

Forest Supervisor and District Ranger notices: *Mountain Democrat* (Placerville, CA).

*Inyo National Forest, California*

Forest Supervisor and District Ranger notices: *Inyo Register* (Bishop, CA).

*Klamath National Forest, California*

Forest Supervisor and District Ranger notices: *Siskiyou Daily News* (Yreka, CA).

*Lake Tahoe Basin Management Unit, California and Nevada*

Forest Supervisor notices: *Tahoe Daily Tribune* (South Lake Tahoe, CA).

*Lassen National Forest, California*

Forest Supervisor and Eagle Lake District Ranger notices: *Lassen County Times* (Susanville, CA).

Almanor District Ranger notices: *Chester Progressive* (Chester, CA).

Hat Creek District Ranger notices: *Intermountain News* (Burney, CA).

*Los Padres National Forest, California*

Forest Supervisor and Santa Barbara District Ranger notices: *Santa Barbara Independent* (Santa Barbara, CA).

Monterey District Ranger notices: *Monterey County Herald* (Monterey, CA).

Santa Lucia District Ranger notices: *The Tribune* (San Luis Obispo, CA).

Ojai District Ranger notices: *Ventura County Star* (Ventura, CA).

Mt. Pinos District Ranger notices: *The Mountain Enterprise* (Frazier Park, CA).

*Mendocino National Forest, California*

Forest Supervisor and Grindstone District Ranger notices: *Chico Enterprise-Record* (Chico, CA).

Upper Lake and Covelo District Ranger notices: *Ukiah Daily Journal* (Ukiah, CA).

*Modoc National Forest, California*

Forest Supervisor and District Ranger notices: *Modoc County Record* (Alturas, CA).

*Plumas National Forest, California*

Forest Supervisor and Mt. Hough District Ranger notices: *Mountain Messenger* (Downieville, CA).

Beckwourth District Ranger notices: *Sierra Booster* (Loyalton, CA). Newspaper occasionally providing additional notice: *Mountain Messenger* (Downieville, CA).

Feather River District Ranger notices: *Oroville Mercury Register* (Oroville, CA).

*San Bernardino National Forest, California*

Forest Supervisor and Front Country District Ranger notices: *San Bernardino Sun* (San Bernardino, CA).

Mountaintop District Ranger notices (Arrowhead Area): *Mountain News* (Blue Jay, CA).

Mountaintop District Ranger notices (Big Bear Area): *Big Bear Grizzly* (Big Bear, CA).

San Jacinto District Ranger notices: *Idyllwild Town Crier* (Idyllwild, CA).

*Sequoia National Forest, California*

Forest Supervisor and District Ranger notices: *Porterville Recorder* (Porterville, CA).

*Shasta-Trinity National Forest, California*

Forest Supervisor and District Ranger notices: *Record Searchlight* (Redding, CA).

*Sierra National Forest, California*

Forest Supervisor and District Ranger notices: *Fresno Bee* (Fresno, CA).

*Six Rivers National Forest, California*

Forest Supervisor and Mad River District Ranger notices: *Times Standard* (Eureka, CA).

Smith River National Recreation Area notices: *Del Norte Triplicate* (Crescent City, CA).

Orleans and Lower Trinity District Ranger notices: *The Two Rivers Tribune* (Hoopa, CA).

*Stanislaus National Forest, California*

Forest Supervisor and District Ranger notices: *The Union Democrat* (Sonora, CA).

*Tahoe National Forest, California*

Forest Supervisor notices: *The Union* (Grass Valley, CA).

American River District Ranger notices: *Auburn Journal* (Auburn, CA).

Sierraville District Ranger notices: *Mountain Messenger* (Downieville, CA). Newspapers providing additional notice: *Sierra Booster* (Loyalton, CA) and *Portola Recorder* (Portola, CA).

Truckee District Ranger notices: *Sierra Sun* (Truckee, CA).

Yuba River District Ranger notices: *The Union* (Grass Valley, CA). Newspaper providing additional notice: *Mountain Messenger* (Downieville, CA).

**Lisa Northrop,**

*Associate Deputy National Forest System.*

[FR Doc. 2026–09866 Filed 5–15–26; 8:45 am]

**BILLING CODE 3411–15–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meetings of the New Jersey Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of virtual business meeting and briefings.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New Jersey Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold public meetings via Zoom. The Committee is in the Implementation Stage and these meetings will be held in order to hear from testimony on the committee's chosen topic of antisemitism and civil rights.

**DATES:**

- Wednesday, May 27, 2026, at 3:00 p.m. Eastern Time; business meeting & briefing 1.
- Tuesday, June 9, 2026, at 3:00 p.m. Eastern Time; briefing 2.
- Thursday, June 25, 2026, at 1:00 p.m. Eastern Time; briefing 3.

*Registration Links (Audio/Visual):*

5/27/26: *https://www.zoomgov.com/webinar/register/WN_o3d-Yp4lTQOwaDP02wGR0w*

- *By Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 160 802 1512 #

6/9/26: *https://www.zoomgov.com/webinar/register/WN_8ctOC2fjRT2McDU9GTK1cg*

- *By Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 161 111 3716 #

6/25/26: *https://www.zoomgov.com/webinar/register/WN_w7h1iw5uQQeMiznaUhv2bA*

- *By Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 160 651 9578 #

*Agendas Link: https://usccr.box.com/s/f735xz7z719bhh0e83a8n48rb5da9u07 (note: final agendas will be available prior to the meeting dates).*

**FOR FURTHER INFORMATION CONTACT:** Victoria Moreno, Designated Federal Officer, at *vmoreno@usccr.gov* or 1–434–515–0204.

**SUPPLEMENTARY INFORMATION:** Committee meetings are available to the public through a registration link (above). Any interested members of the public may attend committee meetings. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of each meeting will include a list of persons who are present. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the

regional office within 30 days following the scheduled meeting. Written comments may be emailed to Evelyn Bohor at *https://wkf.ms/4de4nCi.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–656–8937.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via the file sharing website, *https://tinyurl.com/3ev8d9n9* as well as at: *www.facadatabase.gov* under the Commission on Civil Rights, selecting the Advisory Committee of interest. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Dated: May 13, 2026.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2026–09836 Filed 5–15–26; 8:45 am]

**BILLING CODE; P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–47–2026]**

### Foreign-Trade Zone 164; Application for Subzone; Webco Industries, Inc.; Kellyville, Oklahoma

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Muskogee City-County Port Authority, grantee of FTZ 164, requesting subzone status for the facility of Webco Industries, Inc., located in Kellyville, Oklahoma. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on May 13, 2026.

The proposed subzone (37.4 acres) is located at 18256 W. Highway 66, Kellyville, Oklahoma. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–33–2026).

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 29, 2026. Rebuttal comments in response to material submitted during the foregoing period may be submitted through July 13, 2026.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: May 13, 2026.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2026–09829 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–523–810]**

### Polyethylene Terephthalate Resin From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2023–2024

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that the sole producer/exporter under administrative review, OCTAL SAOC FZC (OCTAL), sold subject merchandise at less than normal value during the period of review (POR), May 1, 2023, through April 30, 2024.

**DATES:** Applicable May 18, 2026.

**FOR FURTHER INFORMATION CONTACT:** Dylan Hill, 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) 482–1197.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 11, 2025, Commerce published the *Preliminary Results* in the **Federal Register**.[1] In January 2026, Commerce conducted a verification of the sales and cost information submitted by OCTAL.[2] On April 10, 2026, Commerce invited interested parties to comment on the *Preliminary Results* and Verification Report.[3] No parties submitted comments.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.[4] Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.[5] On March 12, 2026, Commerce extended the final results of this review by 53 days, until May 11, 2026.[6]

#### Scope of the Order [7]

The merchandise covered by the *Order* is polyethylene terephthalate resin from the Sultanate of Oman. For a full description of the scope of the *Order, see* the *Preliminary Results.*

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in January 2026, Commerce verified the sales and cost data reported by OCTAL. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by OCTAL.[8]

#### Changes Since the Preliminary Results

Based on our verification findings,[9] we recalculated the reported inventory carrying costs using the most recent cost data submitted by OCTAL. *See* the Analysis Memorandum.[10]

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[1] *See Polyethylene Terephthalate Resin from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024,* 90 FR 44015 (September 11, 2025) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Verification of OCTAL SAOC–FZC in the Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Resin from the Sultanate of Oman,'' dated April 9, 2026 (Verification Report).

[3] *See Preliminary Results; see also* Memorandum ''Briefing Schedule,'' dated April 10, 2026.

[4] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated November 14, 2025.

[5] *See* Memorandum, ''Tolling of all Case Deadlines,'' dated November 24, 2025.

[6] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated March 12, 2026.

[7] *See Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman: Amended Final Affirmative Antidumping Determination (Sultanate of Oman) and Antidumping Duty Orders,* 81 FR 27979 (May 6, 2016) (*Order*).

[8] *See* Verification Report.

[9] *Id.* at 13.

[10] *See* Memorandum, ''Final Results Analysis Memorandum,'' dated concurrently with this notice (Analysis Memorandum).

**Final Results of Review**

Commerce determines that the following weighted-average dumping margin exists for the period, May 1, 2023, through April 30, 2024:

| Producer or exporter | Weighted-average dumping margin (percent) |
|---|---|
| OCTAL SAOC FZC ..... | 2.82 |

**Disclosure**

Commerce intends to disclose its calculations and analysis performed in these final results of review to parties to the proceeding within five days after the date of any public announcement of the final results or, if there is no public announcement of the final results, within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

**Assessment Rates**

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise during the POR. Commerce will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis*.[11]

Pursuant to a refinement to Commerce's assessment practice, where sales of subject merchandise that was produced or exported by OCTAL were not reported in the U.S. sales data, but the merchandise was entered for consumption into the United States during the POR, we will instruct CBP to liquidate any entries of such merchandise at the all-others rate (*i.e.,* 7.62 percent)[12] if there is no rate for the intermediate company(ies) involved in the transaction.[13]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this notice of the final results of review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for OCTAL will be 2.82 percent; (2) for merchandise exported by a company that is not under review that has a company-specific cash deposit rate from a completed segment of this proceeding, the cash deposit rate will continue to be the company's cash deposit rate from the most recently completed segment of the proceeding in which the company was under review; (3) if the exporter of the subject merchandise is not covered by this review or a previously completed segment of this proceeding, but the producer of the subject merchandise is/was covered, then the cash deposit rate will be equal to the producer's cash deposit rate from the most recently completed segment of this proceeding in which the producer of the subject merchandise was under review; and (4) if neither the exporter nor the producer of the subject merchandise is covered by this review or a previously completed segment of this proceeding, then the cash deposit rate will be 7.62 percent *ad valorem*[14], the all-others rate established in the less-than-fair-value investigation in this proceeding. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order (APO)**

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

**Notification to Interested Parties**

We are issuing and publishing these final results of review and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: March 11, 2026.

**Christopher Abbott,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2026–09828 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DS–P**

[11] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102–03 (February 14, 2012).

[12] *See Order,* 81 FR at 27982.

[13] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[14] *See Order,* 81 FR at 27982.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–124, C–570–125]**

## Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof, From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that imports of models 5C65M0 and BC70M0 vertical shaft engines produced by Chongqing Zongshen General Power Machine Co., Ltd. (Zongshen) in, and exported from, the People's Republic of China (China) constitute later-developed merchandise that circumvent the antidumping duty (AD) and countervailing duty (CVD) orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical shaft engines), from China.

**DATES:** Applicable May 12, 2026.

**FOR FURTHER INFORMATION CONTACT:** Zachary Shaykin, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2638.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 4, 2021, Commerce published the AD and CVD *Orders* on small vertical shaft engines from China.[1] On June 18, 2025, in response to a request from Briggs & Stratton, LLC (Briggs & Stratton, a domestic interested party), Commerce initiated a circumvention inquiry to determine if models 5C65M0 and BC70M0 of vertical shaft engines produced by Zongshen in, and exported from, China are ''later-developed merchandise,'' and whether these two models are circumventing the *Orders,* such that they should be considered subject to the *Orders.*[2] Briggs & Stratton alleges that such merchandise produced in, and exported from, China, and imported into the United States may circumvent the *Orders.* The period of the circumvention inquiry is January 1, 2018, through July 11, 2025.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceeding by 47 days,[3] and, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.[4] On January 9, 2026, we extended the deadline for the preliminary determination of this inquiry by 83 days.[5] On May 8, 2026, we extended the deadline for the preliminary determination of this inquiry by 4 days.[6]

For a complete description of the events that followed the initiation of this inquiry, *see* the Preliminary Decision Memorandum.[7] The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/frnotices.*

## Scope of the Orders

The products subject to the *Orders* are small vertical shaft engines from China. For a complete description of the scope of the *Orders, see* the Preliminary Decision Memorandum.[8]

## Merchandise Subject to the Circumvention Inquiry

The merchandise subject to this circumvention inquiry are the vertical shaft engine models 5C65M0 and BC70M0 produced by Zongshen.

## Methodology

Commerce is conducting this circumvention inquiry pursuant to section 781(d) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(k). A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice.

## Affirmative Preliminary Determination of Circumvention

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that imports of models 5C65M0 and BC70M0 of small vertical shaft engines produced by Zongshen in, and exported from, China constitute later-developed merchandise that circumvent the *Orders,* pursuant to section 781(d) of the Act and 19 CFR 351.226(k).

## Suspension of Liquidation and Cash Deposit Requirements

In accordance with 19 CFR 351.226(l)(2), we will direct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of previously suspended entries and to suspend liquidation of all entries of models 5C65M0 and BC70M0 of vertical shaft engines produced by Zongshen in, and exported from, China that are entered, or withdrawn from warehouse, for consumption on or after July 11, 2025 (*i.e.,* the date of the publication of the *Initiation Notice*).[9] Pursuant to 19 CFR 351.226(l)(2), we will also instruct CBP to require cash deposits of estimated ADs and CVDs equal to the cash deposit rates in effect for Zongshen.

These suspension of liquidation instructions and cash deposit requirements will remain in effect until further notice.

## Public Comment

Pursuant to 19 CFR 351.226(f)(4), case briefs or other written comments should be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of the publication of this notice.[10] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[11] Parties who submit case or rebuttal briefs in this inquiry are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this inquiry. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**, filed electronically via ACCESS. Hearing requests should

[1] *See Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 23675 (May 4, 2021) (*Orders*).

[2] *See Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof, from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping and Countervailing Duty Orders,* 90 FR 30874 (July 11, 2025) (*Initiation Notice*); s*ee also* Petitioner's Letter, ''Request for Anti-Circumvention Inquiry Pursuant to Section 781(d) of the Tariff Act of 1930,'' dated June 18, 2025.

[3] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated November 14, 2025.

[4] *See* Memorandum, ''Tolling of all Case Deadlines,'' dated November 24, 2025.

[5] *See* Memorandum, ''Extension of Deadline for the Preliminary Determination,'' dated January 9, 2026.

[6] *See* Memorandum, ''Extension of Deadline for the Preliminary Determination,'' dated May 8, 2026.

[7] *See* Memorandum, ''Certain Vertical Shaft Engines Between 99cc and 225cc from the People's Republic of China: Preliminary Decision Memorandum in the Circumvention Inquiry—5C65M0 and BC70M0 Engines,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *Id.* at 3–4.

[9] *See Initiation Notice,* 90 FR at 30874–76.

[10] *See* 19 CFR 351.309(f)(4).

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[12] *See* 19 CFR 351.309(c)(2)(d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to issues raised in the respective comments.[15] If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined and will notify the parties through ACCESS.[16] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

All submissions, including affirmative and rebuttal comments, as well as hearing requests, should be filed using ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

### U.S. International Trade Commission Notification

Commerce, consistent with section 871(e) of the Act, will notify the U.S. International Trade Commission (ITC) of this preliminary determination to include the merchandise subject to this circumvention inquiry within the *Orders.* Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the inquiry merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

### Notification to Interested Parties

This determination is published in accordance with section 781(d) of the Act and 19 CFR 351.226(k).

Dated: May 12, 2026.

**Christopher Abbott,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to the Circumvention Inquiry
V. Statutory and Regulatory Framework
VI. Comments and Analysis
VII. Preliminary Circumvention Determination
VIII. Recommendation

[FR Doc. 2026–09911 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Environmental Technologies Trade Advisory Committee

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an Open Meeting of a Federal Advisory Committee.

**SUMMARY:** The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a virtual meeting on Tuesday, May 26, 2026. The meeting is open to the public with registration instructions provided below. This notice sets forth the schedule and proposed topics for the meeting.

**DATES:** The meeting is scheduled for Tuesday, May 26, 2026 from 11:00 a.m. to 1:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EDT on Tuesday, May 19, 2026. Members of the public must register by that date to participate. Members of the public who wish to participate should register through the registration portal: *https://www.trade.gov/ettac.* Requests for auxiliary aids or to make comments during the meeting, or submit written comments for dissemination prior to the meeting, should be submitted via email to Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration, at *Megan.Hyndman@trade.gov.*

**ADDRESSES:** The meeting will be held virtually.

**FOR FURTHER INFORMATION CONTACT:** Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–482–1297; email: *Megan.Hyndman@trade.gov*).

**SUPPLEMENTARY INFORMATION:** The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Promotion Working Group of the Trade Promotion Coordinating Committee on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 6, 2026.

On Tuesday, May 26, 2026 at 11:00 a.m. to 1:00 p.m. EDT, the ETTAC will hold the tenth meeting of its current charter term. During the meeting, committee members will deliberate on potential recommendation topics. An agenda and any supplemental materials will be made available one week prior to the meeting at *https://www.trade.gov/ettac.*

The meeting will be open to the public and time will be permitted for public comment before the close of the meeting. Members of the public seeking to attend the meeting are required to register by Tuesday, May 19, 2026 at 5:00 p.m. EDT, via the registration portal at *https://www.trade.gov/ettac.* This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to *Megan.Hyndman@trade.gov* or (202) 482–1297 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Tuesday, May 19, 2026 at 5:00 p.m. EDT to ensure transmission to the members before the meeting. Draft minutes and other meeting materials will be available within 30 days of this meeting at *https://www.trade.gov/ettac.*

Dated: May 13, 2026.

**Man K. Cho,**

*Deputy Director, Office of Energy and Environmental Industries.*

[FR Doc. 2026–09908 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–844]**

### Certain Aluminum Foil from the Republic of Türkiye: Notice of Court Decision Not in Harmony with the Final Determination of Antidumping Investigation; Notice of Amended Final Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 5, 2026, the U.S. Court of International Trade (CIT) issued its final judgment in *Assan*

[15] *See* 19 CFR 351.310.

[16] *See* 19 CFR 351.310(d).

*Aluminyum Sanayi ve Ticaret A.S.* v. *United States,* Consol. Court No. 21–00616, sustaining in part and dismissing in part the U.S. Department of Commerce (Commerce)'s remand redeterminations pertaining to the final determination in the investigation of sales at less than fair value (LTFV) of certain aluminum foil from the Republic of Türkiye (Türkiye) covering the period of investigation July 1, 2019 through June 30, 2020.[1] Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's *Final Determination,* and that Commerce is amending the *Final Determination* and the resulting antidumping duty *Order*[2] with respect to the estimated weighted-average dumping margin determined for Assan Aluminyum Sanayi ve Ticaret A.S. (Assan), Kibar Dis Ticaret A.S.; and Ispak Esnek Ambalaj Sanayi A.S. (collectively, Assan Single Entity).[3]

**DATES:** Applicable May 15, 2026.

**FOR FURTHER INFORMATION CONTACT:** Erin Howard, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3453.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 23, 2021, Commerce published its *Final Determination* in the LTFV investigation of certain aluminum foil from Türkiye. On November 12, 2021, Commerce subsequently published the *Order* on certain aluminum foil from Türkiye.

Assan and the Aluminum Association Trade Enforcement Working Group and its individual members (the Aluminum Association, or the petitioner), appealed Commerce's *Final Determination.* On May 8, 2024, the CIT remanded the *Final Determination* to Commerce, holding that Commerce must reconsider or further explain its duty drawback methodology and its treatment of Assan Single Entity's raw material premium costs and net hedging gains.[4]

In its *First Final Results of Redetermination,* issued in May 2024, Commerce revised its duty drawback methodology to base the benefit only on import duties associated with subject merchandise.[5] Commerce also provided further explanation for its treatment of Assan Single Entity's raw material premium costs and net hedging gains, but made no change to the underlying margin calculations for either of these issues.[6] As a result, the estimated weighted-average dumping margin for Assan Single Entity and for all other producers and exporters changed from 2.28 percent to 2.30 percent. The CIT issued a judgment sustaining Commerce's *First Final Results of Redetermination* on duty drawback and raw material premium costs and remanded, in part, Commerce's explanation of Assan Single Entity's net hedging gains, providing Commerce with another opportunity to explain its analysis.[7]

In its Second Draft Results of Redetermination, issued in April 2026, Commerce further explained its choice to rely on Assan's income statement for classification of its net hedging gains over Assan's cash flow statement, and continued to include these net hedging gains as an offset to Assan Single Entity's reported cost of manufacturing.[8] Subsequently, the petitioner filed a motion for dismissal of the litigation. The CIT issued a judgment sustaining Commerce's *First Final Results of Redetermination* with respect to Commerce's duty drawback methodology and its treatment of Assan Single Entity's raw material premium costs [9] and dismissed the case with respect to the remaining issue in the *Second Remand Order.*[10]

## Timken Notice

In its decision in *Timken,*[11] as clarified by *Diamond Sawblades,*[12] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's February 18, 2026, judgment sustaining in part Commerce's *First Final Results of Redetermination* and the CIT's May 5, 2026, dismissal with respect to the remaining issue constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

## Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to Assan Single Entity as follows:

| Exporter or Producer | Final determination weighted-average dumping margin[13] (percent) | Amended final determination weighted-average dumping margin[14] (percent) | Amended cash deposit rate (adjusted for export subsidy offsets)[15] (Percent) |
|---|---|---|---|
| Assan Aluminyum Sanayi ve Ticaret A.S.; Kibar Dis Ticaret A.S.; Ispak Esnek Ambalaj Sanayi A.S. | 2.28 | 2.30 | Not Applicable. *See* the ''Cash Deposit Requirements'' section below. |
| All Others | 2.28 | 2.30 | 1.97. |

[1] *See Certain Aluminum Foil from the Republic of Turkey: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 52880 (September 23, 2021) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Antidumping Duty Orders,* 86 FR 62790 (November 12, 2021) (*Order*).

[3] *See Final Determination,* 86 FR at 52880 n.10 (''Commerce determines that Assan Aluminyum Sanayi ve Ticaret A.S.; Kibar Dis Ticaret A.S.; and Ispak Esnek Ambalaj Sanayi A.S. are a single entity (collectively, the Assan Single Entity).'').

[4] *See Assan Aluminyum Sanayi ve Ticaret A.S.* v. *United States,* Consol. Court No. 21–00616, Slip Op. 24–56 (CIT May 8, 2024) (*First Remand Order*).

[5] *See Final Results of Redetermination Pursuant to Court Remand* in *Assan Aluminyum Sanayi ve Ticaret A.S.* v. *United States,* Consol. Court No. 21–00616, Slip Op. 24–56 (CIT May 8, 2024), dated September 5, 2024 (*First Final Results of Redetermination*).

[6] *Id.*

[7] *See Assan Aluminyum Sanayi ve Ticaret A.S.* v. *United States,* Consol. Court No. 21–00616, Slip Op. 26–13 (CIT February 18, 2026) (*Second Remand Order*).

[8] *See* Draft Results of Redetermination Pursuant to Second Court Remand in *Assan Aluminyum Sanayi ve Ticaret A.S.* v. *United States,* Consol. Court No. 21–00616, Slip Op. 26–13 (CIT February 18, 2026), dated April 16, 2026 (Second Draft Results of Redetermination).

[9] *See Second Remand Order* at 18–19.

[10] *See Assan Aluminyum Sanayi ve Ticaret A.S.* v. *United States,* Consol. Ct. No. 21–00616 (CIT May 5, 2026) (*Order of Dismissal*).

[11] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[12] See *Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

**Cash Deposit Requirements**

Because Assan Single Entity has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review,[16] this notice will not affect the current cash deposit rate for Assan Single Entity. For all other exporters or producers that do not have a superseding cash deposit rate from a completed segment of this proceeding, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection for cash deposit rate for all-others producers and exporters.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: May 12, 2026.

**Christopher Abbott,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2026–09912 Filed 5–15–26; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–231]**

### Tris(hydroxymethyl)aminomethane From the People's Republic of China: Initiation of Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable May 11, 2026.

**FOR FURTHER INFORMATION CONTACT:** Shane Subler, Office VIII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6241.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On April 21, 2026, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of Tris(hydroxymethyl)aminomethane (Tris) from the People's Republic of China (China), filed in proper form on behalf of Advancion Corporation (the petitioner), a domestic producer of Tris.[1] The CVD Petition was accompanied by an antidumping duty (AD) petition concerning imports of Tris from China.[2]

Between April 27 and May 5, 2026, Commerce requested supplemental information pertaining to certain aspects of the Petition in supplemental questionnaires.[3] Between April 30 and May 6, 2026, the petitioner filed timely responses to these requests for additional information.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of the People's Republic of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of Tris from China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing Tris in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition was accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[5]

**Period of Investigation (POI)**

Because the Petition was filed on April 21, 2026, the POI is January 1, 2025, through December 31, 2025.[6]

**Scope of the Investigation**

The product covered by this investigation is Tris from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

**Comments on the Scope of the Investigation**

Between April 27 and May 5, 2026, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[7] Between April 30 and May 6, 2026, the petitioner provided clarifications and revised the scope.[8] The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[10] Commerce requests that interested parties provide at the beginning of their scope comments a public executive summary for each comment or issue raised in their submission. Commerce further requests that interested parties limit their public executive summary of each comment or issue to no more than 450 words, not including citations. Commerce intends to use the public

[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties,'' dated April 21, 2026 (Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''General Issues Supplemental Questions,'' dated April 27, 2026 (First General Issues Questionnaire); ''Supplemental Questions,'' dated April 27, 2026 (First China CVD Supplemental Questionnaire); ''Second General Issues Supplemental Questions,'' dated May 1, 2026 (Second General Issues Questionnaire); and ''Third General Issues Supplemental Questions,'' dated May 5, 2026 (Third General Issues Questionnaire).

[4] *See* Petitioner's Letters, ''Petitioner's First Supplement to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from China,'' dated April 30, 2026 (First General Issues Supplement); ''Petitioner's Supplement to Volume III of the Petition Requesting the Imposition of Countervailing Duties,'' dated April 30, 2026 (First China CVD Supplement); ''Petitioner's Second Supplement to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from China,'' dated May 4, 2026 (Second General Issues Supplement); and ''Petitioner's Third Supplement to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from China,'' dated May 6, 2026 (Third General Issues Supplement).

[5] *See* section on ''Determination of Industry Support for the Petition,'' *infra.*

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* First General Issues Questionnaire; *see also* Second General Issues Questionnaire; and Third General Issues Questionnaire.

[8] *See* First General Issues Supplement at 3–5; *see also* Second General Issues Supplement at 2–3; and Third General Issues Supplement at 2–3 and Exhibit GEN–SUPP3–1.

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[13] *See Final Determination,* 86 FR at 52881; *see also Order,* 86 FR at 62792.

[14] *See First Final Results of Redetermination* at 35.

[15] *See, e.g., Order,* 86 FR at 62792.

[16] *See Certain Aluminum Foil from the Republic of Türkiye: Final Results of Antidumping Duty Administrative Review; 2022–2023,* 90 FR 21896 (May 22, 2025).

executive summaries as the basis of the comment summaries included in the analysis of scope comments. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on June 1, 2026, which is the next business day after 20 calendar days from the signature date of this notice.[11] Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on June 11, 2026, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of this investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

**Filing Requirements**

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[12] An electronically filed document must be received successfully in its entirety by the time and date it is due.

**Consultations**

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided an opportunity for consultations with respect to the Petition.[13] The GOC did not request consultations.

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[16] Based on our analysis of the information submitted on the record, we have determined that Tris, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2025 and compared this to the estimated total production for the domestic like product by the U.S. Tris industry.[18]

On May 4, 2026, we received timely filed comments on industry support from Suzhou Yacoo Science Co., Ltd. (Yacoo), a Chinese producer of Tris.[19] On May 5, 2026, the petitioner responded to the comments from Yacoo in a timely filed rebuttal submission.[20]

Our review of the data provided in the Petition, the First General Issues Supplement, Petitioner's Response, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[21] First, the Petition established

[11] The deadline for scope comments falls on May 31, 2026, which is a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, June 1, 2026). *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'').

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures_March2026.pdf.*

[13] *See* Commerce's Letter, ''Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated April 21, 2026.

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd.* v. *United States,* 865 F.2d 240 (Fed. Cir. 1989)).

[16] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, ''Countervailing Duty Investigation Initiation Checklist: Tris(hydroxymethyl)aminomethane from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Tris(hydroxymethyl)aminomethane from the People's Republic of China (Attachment II). This checklist is on file electronically via ACCESS.

[17] For further discussion, *see* Attachment II of the China CVD Initiation Checklist.

[18] *Id.*

[19] *See* Yacoo's Letter, ''Petition Sufficiency Comments,'' dated May 4, 2026.

[20] *See* Petitioner's Letter, ''Petitioner's Response to Suzhou Yacoo Science Co., Ltd.'s Comments on Petition Sufficiency,'' dated May 5, 2026 (Petitioner's Response).

[21] *See* Attachment II of the China CVD Initiation Checklist.

support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[22] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[23] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[24] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[25]

**Injury Test**

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

**Allegations and Evidence of Material Injury and Causation**

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports from China exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[26]

The petitioner contends that the industry's injured condition is illustrated by a significant increase in the volume of subject imports; reduced market share; lost sales and revenues; underselling and price depression and suppression; decline in production and capacity utilization; and negative impact on financial performance.[27] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[28]

**Initiation of CVD Investigation**

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of Tris from China benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

**Respondent Selection**

In the Petition, the petitioner identified 16 companies in China.[29] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in the investigation. Following standard practice in CVD investigations, in the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for imports under the appropriate Harmonized tariff Schedule of the United States (HTSUS) subheading listed in the ''Scope of the Investigation,'' in the appendix.

On May 8, 2026, Commerce released CBP data on imports of Tris from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three days of the publication date of the notice of initiation of this investigation.[30] Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

**Distribution of a Copy of the Petition**

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of Tris from China are materially injuring, or threatening material injury to, a U.S. industry.[31] A negative ITC determination will result in the investigation being terminated.[32] Otherwise, this CVD investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v)

[22] *Id.; see also* section 702(c)(4)(D) of the Act.

[23] *See* Attachment II of the China CVD Initiation Checklist.

[24] *Id.*

[25] *Id.*

[26] *See* Petitions at Volume I (page 11 and Exhibit GEN–8).

[27] For further discussion, *see* China AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Tris(hydroxymethyl)aminomethane from the People's Republic of China.

[28] *Id.*

[29] *See* Petition at Volume I (page 8 and Exhibit GEN–4); *see also* First General Issues Supplement at 2–3.

[30] *See* Memorandum, ''Release of U.S. Customs and Border Protection Entry Data,'' dated May 8, 2026.

[31] *See* section 703(a)(1) of the Act.

[32] *Id.*

evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [33] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[34] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[35] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.[36]

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[37] Parties must use the certification formats provided in 19 CFR 351.303(g).[38] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letters of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[39]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 11, 2026.

**Christopher Abbott,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigation**

The merchandise subject to this investigation is tris(hydroxymethyl)aminomethane (Tris), also commonly referred to as tromethamine or THAM, and its derivative, tris(hydroxymethyl)aminomethane hydrochloride (Tris HCl), also commonly referred to as Tris hydrochloride or tromethamine HCl. Tris and Tris HCl are organic compounds with molecular compositions of $C_4H_{11}NO_3$ and $C_4H_{11}NO_3{\cdot}ClH$, respectively. The scope includes all grades, purities, and forms of Tris and Tris HCl, which vary based on the raw materials (nitromethane and formaldehyde) used in the production process and the end use application required. Tris and Tris HCl are packaged and sold in different forms and sizes; however, all Tris and Tris HCl are covered regardless of form or packaging. The Tris and Tris HCl covered by this investigation are chemical compounds with the Chemical Abstract Service (CAS) numbers 77–86–1 and 1185–53–1, respectively. The country of origin of the subject merchandise in this investigation is based on the country where the Tris molecule is manufactured. As a result, Tris HCl manufactured in a third country using Tris produced in China is subject to the investigation. In addition, reprocessing Tris or Tris HCl in a third country by, for example, recrystallizing, retesting, or repackaging the merchandise does not remove the product from the scope of this investigation. Tris and Tris HCl covered by the scope of this investigation are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.19.9690. Although the HTSUS subheading and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2026–09831 Filed 5–15–26; 8:45 am]

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[33] *See* 19 CFR 351.301(b).

[34] *See* 19 CFR 351.301(b)(2).

[35] *See* 19 CFR 351.302.

[36] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[37] *See* section 782(b) of the Act.

[38] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[39] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–823]**

### Silicomanganese From India: Final Results of Antidumping Duty Administrative Review; 2023–2024

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that the sole producer and/or exporter subject to this review, Maithan Alloys Limited (MAL), made sales of subject merchandise in the United States at less than normal value during the period of review (POR), May 1, 2023, through April 30, 2024.

**DATES:** Applicable May 18, 2026.

**FOR FURTHER INFORMATION CONTACT:** Zachary Shaykin, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8151.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 11, 2025, Commerce published in the **Federal Register** the preliminary results of the 2023–2024 administrative review of the antidumping duty order on silicomanganese from India.[1] We invited interested parties to comment on

[1] *See Silicomanganese from India: Preliminary Results, Preliminary Results of Antidumping Duty Administrative Review, 2023–2024,* 90 FR 44045 (September 11, 2025) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

the *Preliminary Results*.[2] We received a case brief from Eramet Marietta, Inc. (the petitioner).[3] No other interested parties commented on the *Preliminary Results.* Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.[4] Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.[5] On March 17, 2026, Commerce extended the deadline for the final results by 53 days.[6] Accordingly, the deadline for these final results is now May 11, 2026.

For a complete description of the events that followed the *Preliminary* Results, *see* the Issues and Decision Memorandum.[7] The Issues and Decision Memorandum is a public document and is on file electronically via 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/frnotices.*

## Scope of the Order [8]

The merchandise covered by the scope of the *Order* is silicomanganese from India. A full description of the scope of the *Order* is provided in the Issues and Decision Memorandum.

## Analysis of Comments Received

All issues raised by interested parties for these final results of review are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached as an appendix to this notice.

## Changes Since the Preliminary Results

Based on our analysis of the comments received from interested parties, we made certain changes to the margin calculations for MAL. For a discussion of these changes, *see* the Issues and Decision Memorandum.[9]

## Final Results of the Review

We determine the following estimated weighted-average dumping margin for the period May 1, 2023, through April 30, 2024:

| Exporter/producer | Weight-average dumping margin (percent) |
|---|---|
| Maithan Alloys Limited | 0.53 |

## Disclosure

We intend to disclose the calculations performed in these final results to parties in this proceeding within five days after the date of any public announcement or, if there is no public announcement, within five days after the date of publication of these final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

## Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

If the weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), upon completion of the final results, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[10] To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where the weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[11]

For entries of subject merchandise during the POR produced by MAL for which it did not know that the merchandise it sold to the intermediary (*e.g.,* reseller, trading company, or exporter) was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate (*i.e.,* 17.74) if there is no rate for the intermediate company(ies) involved in the transaction.[12]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of 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

The following cash deposit requirements will be effective upon publication in the **Federal Register** of this notice [13] for all shipments of silicomanganese from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for MAL will be 0.53 percent, the weighted-average dumping margin established in these final results; (2) for previously investigated companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published in the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior

[2] *Id.*

[3] *See* Petitioner's Letter, ''Letter in Lieu of Case Brief Concerning Clerical Errors,'' dated March 23, 2025.

[4] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated November 14, 2025.

[5] *See* Memorandum, ''Tolling of all Case Deadlines,'' dated November 24, 2025.

[6] *See* Memorandum, ''Silicomanganese from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated March 17, 2026.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Silicomanganese from India; 2023–2024,'' dated concurrently with, and hereby adopted by, this notice. (Issues and Decision Memorandum).

[8] *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela,* 67 FR 36149 (May 23, 2002) (*Order*).

[9] *See* Issues and Decision Memorandum at Comments 1 and 2.

[10] *See* 19 CFR 351.212(b)(1).

[11] *See* 19 CFR 352.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See* n.11, *supra.*

review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established in the most recent completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 17.74 percent, the all-others rate established in the LTFV investigation.[14] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

**Administrative Protective Order (APO)**

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the destruction or return of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the destruction or return of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: May 11, 2026.

**Christopher Abbott,**

*Deputy Assistant Secretary for Policy Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## 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. Discussion of the Issues
Comment 1: Inclusion of Sales Not Produced by Maithan Alloys Limited (MAL)
Comment 2: Failure To Account for Direct Selling Expenses in MAL's Dumping Margin Calculation
VI. Recommendation

[FR Doc. 2026–09902 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DS–P**

[14] *See Order.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–856]**

### Certain Corrosion-Resistant Steel Products From Taiwan: Final Results of the Antidumping Duty Administrative Review; 2023–2024

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that certain corrosion-resistant steel products (CORE) from Taiwan are being sold in the United States at less than normal value during the period of review (POR), July 1, 2023, through June 30, 2024.

**DATES:** Applicable May 18, 2026.

**FOR FURTHER INFORMATION CONTACT:** Deborah Cohen or Anjali Mehindiratta, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4521 or (202) 482–9127, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 8, 2026, Commerce published the *Preliminary Results* in the **Federal Register** and invited interested parties to comment.[1] On January 29, 2026, we received case briefs regarding the *Preliminary Results* from mandatory respondent, Prosperity Tieh Enterprise Co., Ltd. (Prosperity),[2] and Steel Dynamics, Inc (SDI).[3]

For a summary of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4] 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/frnotices.*

Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

**Scope of the Order** [5]

The merchandise subject to the *Order* is CORE from Taiwan. For a complete description of the scope, *see* the Issues and Decision Memorandum.

**Analysis of Comments Received**

The issues raised in the case briefs are addressed in the Issues and Decision Memorandum. A list of topics and the issues that parties raised are attached as an appendix to this notice.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties regarding the *Preliminary Results,* we have corrected the spelling of Prosperity's full company name in order to correct for an inadvertent spelling error in the *Preliminary Results.* However, there are no other changes to the *Preliminary Results.*

**Rate for Non-Examined Company**

The Act and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average

[1] *See Certain Corrosion Resistant Steel Products from Taiwan: Preliminary Results and Recission, In Part, of Antidumping Duty Administrative Review; 2023–2024,* 91 FR 691 (January 8, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memo (PDM).

[2] *See* Prosperity's Letter, ''Prosperity Tieh's Case Brief,'' dated January 29, 2026.

[3] *See* SDI's Letter, ''Case Brief,'' dated January 29, 2026.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan; 2023–2024,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See 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) (*Order*).

dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

Where the weighted-average dumping margins for individually examined respondents are zero, *de minimis,* or determined based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated . . .'' The SAA states that the expected method in such cases will be to weight average the zero and *de minimis* margins, and margins determined pursuant to facts available, provided that volume data is available.[6] The SAA continues that ''if this method is not feasible, or it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable means.'' [7] The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) and the U.S. Court of International Trade (CIT) have further explained that ''the expected method is the default method,'' and any party seeking to depart from the expected method must demonstrate that there is a reasonable basis for doing so.[8]

In this administrative review, we calculated dumping margins of zero percent for both mandatory respondents: SYSCO and Prosperity. Accordingly, in line with the guidance provided in the SAA, we have preliminarily determined, as a reasonable method, to assign the most recently calculated non-*de minimis* estimated weighted-average dumping margin to the non-selected company, Great Grandeul Steel Company Limited (Samoa) (Great Grandeul), subject to this review.

## Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period July 1, 2023, through June 30, 2024:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Sheng Yu Steel Co., Ltd. | 0.00 |
| Prosperity Tieh Enterprise Co., Ltd. | 0.00 |
| Great Grandeul Steel Company Limited (Samoa) | 0.99 |

## Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with the final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce made no changes to the *Preliminary Results* calculations, there are no new calculations to disclose.

## Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the CIT, 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).

Because the respondents' weighted-average dumping margins or importer-specific assessment rates are zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.[9] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[10]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by the respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate of 11.04 percent [11] if there is no rate for the intermediate company(ies) involved in the transaction.[12]

For the company which was not selected for individual review (Great Grandeul), we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these final results.

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on, or after, the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies identified above in the ''Final Results of Review'' section will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer has been covered in a prior complete segment of this proceeding, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.04 percent,[13] the all-others rate from the *Third Amended Final Determination.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR

[6] *See* Statement of Administrative Action, H.R. Rep. No. 103–316, vol. 1 (1994) (SAA) at 873.

[7] *Id.*

[8] *See PrimeSource Building Prods.* v. *United States,* 581 F.Supp.3d 1331, 1338 (CIT 2022); *see also Albemarle Corp.* v. *United States,* 821 F.3d 1345, 1353 (Fed. Cir. 2016).

[9] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102–03 (February 14, 2012); *see also* 19 CFR 351.106(c)(2).

[10] *See* section 751(a)(2)(C) of the Act.

[11] *See Corrosion-Resistant Steel Products from Taiwan: Notice of Third Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Partial Exclusion from Antidumping Duty Order,* 88 FR 58245 (August 25, 2023) (*Third Amended Final Determination*).

[12] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Third Amended Final Determination.*

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Administrative Protective Order

This notice also serves as the final 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 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

### Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(l) and 777(i)(l) of the Act, and 19 CFR 351.221(b)(5).

Dated: May 8, 2026.

**Christopher Abbott,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## 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. Discussion of the Issues
Comment 1: Whether to Apply Partial AFA to SYSCO's Dumping Margin
Comment 2: Correction of Prosperity's Name in **Federal Register** Notice
VI. Recommendation

[FR Doc. 2026–09903 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–230]**

### Tris(hydroxymethyl)aminomethane From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable May 11, 2026.

**FOR FURTHER INFORMATION CONTACT:** Monica Gillis, Office V, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6384.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On April 21, 2026, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of Tris(hydroxymethyl)aminomethane (Tris) from the People's Republic of China (China), filed in proper form on behalf of Advancion Corporation (the petitioner), a domestic producer of Tris.[1] The AD Petition was accompanied by a countervailing duty (CVD) petition concerning imports of Tris from China.[2]

Between April 27 and May 5, 2026, Commerce requested supplemental information pertaining to certain aspects of the Petition in supplemental questionnaires.[3] Between April 30 and May 6, 2026, the petitioner filed timely responses to these requests for additional information.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of Tris from China are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the Tris industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition was accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigation.[5]

### Period of Investigation (POI)

Because the Petition was filed on April 21, 2026, and because China is a non-market economy (NME) country pursuant to 19 CFR 351.204(b)(1), the POI for the LTFV investigation is October 1, 2025, through March 31, 2026.

### Scope of the Investigation

The product covered by this investigation is Tris from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

### Comments on the Scope of the Investigation

Between April 27 and May 5, 2026, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[6] Between April 30 and May 6, 2026, the petitioner provided clarifications and revised the scope.[7] The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider

[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties,'' dated April 21, 2026 (Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''General Issues Supplemental Questions,'' dated April 27, 2026 (First General Issues Questionnaire); ''Supplemental Questions,'' dated April 28, 2026 (First China AD Supplemental Questionnaire); ''Second General Issues Supplemental Questions,'' dated May 1, 2026 (Second General Issues Questionnaire); ''Second Supplement Questions,'' dated May 4, 2026 (Second China AD Supplemental Questionnaire); and ''Third General Issues Supplemental Questions,'' dated May 5, 2026 (Third General Issues Questionnaire).

[4] *See* Petitioner's Letters, ''Petitioner's First Supplement to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from China,'' dated April 30, 2026 (First General Issues Supplement); ''Petitioner's Response to the Department's Supplemental Questionnaire Regarding the Petition for the Imposition of Antidumping Duties on Imports from China,'' dated May 1, 2026 (China AD Supplement); ''Petitioner's Second Supplement to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from China,'' dated May 4, 2026 (Second General Issues Supplement); ''Petitioner's Response to the Department's 2nd Supplemental Questionnaire Regarding the Petition for the Imposition of Antidumping Duties on Imports from China,'' dated May 5, 2026 (Second China AD Supplement); and ''Petitioner's Third Supplement to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from China,'' dated May 6, 2026 (Third General Issues Supplement).

[5] *See* section on ''Determination of Industry Support for the Petition,'' *infra.*

[6] *See* First General Issues Questionnaire; *see also* Second General Issues Questionnaire; and Third General Issues Questionnaire.

[7] *See* First General Issues Supplement at 3–5; *see also* Second General Issues Supplement at 2–3; and Third General Issues Supplement at 2–3 and Exhibit GEN–SUPP3–1.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[9] Commerce requests that interested parties provide at the beginning of their scope comments a public executive summary for each comment or issue raised in their submission. Commerce further requests that interested parties limit their public executive summary of each comment or issue to no more than 450 words, not including citations. Commerce intends to use the public executive summaries as the basis of the comment summaries included in the analysis of scope comments. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on June 1, 2026, which is the next business day after 20 calendar days from the signature date of this notice.[10] Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on June 11, 2026, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of this investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

**Filing Requirements**

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

**Comments on Product Characteristics**

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of Tris to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) accurately, as well as to develop appropriate product comparison criteria.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on June 1, 2026, which is the next business day after 20 calendar days from the signature date of this notice.[12] Any rebuttal comments must be filed by 5:00 p.m. ET on June 11, 2026, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the LTFV investigation.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[15] Based on our analysis of

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] The deadline for scope comments falls on May 31, 2026, which is a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, June 1, 2026). *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'').

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help* and a handbook can be found at *https://access.trade.gov/ACCESS%20Handbook%20on%20Electronic%20Filing%20Procedures_March2026.pdf.*

[12] The deadline for product characteristics comments falls on May 31, 2026, which is a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, June 1, 2026). *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'').

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F.Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F.Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd.* v. *United States,* 865 F.2d 240 (Fed. Cir. 1989)).

[15] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, ''Antidumping Duty Investigation Initiation Checklist: Tris(hydroxymethyl)aminomethane from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (China AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Tris(hydroxymethyl)aminomethane from the

Continued

the information submitted on the record, we have determined that Tris, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own 2025 production of the domestic like product and compared this to estimated total production of the domestic like product by the U.S. Tris industry.[17] We relied on data provided by the petitioner for purposes of measuring industry support.[18]

On May 4, 2026, we received timely filed comments on industry support from Suzhou Yacoo Science Co., Ltd. (Yacoo), a Chinese producer of Tris.[19] On May 5, 2026, the petitioner responded to the comments from Yacoo in a timely filed rebuttal submission.[20]

Our review of the data provided in the Petition, the First General Issues Supplement, Petitioner's Response, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[21] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[22] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[23] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[24] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[25]

### Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[26]

The petitioner contends that the industry's injured condition is illustrated by a significant increase in the volume of subject imports; reduced market share; lost sales and revenues; underselling and price depression and suppression; decline in production and capacity utilization; and negative impact on financial performance.[27] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[28]

### Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigation of imports of Tris from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the China AD Initiation Checklist.

### U.S. Price

The petitioner based export price (EP) on pricing information for Tris produced in China and sold or offered for sale in the U.S. market.[29] The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.[30]

### Normal Value

Commerce considers China to be an NME country.[31] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of the LTFV investigation. Accordingly, we base NV on FOPs valued in surrogate market economy countries in accordance with section 773(C) of the Act.

The petitioner claims that Brazil, Malaysia, and the Republic of Türkiye (Türkiye) are appropriate surrogate countries for China because they are market economy countries that are at a level of economic development comparable to that of China and are a significant producers of comparable merchandise.[32] The petitioner provided publicly available information from Brazil, Malaysia, and Türkiye to value all FOPs.[33] Based on the information provided by the petitioner, we believe it is appropriate to use Brazil, Malaysia, and Türkiye as surrogate countries for China to value all FOPs for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

### Factors of Production

Because information regarding the volume of inputs consumed by Brazilian, Malaysian, and Turkish producers/exporters were not reasonably available, the petitioner used its own production experience and product-specific consumptions rates as a surrogate to value the Chinese

People's Republic of China (Attachment II). This checklist is on file electronically via ACCESS.

[16] For further discussion, *see* Attachment II of the China AD Initiation Checklist.

[17] *Id.*

[18] *Id.*

[19] *See* Yacoo's Letter, ''Petition Sufficiency Comments,'' dated May 4, 2026.

[20] *See* Petitioner's Letter, ''Petitioner's Response to Suzhou Yacoo Science Co., Ltd.'s Comments on Petition Sufficiency,'' dated May 5, 2026 (Petitioner's Response).

[21] *See* Attachment II of the China AD Initiation Checklist.

[22] *Id.; see also* section 732(c)(4)(D) of the Act.

[23] *See* Attachment II of the China AD Initiation Checklist.

[24] *Id.*

[25] *Id.*

[26] For further discussion, *see* China AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Tris(hydroxymethyl)aminomethane from the People's Republic of China.

[27] *Id.*

[28] *Id.*

[29] *See* China AD Initiation Checklist.

[30] *Id.*

[31] *See, e.g., Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances,* 88 FR 34485 (May 30, 2023).

[32] *See* China AD Initiation Checklist.

[33] *Id.*

manufacturers' FOPs.[34] Additionally, for China, the petitioner calculated factory overhead, SG&A, and profit based on the experiences of Brazilian, Malaysian, and Turkish producer of comparable merchandise.[35]

**Fair Value Comparisons**

Based on the data provided by the petitioner, there is reason to believe that imports of Tris from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP or NV in accordance with sections 772 and 773 of the Act, after accounting for certain revisions made by Commerce, the estimated dumping margins for Tris from China covered by this initiation range from (1) China (Brazil surrogate)—114.26 to 303.53 percent; (2) China (Malaysia surrogate)—155.99 to 372.20 percent; (3) China (Türkiye surrogate)—53.39 to 167.04 percent.[36]

**Initiation of LTFV Investigation**

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating a LTFV investigation to determine whether imports of Tris from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

**Respondent Selection**

In the Petition, the petitioner identified 16 companies in China as producers and/or exporters of Tris.[37] Our standard practice for respondent selection in an AD investigation involving an NME country is to select respondents based on quantity and value (Q&V) questionnaires in cases where Commerce has determined that the number is large, and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Given the number of producers and/or exporters identified in the Petition, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which there is complete address information on the records.

Commerce will post the Q&V questionnaires along with filing instruction on Commerce's website at *https://www.trade.gov/ec-adcvd-qv-questionnaire.* Producers/exporters of Tris from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire may be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on May 26, 2026, which is the next business day after two weeks from the signature date of this notice.[38] All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above. Instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

**Separate Rates**

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at *https://www.trade.gov/non-market-economy-separate-rate-applications-and-certifications.* Note that Commerce recently promulgated new regulations pertaining to separate rates, including the separate rate application deadline and eligibility for separate rate status, in 19 CFR 351.108.[39] Pursuant to 19 CFR 351.108(d)(1), the separate rate application will be due 21 days after publication of this initiation notice.[40] Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. In addition, pursuant to 19 CFR 351.108(e), exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they fully respond to all parts of Commerce's AD questionnaire and participate in the LTFV proceeding as mandatory respondents.[41] Commerce requires that companies from China submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

**Use of Combination Rates**

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.[42]

**Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the Government of China via ACCESS. To

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See* Petition at Volume I (page 8 and Exhibit GEN–4); *see also* First General Issues Supplement at 2–3.

[38] The deadline for Q&V responses falls on May 25, 2026, which is a federal holiday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, May 26, 2026). *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'').

[39] *See Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws,* 89 FR 101694, 101759–60 (December 16, 2024).

[40] *See* 19 CFR 351.108(d)(1).

[41] *See* 19 CFR 351.108(e).

[42] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005), at 6 (emphasis added), available on Commerce's website at *https://www.trade.gov/enforcement-and-compliance-policy-bulletins-0.*

the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of Tris from China are materially injuring, or threatening material injury to, a U.S. industry.[43] A negative ITC determination will result in the investigation being terminated.[44] Otherwise, this LTFV investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [45] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[46] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[47] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.[48]

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[49] Parties must use the certification formats provided in 19 CFR 351.303(g).[50] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[51]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 11, 2026.

**Christopher Abbott,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigation**

The merchandise subject to this investigation is tris(hydroxymethyl)aminomethane (Tris), also commonly referred to as tromethamine or THAM, and its derivative, tris(hydroxymethyl)aminomethane hydrochloride (Tris HCl), also commonly referred to as Tris hydrochloride or tromethamine HCl. Tris and Tris HCl are organic compounds with molecular compositions of $C_4H_{11}NO_3$ and $C_4H_{11}NO_3{\cdot}ClH$, respectively. The scope includes all grades, purities, and forms of Tris and Tris HCl, which vary based on the raw materials (nitromethane and formaldehyde) used in the production process and the end use application required. Tris and Tris HCl are packaged and sold in different forms and sizes; however, all Tris and Tris HCl are covered regardless of form or packaging. The Tris and Tris HCl covered by this investigation are chemical compounds with the Chemical Abstract Service (CAS) numbers 77–86–1 and 1185–53–1, respectively. The country of origin of the subject merchandise in this investigation is based on the country where the Tris molecule is manufactured. As a result, Tris HCl manufactured in a third country using Tris produced in China is subject to the investigation. In addition, reprocessing Tris or Tris HCl in a third country by, for example, recrystallizing, retesting, or repackaging the merchandise does not remove the product from the scope of this investigation. Tris and Tris HCl covered by the scope of this investigation are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.19.9690. Although the HTSUS subheading and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2026–09830 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DS–P**

[43] *See* section 733(a) of the Act.

[44] *Id.*

[45] *See* 19 CFR 351.301(b).

[46] *See* 19 CFR 351.301(b)(2).

[47] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013 (*Time Limits Final Rule*)), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[48] *See* 19 CFR 351.302; *see also, e.g., Time Limits Final Rule.*

[49] *See* section 782(b) of the Act.

[50] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[51] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–122–874]**

# Fresh Mushrooms From Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of fresh mushrooms from Canada. The period of investigation is January 1, 2024, through December 31, 2024. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable May 18, 2026.

**FOR FURTHER INFORMATION CONTACT:** Ines Martinand or Colton Dulin, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2000 or (202) 482–1222, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 8, 2026.[1] Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.[2] Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.[3] On February 18, 2026, Commerce postponed the preliminary determination of this investigation until May 12, 2026.[4]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/frnotice.*

## Scope of the Investigation

The product covered by this investigation is fresh mushrooms from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

## Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[6] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[7] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce intends to issue its preliminary decision regarding comments concerning the scope of the less-than-fair value (LTFV) and countervailing duty (CVD) investigations in the preliminary determination of the companion LTFV investigation.

## Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8]

## Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final determination in this investigation with the final determination in the companion LTFV investigation of fresh mushrooms from Canada based on a request made by Fresh Mushrooms Fair Trade Coalition and its individual members (the petitioner).[9] Consequently, the final determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than September 28, 2026, unless postponed.

## All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, Commerce calculated an individual estimated countervailable subsidy rate for Champ's Fresh Farms Inc. (Champ's) and Farmers' Fresh Mushroom Inc. (Farmers' Fresh) that are not zero, or *de minimis,* or based entirely on facts otherwise available. Thus, Commerce calculated the all-others rate by weight averaging the estimated countervailable subsidy rates that it calculated for Champ's and Farmers' Fresh by each company's publicly-ranged values of sales of subject merchandise during the POI.[10]

[1] *See Fresh Mushrooms from Canada: Initiation of Countervailing Duty Investigation,* 91 FR 668 (January 8, 2026) (*Initiation Notice*).

[2] *See* Memorandum, ''Deadlines Affected by Shutdown of the Federal Government,'' dated November 14, 2025.

[3] *See* Memorandum, ''Tolling of All Case Deadlines,'' dated November 24, 2025.

[4] *See Fresh Mushrooms from Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 91 FR 7440 (February 18, 2026).

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Fresh Mushrooms from Canada,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See Initiation Notice.*

[8] *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(5A) of the Act regarding specificity.

[9] *See* Petitioner's Letter, ''Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated May 12, 2026

[10] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,*75 FR 53661, 53662

Continued

**Preliminary Determination**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate (percent *ad valorem*) |
|---|---|
| Champ's Fresh Farms Inc.[11] | 1.62 |
| Farmers' Fresh Mushrooms Inc.[12] | 4.97 |
| All Others | 2.84 |

**Suspension of Liquidation**

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of fresh mushrooms, as described in the scope of the investigation section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 703(d)(1)(B) of the Act and 19 CFR 351.107(e), Commerce will instruct CBP to require a cash deposit equal to the estimated company-specific countervailable subsidy rate or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated individual countervailable subsidy rates determined in this preliminary determination; (2) if both the producer and exporter of the subject merchandise have company-specific estimated subsidy rates determined in this preliminary determination, and their rates differ, then the applicable cash deposit rate will be the higher of these two rates; (3) if either the producer or the exporter, but not both, of the subject merchandise have a company-specific estimated subsidy rate determined in this preliminary determination, the applicable cash deposit rate will be that company's company-specific rate; and (4) the cash deposit rate for all other producers and exporters will be equal to the estimated all-others subsidy rate.

(September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, see the All-Others Rate Calculation Memorandum.

[11] As discussed in the Preliminary Determination Memorandum, Commerce has found the following to be cross owned with Champ's: Loveday Mushroom Farms Ltd. *See* Preliminary Decision Memorandum at 6.

[12] As discussed in the Preliminary Decision Memorandum, Commerce found the following to be cross owned with Farmers' Fresh: Ross Land Mushroom Farm Ltd.; Farmers' Fresh Management Ltd.; 1134017 B.C. Ltd. (d/b/a Triple 8 Mushrooms); and Abbycel Substrate Ltd. *See* Preliminary Decision Memorandum at 8.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[13] Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[14]

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public executive summary for each issue raised in their briefs.[15] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. 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 by telephone the date, time, and location of the hearing two days before the scheduled date.

**U.S. International Trade Commission (ITC) Notification**

In accordance with section 703(f) of the Act, Commerce will notify the ITC of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of fresh mushrooms from Canada are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: May 12, 2026.

**Christopher Abbott,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigation**

The merchandise covered by this investigation is fresh mushrooms of the genus Agaricus (fresh mushrooms). This includes, but is not limited to, fresh mushrooms of the species Agaricus bisporus, which are commonly referred to as button mushrooms, chestnut mushrooms, cremini or crimini mushrooms, baby bellas, portabella

[13] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[16] *See APO and Service Final Rule.*

or portobello mushrooms, table mushrooms, or as white or browns. Fresh mushrooms include whole mushrooms, as well as mushrooms that have been sliced, diced, or separated into stems and pieces prior to importation. Fresh mushrooms may also be imported in bulk or loose form, or may be imported in individual containers packaged for retail sale. The scope of this investigation includes all fresh mushrooms of the genus Agaricus, whether or not organic, and irrespective of age, cut, color, size, species, or packaging.

Subject merchandise may be cleaned, washed, inspected, subjected to metal detection, sliced, diced, or de-stemmed, and/or vacuum cooled prior to importation, but otherwise undergoes minimal further processing. The scope of this investigation covers fresh mushrooms of the genus Agaricus regardless of end use, including both mushrooms destined for the fresh market and mushrooms intended for food processing.

Fresh mushrooms of the genus Agaricus are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 0709.51.0100. Although the HTSUS statistical reporting number is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Injury Test
IV. Diversification of Canada's Economy
V. Subsidies Valuation Information
VI. New Subsidy Allegations
VII. Use of Partial Facts Available
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2026–09910 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–401–809; A–428–843; A–570–996; A–580–872; A–583–851; A–588–872; C–570–997; and C–583–852]**

### Non-Oriented Electrical Steel From Sweden, Germany, the People's Republic of China, the Republic of Korea, Taiwan and Japan: Continuation of Antidumping Duty Orders and Countervailing Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders and countervailing duty (CVD) orders on non-oriented electrical steel (NOES) from Sweden, Germany, the People's Republic Of China (China), the Republic of Korea (Korea), Taiwan and Japan would likely lead to the continuation or recurrence of dumping, and countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

**DATES:** Applicable May 13, 2026.

**FOR FURTHER INFORMATION CONTACT:** David De Falco, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2178.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 3, 2014, Commerce published in the **Federal Register** the AD and CVD orders on NOES from Sweden, Germany, China, Korea, Taiwan and Japan.[1] On December 1, 2025, the ITC instituted,[2] and Commerce initiated,[3] the second sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.[4]

On May 13, 2026, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

## Scope of the Orders

The merchandise subject to these *Orders* consists of NOES, which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ''substantially equal'' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to these *Orders* whether it is fully processed (*i.e.,* fully annealed to develop final magnetic properties) or semi-processed (*i.e.,* finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of these *Orders* is not limited to merchandise meeting the ASTM, JIS, and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of these *Orders* are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the

[1] *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) and *Non-Oriented Electrical Steel from the People's Republic of China and Taiwan: Countervailing Duty Orders,* 79 FR 71749 (December 3, 2014) (*Orders*).

[2] *See Non-Oriented Electrical Steel from China, Germany, Japan, South Korea, Sweden, and Taiwan; Institution of Five-Year Reviews* 90 FR 55159 (December 1, 2025).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 90 FR 55086 (December 1, 2025).

[4] *See Non-Oriented Electrical Steel from Sweden, Germany, the People's Republic of China, the Republic of Korea, Taiwan, and Japan: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders,* 91 FR 20407 (April 16, 2026), and accompanying Issues and Decision Memorandum (IDM); and *Non-Oriented Electrical Steel from the People's Republic of China and Taiwan: Final Results of the Expedited Sunset Reviews of the Countervailing Duty Orders,* 73 FR 20409 (April 16, 2026), and accompanying IDM.

[5] *See Non-Oriented Electrical Steel from China, Germany, Japan, South Korea, Sweden, and Taiwan; Determinations,* 91 FR 27078 (May 13, 2026) (*ITC Final Determination*).

United States (HTSUS) as a part (*i.e.,* lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

**Continuation of the Orders**

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be May 13, 2026.[6] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

**Administrative Protective Order (APO)**

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

**Notification to Interested Parties**

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

[6] *See ITC Final Determination.*

Dated: May 13, 2026.

**Scot Fullerton,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2026–09826 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XF761]**

### Deepwater Horizon Louisiana Trustee Implementation Group Draft Phase 2 Restoration Plan and Environmental Assessment #8.1: East Orleans Landbridge Restoration and Raccoon Island Restoration

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

**ACTION:** Notice of availability; request for public comments.

**SUMMARY:** The Deepwater Horizon (DWH) natural resource Trustees for the Louisiana Trustee Implementation Group (Louisiana TIG) have prepared the Draft Phase 2 Restoration Plan and Environmental Assessment #8.1: East Orleans Landbridge Restoration Project and Raccoon Island Restoration Project (RP/EA #8.1). The Draft RP/EA #8.1 proposes alternatives to help restore wetlands, coastal, and nearshore habitats impacted by the DWH oil spill. The Draft RP/EA #8.1 evaluates three design alternatives for each project under the Oil Pollution Act (OPA) including criteria set forth in the OPA Natural Resource Damage Assessment (NRDA) regulations, and the National Environmental Policy Act of 1969 (NEPA, as amended). The total estimated cost to implement the Louisiana TIG's two preferred alternatives is approximately $246.7 million. The Louisiana TIG invites the public to comment on the Draft RP/EA #8.1.

**DATES:** The Louisiana TIG will consider public comments on the Draft RP/EA #8.1 received on or before June 17, 2026.

**ADDRESSES:** *Obtaining Documents:* You may view and download the Draft RP/EA #8.1 at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.* You may also request a flash drive containing the Draft RP/EA #8.1 (see **FOR FURTHER INFORMATION CONTACT**).

*Submitting Comments:* You may submit comments on the Draft RP/EA #8.1 by either of the following methods:

- *Website: https://parkplanning.nps.gov/parkplanning.nps.gov/LATIGRP8-1.* Follow the online instructions for submitting comments.
- *Mail:* U.S. Fish and Wildlife Service Gulf Restoration Office, 341 N. Greeno Rd., Suite A, Fairhope, AL 36532. To be considered, mailed comments must be postmarked on or before the comment deadline given in **DATES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Public Webinar:* The Louisiana TIG will host one public webinar to facilitate public review and comment on the Draft RP/EA #8.1. The webinar date, time, and registration link is as follows:

- Monday, June 8, 2026 from 12:00pm—1:00pm Central Time. Register at: *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana*

After registering, participants will receive a confirmation email with instructions for joining the webinar and how to make comments during the webinar. Shortly after the webinar concludes, the presentation material will be posted on the web at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*

**FOR FURTHER INFORMATION CONTACT:** National Oceanic and Atmospheric Administration—David Reeves, NOAA Restoration Center, (225) 726–1914, *louisiana.TIG@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Introduction**

On April 20, 2010, the mobile offshore drilling unit Deepwater Horizon, which was drilling a well for BP Exploration and Production, Inc. (BP), experienced a significant explosion, fire and subsequent sinking in the Gulf of America, resulting in the release of millions of barrels of oil and other discharges into the Gulf. Under the authority of the OPA, designated Federal and state Trustees, acting on behalf of the public, assessed the injuries to natural resources and prepared the Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and the Record of Decision for the

Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (ROD), which sets forth the governance structure and process for DWH restoration planning under the OPA NRDA regulations. On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP.

The Louisiana TIG, which includes the State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Departments of Environmental Quality, Wildlife and Fisheries, and Natural Resources, the NOAA, the U.S. Department of the Interior, the U.S. Environmental Protection Agency, and the U.S. Department of Agriculture, selects and implements restoration projects under the Louisiana TIG's management authority in accordance with the Consent Decree. The Final PDARP/PEIS, ROD, Consent Decree, and information on the DWH Trustees can be found at *https://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan.*

**Background**

As provided for in the Final PDARP/PEIS, TIGs may propose conceptual projects for funding of a planning phase (*e.g.,* initial engineering and design [E&D]) in a restoration plan. This allows the TIG to develop information needed to fully consider a subsequent implementation phase of the project in a subsequent restoration plan. In the Final RP/EA #8, the Louisiana TIG selected conceptual projects to fund for E&D, including the East Orleans Landbridge Restoration project and the Raccoon Island Restoration project. Both projects have design alternatives that are now at a stage where proposed construction alternatives may be analyzed under the OPA NRDA regulations and NEPA. Therefore, in the Draft RP/EA #8.1, the Louisiana TIG is proposing to implement the preferred design alternatives to construct the East Orleans Landbridge project and the Raccoon Island Restoration project.

**Overview of the Louisiana TIG Draft RP/EA #8.1**

The Draft RP/EA #8.1 is being released in accordance with OPA NRDA regulations, NEPA, the Final PDARP/PEIS, and the Consent Decree. The Draft RP/EA #8.1 provides OPA NRDA and NEPA analyses for a reasonable range of design alternatives and identifies the Louisiana TIG's preferred design alternative for each project. The preferred design alternative, East Orleans Landbridge Restoration Alternative 4 (E.O. Alternative 4) would dredge and place approximately 5.0 million cubic yards (3.8 million cubic meters) of sediment dredged from a nearby inland borrow source to restore up to 1,320 acres (534 hectares) of a wetland complex. E.O. Alternative 4 would also include 14,867 linear feet (4.53 kilometers) of shoreline protection. The approximate cost to implement the preferred alternative is $101.2 million. The preferred design alternative, Raccoon Island Restoration Project Alternative 3 (RI Alternative 3) would dredge approximately 2.9 million cubic yards (2.2 million cubic meters) of sand from an offshore borrow source to restore up to 410 acres (166 hectares) of barrier island habitat. RI Alternative 3 also includes maintenance of existing Gulfside breakwaters, construction of four bayside breakwaters, and construction of nine living shoreline structures. The approximate cost to implement the preferred alternative is $145.5 million.

Funding to implement any of the alternatives ultimately selected by the Louisiana TIG would come from the Wetlands, Coastal, and Nearshore Habitats Restoration Type allocation. The total estimated cost to implement the two preferred alternatives is approximately $246.7 million.

**Next Steps**

After the public comment period ends, the Louisiana TIG will consider and address all substantive comments received before making a final decision on which, if any, alternatives to fund and implement. A Final RP/EA #8.1 and Finding of No Significant Impact, as appropriate, identifying selected alternatives will be made publicly available.

**Administrative Record**

The Administrative Record for the Draft RP/EA #8.1 can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord* under the folder 6.5.5.2.16.

*Authority:* The authority for this action is the OPA of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA regulations found at 15 CFR part 990, and the NEPA as amended (42 U.S.C. 4321 *et seq.*).

Dated: May 14, 2026.

**Carrie Diane Robinson,**

*Director, Office of Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 2026–09901 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; International Dolphin Conservation Program

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Information Collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before July 17, 2026.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0387 in the subject line of your comments. All comments received are part of the public record and will generally be posted on *https://www.regulations.gov* without change. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Chris Fanning, Fishery Policy Analyst, NOAA/National Marine Fisheries Service, 501 West Ocean Blvd., #4200, Long Beach, CA 90802, (562) 980–4198, *Chris.Fanning@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for the revision and extension of OMB Control Number: 0648–0387, sponsored by NOAA's National Marine Fisheries Service (NMFS) West Coast Region (WCR). This collection is being revised to remove five (5) of the twenty-one (21) information collections under OMB Control Number: 0648–0387 that were

recently added to Control Number 0648–0335, which is sponsored by the NMFS Office of International Affairs, Trade, and Commerce (IATC). The purpose of this revision is to more accurately reflect how the information is being managed. The remaining sixteen (16) information collections are being renewed without modification.

The sixteen unmodified collections of information comply with the requirements of the International Dolphin Conservation Program Act (IDCPA), 16 U.S.C. 1414. The IDCPA amended the Marine Mammal Protection Act (MMPA), 16 U.S.C. Ch. 31, and the Dolphin Protection Consumer Information Act (DPCIA), 16 U.S.C. 1385. The IDCPA and the DPCIA authorize the Secretary of Commerce to promulgate regulations that, *inter alia,* implement the dolphin-safe labeling standard in the United States by the collection of documents on the dolphin-safe status of tuna import shipments and domestic tuna product processing; by allowing documentary requests to allow for an effective tracking and verification program; and by verifying that tuna was not harvested by a nation under embargo or otherwise prohibited from exporting tuna to the United States.

The IDCPA allows entry of yellowfin tuna into the United States, under specific conditions, from nations in the International Dolphin Conservation Program that would otherwise be under embargo. The IDCPA also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) on terms equivalent with the vessels of other nations. NOAA collects information to verify these conditions are met and that allows tracking and verification of ''dolphin-safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

This collection of information also complies with the requirements of the Tuna Conventions Act (TCA), 16 U.S.C. 951 *et seq.,* which was amended by the ''Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015'' (Pub. L. 114–81). The TCA gives the Secretary of Commerce the authority to enact regulations to fulfill the requirement that all member States maintain and provide to the Inter-American Tropical Tuna Commission (IATTC) a list of vessels flagged by the member State and (1) authorized by the member State to be used for fishing for tuna and tuna-like species in the IATTC Convention Area, or (2) authorized by other States to be used for fishing for tuna and tuna-like species in their areas of jurisdiction in the IATTC Area, and to maintain and provide for each vessel on that list certain information on its characteristics and its owner and operator. The TCA also gives the Secretary of Commerce authority to implement fishery management resolutions of the IATTC.

The information is used by NMFS, the United States Coast Guard (USGC), and the IATTC to monitor the size and composition of the vessel fleets in the IATTC Convention Area for compliance and scientific-related purposes. Knowing such information as the number of vessels, the details of the vessels and their ownership, and the types of gear employed enables effective monitoring of vessel activity for enforcement and assessment purposes. NMFS also uses this information for the purposes of managing the U.S. purse seine fleet capacity in the IATTC Convention Area.

This collection includes permit applications, notifications, reports, and certifications that provide information on vessel characteristics and operations in the ETP, documentary evidence requests, and certain other information necessary to implement the IDCPA.

The five information collections being removed from 0648–0387 that were added to 0648–0335 ''Tuna Tracking and Verification Program'' (90 FR 21752, May 21, 2025), also comply with requirements of the IDCPA and DPCIA. They include vessel arrival notifications, tuna tracking forms, tuna product receiving and processing reports, and documents/certifications that provide information on vessel characteristics and operations in the ETP, the origin of tuna and tuna products, and chain of custody recordkeeping requirements.

## II. Method of Collection

Information will be collected via online application, email notifications and reporting, and an option for paper format permit applications.

## III. Data

*OMB Control Number:* 0648–0387.

*Form Number(s):* None.

*Type of Review:* Regular submission [revision and extension of a currently approved information collection].

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 240.

*Estimated Time per Response:* 35 minutes for a vessel permit application; 10 minutes for an operator permit application, a notification of vessel arrival or departure, a change in permit operator, a notification of a net modification; 30 minutes for a request for a waiver to transit the ETP without a permit (and subsequent radio reporting) or for a special report documenting the origin of tuna (if requested by the NOAA Administrator); 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 35 minutes for written notification to request active status for a small tuna purse seine vessel; 5 minutes for written notification to request inactive status for a small tuna purse seine vessel or for written notification of the intent to transfer a tuna purse seine vessel to foreign registry and flag; 30 minutes for International Maritime Organization (IMO) application or exemption request.

*Estimated Total Annual Burden Hours:* 111.

*Estimated Total Annual Cost to Public:* $450.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* International Dolphin Conservation Program Act (IDCPA), 16 U.S.C. 1414; The IDCPA amended the Dolphin Protection Consumer Information Act (DPCIA), 16 U.S.C. 1385; and the Tuna Conventions Act (TCA), 16 U.S.C. 951 *et seq.*

## IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2026–09926 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XF771]**

### Western Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold its Mariana Archipelago Fishery Ecosystem Plan (FEP) Guam Advisory Panel (AP), Social Science Planning Committee (SSPC), Hawaii Archipelago and Pacific Remote Island Areas (PRIA) FEP AP, and Mariana Archipelago FEP Commonwealth of the Northern Mariana Islands (CNMI) AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

**DATES:** The meetings will be held between May 28, 2026, and May 30, 2026. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The Council will hold its SSPC, Hawaii Archipelago and PRIA FEP AP, Mariana Archipelago FEP Guam AP meetings in a hybrid format with in-person and remote participation (Webex) options available for the members and the public. The Council will hold its Mariana Archipelago FEP CNMI AP virtually with remote participation (Webex) for the members and the public. In-person attendance for the Mariana Archipelago FEP Guam AP and public will be hosted at Cliff Pointe, 304 W. O'Brien Drive, Hagatña, GU, 96910. In-person attendance (for members and public) for the SSPC and Hawaii Archipelago and PRIA FEP AP meetings will be hosted at the Council Office, 1164 Bishop St Suite 1400, Honolulu, Hawaii, 96813. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *https://www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

**FOR FURTHER INFORMATION CONTACT:** Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** The Mariana Archipelago FEP Guam AP will be held between 6 p.m. and 8 p.m. (Chamorro Standard Time [ChST]) on Thursday, May 28, 2026. The SSPC will be held between 12 p.m. and 3 p.m. (Hawaii Standard Time [HST]) on Thursday, May 28, 2026. The Hawaii and PRIA FEP AP will be held between 9 a.m. and 1 p.m. (HST) on Friday, May 29, 2026. The Mariana Archipelago FEP CNMI AP will be held between 10 a.m. and 1 p.m. (ChST) on Saturday, May 30, 2026. Public Comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

#### Schedule and Agenda for the Mariana Archipelago FEP Guam AP Meeting

*Thursday, May 28, 2026, 6 p.m. to 8 p.m. (ChST)*

1. Welcome and Introductions
2. Review of the Last AP Recommendation and Meeting
3. Council Fisheries Issues
   A. 2025 Mariana Archipelago Stock Assessment and Fishery Evaluation (SAFE) Report
4. Council Inflation Reduction Act (IRA) Project Update
   A. Scenario Planning
   B. Regulatory Review
   C. Protected Species
   D. Community Consultation
5. Bureau of Ocean Energy Management (BOEM) Deep Sea Mining Update
6. AP Strategic Planning for 2026
7. Other Business
8. Public Comment
9. Discussion and Recommendations

#### Schedule and Agenda for the SSPC Meeting

*Thursday, May 28, 2026, 12 p.m. to 3 p.m. (HST)*

1. Welcome and Introductions
2. Approval of Agenda
3. Refining the Objectives and Activities in the SSPC Strategic Plan
4. Social, Economic, Ecological and Management Process Revision Draft Procedural Document
5. SSPC Feedback on Revising the Annual SAFE Report Socioeconomic Module Structure
6. Alignment of Science and Management Priorities and Scientific and Statistical Committee Working Group
7. Socioeconomic Considerations for Council Actions and Issues
   A. Main Hawaiian Islands (MHI) Kona Crab Annual Catch Limit (ACL) Specification for 2027–2030
8. Project Updates
9. Other Business
10. Public Comment
11. Discussion and Recommendations

#### Schedule and Agenda for the Hawaii and PRIA FEP AP Meeting

*Thursday, May 29, 2026, 2 p.m. to 5 p.m. (HST)*

1. Welcome and Introductions
2. Review of the Last AP Recommendation and Meeting
3. Council Fisheries Issues
   A. MHI Kona Crab ACL Specification for 2027–2030
   B. 2025 Hawaii SAFE Report
4. Council IRA Project Discussion
   A. Scenario Planning
   B. Regulatory Review
   C. Protected Species
5. Uku Management Strategy Evaluation and Mail Survey Update
6. State of Hawaii Holomua Update for Maui and Hawaii Island
7. Hawaii AP Action Plan Planning for 2026
8. Other Business
9. Public Comment
10. Discussion and Recommendations

#### Schedule and Agenda for the Mariana Archipelago FEP CNMI AP Meeting

*Saturday, May 30, 2026, 10 a.m. to 1 p.m. (ChST)*

1. Welcome and Introductions
2. Review of the Last AP Recommendation and Meeting
3. Council Fisheries Issues
   A. 2025 Mariana Archipelago SAFE Report
4. Council IRA Project Update
   A. Scenario Planning
   B. Regulatory Review
   C. Protected Species
   D. Community Consultation
5. New Territorial Data Collection Methods
6. BOEM Deep Sea Mining Update
7. AP Strategic Planning for 2026
8. Other Business
9. Public Comment
10. Discussion and Recommendations

#### Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 14, 2026.

**Rey Israel Marquez,**

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

[FR Doc. 2026–09928 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XF732]**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is holding a hybrid public meeting of its Scientific and Statistical Committee (SSC) to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Monday, June 1 and June 2, 2026, beginning at 9 a.m. EST. Webinar Registration information: *https://nefmc-org.zoom.us/meeting/register/gwvUOpavRDCC2gAPv-oVQ.*

**ADDRESSES:** This meeting will take place at the Hampton Inn Boston Seaport District, 670 Summer Street, Boston, MA 02210 Phone: (857) 356–3033.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

#### Agenda

The SSC will convene in a facilitated workshop on dynamic reference points. Reference points in fisheries stock assessments and management are an essential tool for understanding the condition of a resource relative to a desired state. Dynamic reference points, unlike static ones, are allowed to change through time in response to non-stationarity in fish population dynamics. While scientific approaches to define dynamic biological reference points exist, the lack of a full understanding of their appropriate application and practical concerns about this change in key management targets and thresholds has presented challenges to adoption. This workshop aims to develop practical guidelines for integrating dynamic reference points into fisheries stock assessment and management.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: May 14, 2026.

**Rey Israel Marquez,**

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

[FR Doc. 2026–09937 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XF692]**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Advisory Panel.

**DATES:** The meeting will be held on Monday, June 22, 2026, from 3 p.m. until 6 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at *https://www.mafmc.org.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *https://www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will meet via webinar jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Advisory Panel. The purpose of this meeting is to discuss recent performance of the summer flounder, scup, and black sea bass commercial and recreational fisheries and develop Fishery Performance Reports. These reports will be considered by the Scientific and Statistical Committee, the Monitoring Committee, the Mid-Atlantic Fishery Management Council, and the Atlantic States Marine Fisheries Commission when reviewing 2027 catch and landings limits and other management measures for all three species.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

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

Dated: May 14, 2026.

**Rey Israel Marquez,**

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

[FR Doc. 2026–09929 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Groundfish Electronic Fish Ticket Program

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Information Collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before July 17, 2026.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0738 in the subject line of your comments. All comments received are part of the public record and will generally be posted on *https://www.regulations.gov* without change. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Jahnava Duryea, Groundfish IFQ Permits Coordinator, Southwest Fisheries Science Center, 110 McAllister Way, Santa Cruz, CA 95060, (916) 930–3725 or via email at *jahnava.duryea@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This is a request for renewal of an approved information collection. The National Marine Fisheries Service (NMFS) requests comments on the extension of a currently approved information collection for the West Coast Region Groundfish Electronic Fish Ticket Program.

As part of its fishery management responsibilities, the National Oceanic and Atmospheric Administration (NOAA) NMFS collects information to determine the amount and type of groundfish caught by fishing vessels. Electronic fish tickets are submissions of landings data from the first receiver to the Pacific States Marine Fisheries Commission (PSMFC) and NMFS. This collection supports requirements for participants of the Pacific Coast shore based commercial groundfish fisheries (including the shore based Individual Fishing Quota (IFQ) program, the limited entry fixed gear fishery, and the open access fixed gear fishery) to account for all landed catch and to send electronic catch data used to manage the catch allocations and limits. The respondents are principally shore based first receivers.

#### II. Method of Collection

Electronic fish ticket data of landings data will be submitted from the first receiver to PSMFC. Shoreside first receivers, defined as persons who receive, purchase, or take custody, control, or possession of catch onshore directly from a vessel, are required to use a web-based, NMFS-approved electronic fish ticket program to send catch reports within 24 hours from the date of the landing. The electronic fish tickets are based on information currently required in state fish receiving tickets or landing receipts. The PSMFC currently receives and stores fish ticket data from the states. This data is maintained on the Pacific Fisheries Information Network (PacFIN) database.

#### III. Data

*OMB Control Number:* 0648–0738.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations; non-profit institutions; State, local, or tribal government.

*Estimated Number of Respondents:* 100.

*Estimated Time per Response:* 2–10 minutes. Electronic fish ticket filling and submission (Washington and California): 10 minutes. Electronic fish ticket submission (Oregon already requires electronic fish tickets, sending will be the only additional time/cost burden): 2 minutes.

*Estimated Total Annual Burden Hours:* 667 hours.

*Estimated Total Annual Cost to Public:* $0.

*Respondent's Obligation:* Required by regulatory compliance to participate in the fishery.

*Legal Authority:* NMFS implemented a trawl rationalization program in January 2011 for the Pacific Coast Groundfish Limited Entry Trawl Fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish FMP and the corresponding implementing regulations for recordkeeping and reporting at 50 CFR 660.113 (*https://www.ecfr.gov/current/title-50/section-660.113*).

#### IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2026–09874 Filed 5–15–26; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Notice of Intent To Grant a Joint Ownership Agreement With an Exclusive Patent License

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Notice of Intent.

**SUMMARY:** Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a joint ownership agreement with an exclusive (the field to include all fields) patent license to the University of Kansas Center for Technology Commercialization having a place of business at 2029 Becker Drive, Suite 142. Lawrence, Kansas 66047.

**DATES:** Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

**ADDRESSES:** Submit objections to Robert Barnes, AFRL/RFYP, 2241 Avionics Way, Wright Patterson AFB, OH 45433–7304; Phone: (312) 713–8511; or Email: *Robert.Barnes.36.ctr@us.af.mil.* Include Docket No. 26–0006229–AFRL/RY in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Robert Barnes, AFRL/RFYP, 2241 Avionics Way, Wright Patterson AFB, OH 45433–7304; Phone: (312) 713–8511; or Email: *Robert.Barnes.36.ctr@us.af.mil.*

**SUPPLEMENTARY INFORMATION:**

*Abstract of patent application(s):* Systems and methods of embodiments provide a feasible approach to implementing Far-Field Radiated Emission Design (FFRED) techniques suitable for simultaneous transmission of radar and communication signals. A set of signals for transmission and a transmission direction for each signal of the set of signals may be determined. The set of signals includes at least a first signal associated with a first transmission direction and a second signal associated with a second transmission direction that is different from the first direction. An optimization problem is configured based on characteristics of an antenna array and the set of signals and then solved to identify a set of waveforms suitable for transmitting the signals. The set of waveforms may include at least two waveforms, each of the at least two waveforms configured for transmission by a different antenna element of the antenna array. The determined waveforms may be coherent in the far-field and suitable for power efficient transmission.

*Intellectual property:* U.S. Patent No. 12,320,885 issued on June 3, 2025, and entitled *Physical Waveform Optimization For Multiple-Beam Multifunction Digital Arrays,* and U.S. Continuation Patent Application No. 19/214,006 filed on June 3, 2025, and entitled *Physical Waveform Optimization For Multiple-Beam Multifunction Digital Arrays.*

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

(Authority: 35 U.S.C. 209; 37 CFR 404.)

**Crystle C. Poge,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 2026–09906 Filed 5–15–26; 8:45 am]

**BILLING CODE 3911–44–P**

## DEPARTMENT OF EDUCATION

### Notice Announcing College Assistance Migrant Program Competition

**AGENCY:** Department of Education, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration at the U.S. Department of Labor (DOL) is soliciting applications in support of the administration of the Fiscal Year (FY) 2026 College Assistance Migrant Program (CAMP), Assistance Listing Number 84.149A, on behalf of the U.S. Department of Education (ED).

**DATES:** Complete proposals must be submitted electronically through the *Grants.gov* ''APPLY'' function by 11:59:59 p.m. Eastern time June 12, 2026.

**FOR FURTHER INFORMATION CONTACT:** Jessica Stein. Telephone: (202) 987–1609. Email: *Jessica.Stein@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the CAMP is to assist migratory or seasonal farmworkers (or immediate family members of such workers) who are enrolled or are admitted for enrollment on a full-time basis at an institution of higher education (IHE) to complete their first academic year. The FY 2026 competition includes one absolute priority, two competitive preference priorities, selection criteria, and requirements. The absolute priority is: (1) Providing a CAMP Project. The competitive preference priorities are: (1) Consideration of Prior Experience and (2) Career Pathways and Workforce Readiness.

*Maximum Award:* The maximum award an applicant may receive is $550,000 for a single budget period of 12 months.

*Minimum Award:* The minimum award an applicant may receive is $180,000 for a single budget period of 12 months.

*Eligible Applicants:* To be considered for an award under this competition, an applicant must be one of the following:

(1) An IHE (as defined in section 101 and 102 of the HEA), or

(2) A private nonprofit organization (as those terms are defined in 34 CFR 77.1).

If a private nonprofit organization other than an IHE applies for a CAMP grant, that organization must plan the project in cooperation with an IHE and must propose to operate some aspects of the project with the facilities of that IHE. See 34 CFR 206.2(b).

*Program Authority:* 20 U.S.C. 1070d-2.

*To Apply:* The complete funding opportunity announcement and all information needed to apply, including the priorities, selection criteria, and requirements, are available on ED's website at *https://www.ed.gov/grants-and-programs/grants-special-populations/grants-migrant-students/college-assistance-migrant-program,* on DOL's website at *https://www.dol.gov/agencies/eta/grants/apply/find-opportunities,* and on *Grants.gov* at *https://www.grants.gov/search-results-detail/362390.* The application notice and instructions on *Grants.gov* is the official document governing the grant competition.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Note: Henry Maklakiewicz signs this notice in furtherance of DOL's role in providing support to ED.

**Kirsten Baesler,**

*Assistant Secretary, Office of Elementary and Secondary Education.*

In concurrence

**Henry Maklakiewicz,**

*Assistant Secretary for Employment and Training, Department of Labor.*

[FR Doc. 2026–09932 Filed 5–15–26; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice Announcing Personnel Development to Improve Services and Results for Children With Disabilities—Expanding Career Pathways and Workforce Readiness of Special Education Teachers And Early Intervention Personnel Through Registered Apprenticeships Competition

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

**ACTION:** Notice.

**SUMMARY:** The Department of Education (ED) announces the opportunity to apply for competitive grants for the Fiscal Year (FY) 2026 Expanding Career Pathways and Workforce Readiness of Special Education Teachers and Early Intervention Personnel Through Registered Apprenticeships competition, Assistance Listing Number 84.325J.

**DATES:** Complete proposals must be submitted electronically through the *Grants.gov* ''APPLY'' function by 11:59:59 p.m. Eastern time July 13, 2026.

**FOR FURTHER INFORMATION CONTACT:** Anna Macedonia. Telephone: (202) 987–1282. Email: *Anna.Macedonia@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the Expanding Career Pathways and Workforce Readiness of Special Education Teachers and Early Intervention Personnel Through Registered Apprenticeships (84.325J) competition is to fund cooperative agreements that support registered apprenticeship programs that attract, prepare, and retain special education teachers or early intervention personnel. The FY 2026 competition includes an absolute priority, selection criteria, and requirements. The absolute priority is: Expanding Career Pathways and Workforce Readiness of Special Education Teachers and Early Intervention Personnel Through Registered Apprenticeships.

*Maximum Award:* We will not make an award exceeding $5,000,000 for a project period of 60 months or an award that exceeds $1,000,000 for any single budget period.

*Eligible Applicants:* State educational agencies and other public agencies, including Individuals with Disabilities Act (IDEA) Part C lead agencies and State apprenticeship agencies.

*Note:* Pursuant to 20 U.S.C. 1461(b)(2), other types of entities such as local educational agencies, institutions of higher education, and public charter schools, are not eligible to apply.

*Program Authority:* 20 U.S.C. 1462, 1481–1482.

*To Apply:* The complete funding opportunity announcement and all information needed to apply, including the priority and program requirements, are available on ED's website at *https://www.ed.gov/grants-and-programs/grants-special-populations/grants-special-education-and-individuals-disabilities/personnel-development/84.325J* and on *Grants.gov* at *https://grants.gov/search-results-detail/362373.* The application notice and instructions on *Grants.gov* is the official document governing the grant competition.

*Accessible Format:* On request to the person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

**Kimberly Richey,**

*Acting Assistant Secretary and Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2026–09897 Filed 5–15–26; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice Announcing Personnel Development To Improve Services and Results for Children With Disabilities—Personnel Preparation of Special Education, Early Intervention, and Related Services Personnel Program Competition

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

**ACTION:** Notice.

**SUMMARY:** The Department of Education (ED) announces the opportunity to apply for competitive grants for the Fiscal Year (FY) 2026 Personnel Preparation of Special Education, Early Intervention, and Related Services Personnel program, Assistance Listing Number 84.325K.

**DATES:** Complete proposals must be submitted electronically through the *Grants.gov* ''APPLY'' function by 11:59:59 p.m. Eastern time July 2, 2026.

**FOR FURTHER INFORMATION CONTACT:** Sunyoung Ahn. Telephone: (202) 987–0141. Email: *Sunyoung.Ahn@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the Personnel Preparation of Special Education, Early Intervention, and Related Services Personnel (84.325K) competition is to prepare and increase the number of personnel who have the necessary qualifications to serve children with disabilities. Under this absolute priority, the Department will fund grantees that use evidence-based strategies to prepare scholars in special education, early intervention, and related services at the bachelor's degree, certification, master's degree, educational specialist degree, or clinical doctoral degree levels to serve in a variety of settings, including natural environments (the home and community settings in which children with and without disabilities participate), early learning programs, child care, classrooms, and schools. The FY 2026 competition includes an absolute priority, two competitive preference priorities, selection criteria, and requirements. The absolute priority is: Personnel Preparation of Special Education, Early Intervention, and Related Services Personnel. The two competitive preference priorities are: Applications from Historically Black Colleges and Universities (HBCUs) and Tribally Controlled Colleges and Universities (TCCUs), and Applications from New Potential Grantees.

*Maximum Award:* We will not make an award exceeding $1,250,000 per project for a project period of 60 months or an award that exceeds $350,000 for any single budget period.

*Eligible Applicant*s: Institutions of higher education and private nonprofit organizations.

*Program Authority:* 20 U.S.C. 1462 and 1481–1482.

*To Apply:* The complete funding opportunity announcement and all information needed to apply, including the priority and program requirements, are available on ED's website at *https://www.ed.gov/grants-and-programs/grants-special-populations/grants-special-education-and-individuals-disabilities/personnel-development/84.325K* and on *Grants.gov* at *https://grants.gov/search-results-detail/362374.* The application notice and instructions on *Grants.gov* is the official document governing the grant competition.

*Accessible Format:* On request to the person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

**Kimberly Richey,**

*Acting Assistant Secretary and Deputy Assistant Secretary,Delegated the authority to perform the functions and duties of Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2026–09898 Filed 5–15–26; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice Announcing Promise Neighborhoods Program Competition

**AGENCY:** Department of Education, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The Administration for Children and Families at the U.S. Department of Health and Human Services (HHS) is soliciting applications in support of the administration of the Fiscal Year (FY) 2026 Promise Neighborhoods (PN) program, Assistance Listing Number 84.215N, on behalf of the U.S. Department of Education (ED).

**DATES:** Complete proposals must be submitted electronically through the *Grants.gov* ''APPLY'' function by 11:59:59 p.m. Eastern time August 6, 2026.

**FOR FURTHER INFORMATION CONTACT:** Rich Wilson. Telephone: (202) 453–6709. Email: *PromiseNeighborhoods@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the PN program is to significantly improve the academic and developmental outcomes of children and youth living in the most distressed communities of the United States, including ensuring school readiness, high school graduation, and access to a community-based continuum of high-quality services. The FY 2026 competition includes priorities, selection criteria, and requirements. The absolute priorities are: Non-Rural and Non-Tribal Communities, Rural Communities, and Tribal Communities. The competitive preference priorities are: Promoting Evidence-Based Literacy, Meaningful Learning Opportunities—High-Quality Interventions or Accelerated Learning Supports for Students and Supporting Families, and Meaningful Learning Opportunities—Career Connected Learning.

*Eligible Applicants:* Under section 4622 of the ESEA, an eligible entity must be one of the following:

(a) An institution of higher education (IHE), as defined in section 102 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1002);

(b) An Indian Tribe or Tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); or

(c) One or more nonprofit entities working in formal partnership with not less than one of the following entities:

(i) A high-need local educational agency.

(ii) An IHE, as defined in section 102 of the HEA (20 U.S.C. 1002).

(iii) The office of a chief elected official of a unit of local government.

(iv) An Indian Tribe or Tribal organization, as defined under section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

*Program Authority:* 20 U.S.C. 7273–7274.

*To Apply:* The complete funding opportunity announcement and all information needed to apply, including the priorities and program requirements, are available on ED's website at *https://www.ed.gov/grants-and-programs/grants-birth-grade-12/school-and-community-improvement-grants/promise-neighborhoods-pn* and on *Grants.gov* at *https://www.grants.gov/search-results-detail/362347.* The application notice and instructions on *Grants.gov* is the official document governing the grant competition.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

*Note:* Alex J. Adams signs this notice in furtherance of HHS' role in providing support to ED.

**Kirsten Baesler,**

*Assistant Secretary, Office of Elementary and Secondary Education, Department of Education.*

In concurrence

**Alex J. Adams,**

*Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.*

[FR Doc. 2026–09927 Filed 5–15–26; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice Announcing High School Equivalency Program Competition

**AGENCY:** Department of Education, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration at the U.S. Department of Labor (DOL) is soliciting applications in support of the administration of the Fiscal Year (FY) 2026 High School Equivalency Program (HEP), Assistance Listing Number 84.141A, on behalf of the U.S. Department of Education (ED).

**DATES:** Complete proposals must be submitted electronically through the *Grants.gov* ''APPLY'' function by 11:59:59 p.m. Eastern time June 12, 2026.

**FOR FURTHER INFORMATION CONTACT:** Jessica Stein. Telephone: (202) 987–1609. Email: *Jessica.Stein@ed.gov.*

**SUPPLEMENTARY INFORMATION:**

The purpose of the High School Equivalency Program (HEP) is to assist migratory or seasonal farmworkers (or immediate family members of such workers) to obtain the equivalent of a secondary school diploma and subsequently to gain improved employment, enter military service, or be placed in an institution of higher education (IHE) or other postsecondary education or training, which includes Registered Apprenticeships. The FY 2026 competition includes one absolute priority and three competitive preference priorities. The absolute priority is: (1) Providing a HEP Project. The competitive preference priorities are: (1) Consideration of Prior Experience, (2) Expanding Education Choice, and (3) Career Pathways and Workforce Readiness.

*Maximum Award:* The maximum award an applicant may receive is $550,000 for a single budget period of 12 months.

*Minimum Award:* The minimum award an applicant may receive is $180,000 for a single budget period of 12 months.

*Eligible Applicants:* To be considered for an award under this competition, an applicant must be one of the following:

(1) An IHE (as defined in section 101 and 102 of the HEA), or

(2) A private nonprofit organization (as those terms are defined in 34 CFR 77.1) may apply for a grant to operate a HEP project.

If a private nonprofit organization other than an IHE applies for a HEP grant, that organization must plan the project in cooperation with an IHE and must propose to operate some aspects of the project with the facilities of that IHE. See 34 CFR 206.2(b)

*Program Authority:* 20 U.S.C. 1070d–2.

*To Apply:* The complete funding opportunity announcement and all information needed to apply, including

the priorities, selection criteria, and requirements, are available on ED's website at *https://oese.ed.gov/offices/office-of-migrant-education/high-school-equivalency-program/applicant-information-high-school-equivalency-program/,* on DOL's website at *https://www.dol.gov/agencies/eta/grants/apply/find-opportunities,* and on *Grants.gov* at *https://www.grants.gov/search-results-detail/362389.* The application notice and instructions on *Grants.gov* is the official document governing the grant competition.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Note: Henry Maklakiewicz signs this notice in furtherance of DOL's role in providing support to ED.

**Kirsten Baesler,**

*Assistant Secretary, Office of Elementary and Secondary Education.*

In concurrence

**Henry Maklakiewicz,**

*Assistant Secretary for Employment and Training, Department of Labor.*

[FR Doc. 2026–09931 Filed 5–15–26; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Notice of Closed Meetings To Implement Voluntary Agreements and Related Plans of Action Under the Defense Production Act

**AGENCY:** Office of Nuclear Energy, Department of Energy.

**ACTION:** Notice of meetings.

**SUMMARY:** The notice announces a series of closed meetings held (or to be held) pursuant to the Defense Production Act to discuss the implementation of its Voluntary Agreement and potential accompanying Plans of Action with entities involved in the nuclear fuel industry.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for further details.

**ADDRESSES:** The committee meetings were held (or will be held) virtually (via Teams).

**FOR FURTHER INFORMATION CONTACT:** Ms. Sarah McPhee-Charrez, Chief of Staff, Nuclear Fuel Cycle, Office of Nuclear Energy, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, Telephone: (202) 587–1092. Email: *sarah.mcphee@nuclear.energy.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with section 708 of the Defense Production Act (''DPA'') (50 U.S.C. 4558) and consistent with the regulations set out at 10 CFR part 821, the Department of Energy (''DOE'') hereby gives notice that a series of closed meetings were held (or will be held) to discuss the implementation of a Voluntary Agreement and any subsequent Plans of Action regarding each of the listed topics. DOE determined that these meetings were (or are) likely to disclose information treated as trade secrets and commercial or financial information obtained from a person and privileged or confidential. As a result, DOE determined that the matters discussed in these meetings fall within the scope of 5 U.S.C. 552b(c), thereby necessitating their closure to the public.

*Meeting 1:* Reactors Meeting

April 7, 2026, April 14, 2026, April 21, 2026, and April 28, 2026.

11:00 a.m.–11:45 a.m. Virtual (Teams)

*Meeting 2:* Recycling and Reprocessing Meeting

April 7, 2026, April 14, 2026, April 21, 2026, and April 28, 2026.

11:45 a.m.–12:45 p.m. Virtual (Teams)

*Meeting 3:* Mining and Milling Meeting

April 7, 2026, April 14, 2026, April 21, 2026, and April 28, 2026.

1:00 p.m.–1:30 p.m. Virtual (Teams)

*Meeting 4:* Enrichment Meeting

April 8, 2026, April 15, 2026, and April 29, 2026.

12:00 p.m.–12:30 p.m. Virtual (Teams)

*Meeting 5:* Conversion Meeting

April 8, 2026, April 15, 2026, and April 29, 2026.

10:30 a.m.– 11:00 a.m. Virtual (Teams)

#### Signing Authority

This document of the Department of Energy was signed on May 13, 2026, by Theodore J. Garrish, Assistant Secretary, Nuclear Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 14, 2026.

**Treena V. Garrett,**

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

[FR Doc. 2026–09909 Filed 5–15–26; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to reinstate a previously approved information collection, OMB Control Number 1910–5134, titled DOE Loan Guarantees for Energy Projects. DOE is requesting a three-year approval of its collection from the Office of Management and Budget (OMB). DOE invites the public to comment.

**DATES:** Comments regarding this proposed information collection must be received on or before June 17, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–9493.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. The docket web page for this notice can be found at *www.regulations.gov/docket/DOE–HQ–2026–0463.*

**FOR FURTHER INFORMATION CONTACT:** Uchechukwu ''Emeka'' Eze, 1000 Independence Avenue SW, Ste 4B–122, Washington, DC 20585–0121, telephone: (202) 586–1092, or by email at: *LPO.IFR@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5134;

(2) *Information Collection Request Titled:* DOE Title 17 Energy Financing Program (formerly titled, Loan Guarantees for Projects that Employ Innovative Technologies);

(3) *Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(4) *Purpose:* DOE's Title 17 Energy Financing Program is implemented pursuant to Title XVII of the Energy Policy Act of 2005, as amended (Title 17). 42 U.S.C. 16511 *et seq.* Under the program, DOE may make guarantees for projects meeting the eligibility requirements set forth at 42 U.S.C. 16513 (also referred to the Section 1703 Program) or 42 U.S.C. 16517 (also referred to the Section 1706 Program, or the Energy Dominance Financing Program). DOE has set forth regulations at 10 CFR part 609 to establish application requirements and otherwise implement the Title 17 programs. This information collection request covers the information necessary to evaluate those applications. The information collected will be used to analyze whether an applicant and its project is eligible under Title 17. The collection of this information is critical to ensure the government has sufficient information to determine whether applicants meet program requirements and the criteria specified in 10 CFR part 609.

On February 18, 2026, DOE published in the **Federal Register** an initial notice and request for comment on this proposed information collection (91 FR 7469). That public comment period concluded on April 20, 2026. One comment was received. DOE has considered the comment. Among other things, the comment requested DOE publish the basis of its proposed certification to OMB: specifically, DOE's estimates of respondent burdens.

As explained in the Supporting Statement, DOE anticipates approximately the same number of respondents to the program. Where DOE once estimated 98 applicants, it now assumes 100 applicants. DOE also anticipates approximately the same number of burden hours to produce an application. DOE notes that applicants provide much of the same financial and technical information in the private sector when seeking financing for a project of similar complexity, size, and risk. For this reason, DOE reverted to a prior estimate of 132.5 hours per application, minus 14 hours attributable to a change in law (the elimination of the statutory requirement for an applicant to submit ''an analysis of how the proposed project will engage with and affect associated communities'' implemented in the form of a required ''Community Benefits Plan''). *See* Public Law 119–21, Sec. 50403, 139 Stat. 153 (Jul. 4, 2025). Finally, DOE applied 2025 hourly wage rates (published by the U.S. Bureau of Labor Statistics) by functional categories to estimate the cost burden to an applicant ($33,711). The docket web page for this notice contains DOE's Supporting Statement which can be accessed at *www.regulations.gov/docket/DOE–HQ–2026–0463.*

(5) *Annual Estimated Number of Respondents:* 100 respondents;

(6) *Annual Estimated Number of Total Responses:* 100 respondents;

(7) *Annual Estimated Number of Burden Hours:* 13,250 Burden Hours;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $3,371,100 (or $33,711 per Respondent).

*Statutory Authority:* Title XVII of the Energy Policy Act of 2005, as amended (42 U.S.C. 16511 *et seq.*).

**Signing Authority**

This document of the Department of Energy was signed on May 13, 2026, by Gregory A. Beard, Director, Office of Energy Dominance Financing, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 14, 2026.

**Treena V. Garrett,**

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

[FR Doc. 2026–09868 Filed 5–15–26; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Notice of Closed Meetings To Implement Voluntary Agreements and Related Plans of Action Under the Defense Production Act

**AGENCY:** Office of Nuclear Energy, Department of Energy.

**ACTION:** Notice of closed meetings.

**SUMMARY:** The notice announces a series of closed meetings held (or to be held) pursuant to the Defense Production Act to discuss the implementation of its Voluntary Agreement and potential accompanying Plans of Action with entities involved in the nuclear fuel industry.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for further details.

**ADDRESSES:** The meetings were held (or will be held) virtually (Teams).

**FOR FURTHER INFORMATION CONTACT:** Ms. Sarah McPhee-Charrez, Chief of Staff, Nuclear Fuel Cycle, Office of Nuclear Energy, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, Telephone: (202) 587–1092. Email: *sarah.mcphee@nuclear.energy.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with section 708 of the Defense Production Act (''DPA'') (50 U.S.C. 4558) and consistent with the regulations set out at 10 CFR part 821, the Department of Energy (''DOE'') hereby gives notice that a series of closed meetings were held (or will be held) to discuss the implementation of a Voluntary Agreement and any subsequent Plans of Action regarding each of the listed topics. DOE determined that these meetings were likely (or will be likely) to disclose information treated as trade secrets and commercial or financial information obtained from a person and privileged or confidential. As a result, DOE determined that the matters discussed (or to be discussed) in these meetings fall within the scope of 5 U.S.C. 552b(c), thereby necessitating their closure to the public.

**Meeting 1: Reactors Meeting**

May 5, 2026, May 12, 2026, May 19, 2026, and May 26, 2026.

11–11:45 a.m. Virtual (Teams).

**Meeting 2: Recycling and Reprocessing Meeting**

May 5, 2026, May 12, 2026, May 19, 2026, and May 26, 2026.

4–5 p.m. Virtual (Teams).

**Meeting 3: Mining and Milling Meeting**

May 12, 2026, May 19, 2026, and May 26, 2026.

1–1:30 p.m. Virtual (Teams).

**Meeting 4: Human Mobilization Committee 3**

May 7, 2026.
3–4 p.m. Virtual (Teams).

**Meeting 5: Materials and Sufficiency Committee 1**

May 7, 2026.
1–2 p.m. Virtual (Teams).

**Signing Authority**

This document of the Department of Energy was signed on May 13, 2026, by Theodore J. Garrish, Assistant Secretary for Nuclear Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, May 14, 2026.

**Jennifer Hartzell,**

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

[FR Doc. 2026–09923 Filed 5–15–26; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–4436–014; ER10–2472–014; ER10–2473–015.

*Applicants:* Cheyenne Light, Fuel and Power Company, Black Hills Wyoming, LLC, Black Hills Power, Inc.

*Description:* Notice of Non-Material Change in Status of Black Hills Power, Inc., et al.

*Filed Date:* 5/6/26.

*Accession Number:* 20260506–5179.

*Comment Date:* 5 pm ET 5/27/26.

*Docket Numbers:* ER14–1219–019; ER16–1732–019; ER17–989–018; ER10–1854–025; ER22–425–008; ER17–990–018; ER17–1946–018; ER11–3320–025; ER10–2744–026; ER16–2406–020; ER16–2405–019; ER17–992–018; ER10–2678–025; ER10–1631–025.

*Applicants:* University Park Energy, LLC, Troy Energy, LLC, Springdale Energy, LLC, Rockford Power II, LLC, Rockford Power, LLC, Riverside Generating Company, L.L.C., LSP University Park, LLC, Helix Ironwood, LLC, Gans Energy, LLC, Enerwise Global Technologies, LLC, Doswell Limited Partnership, Chambersburg Energy, LLC, Aurora Generation, LLC, Armstrong Power, LLC.

*Description:* Response to 01/29/2026, Deficiency Letter of Armstrong Power, LLC et al.

*Filed Date:* 5/4/26.

*Accession Number:* 20260504–5429.

*Comment Date:* 5 pm ET 5/26/26.

*Docket Numbers:* ER17–1609–006; ER19–1215–003; ER20–2667–002.

*Applicants:* South Field Energy LLC, Cricket Valley Energy Center, LLC, Carroll County Energy LLC.

*Description:* Response to 03/17/2026, Deficiency Letter of Carroll County Energy LLC, et al.

*Filed Date:* 5/8/26.

*Accession Number:* 20260508–5287.

*Comment Date:* 5 pm ET 5/29/26.

*Docket Numbers:* ER26–2516–000.

*Applicants:* PacifiCorp.

*Description:* § 205(d) Rate Filing: Surplus LGIA (Pryor Mtn—SI–04) (SA No. 1207) to be effective 5/14/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5082.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2517–000.

*Applicants:* PacifiCorp.

*Description:* § 205(d) Rate Filing: Surplus LGIA (TB Flats I—SI–05) (SA No. 1208) to be effective 5/14/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5086.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2518–000.

*Applicants:* Arizona Public Service Company.

*Description:* § 205(d) Rate Filing: OATT Revision—LGIP Section 4—POI Modifications to be effective 7/13/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5107.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2519–000.

*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.

*Description:* Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Horus Georgia 2 (Coweta Solar) LGIA Termination Filing to be effective 5/13/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5121.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2520–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 7259; Project Identifier No. AG1–037 to be effective 7/13/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5122.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2521–000.

*Applicants:* Hart Solar Partners, LLC.

*Description:* § 205(d) Rate Filing: Application for Market-Based Rate Authorization to be effective 7/16/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5135.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2522–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to GIA, SA No. 7086; Queue No. AE2–323 to be effective 7/13/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5137.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2523–000.

*Applicants:* California Grid Holdings LLC.

*Description:* Application for Authorization for Abandoned Plant Incentive Rate Treatment of California Grid Holdings LLC.

*Filed Date:* 5/8/26.

*Accession Number:* 20260508–5286.

*Comment Date:* 5 pm ET 5/29/26.

*Docket Numbers:* ER26–2524–000.

*Applicants:* PacifiCorp.

*Description:* § 205(d) Rate Filing: Ministerial Revisions to PacifiCorp Market Based Power Sales Tariff to be effective 9/30/2010.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5150.

*Comment Date:* 5 pm ET 6/3/26.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH26–12–000.

*Applicants:* New Jersey Resources Corporation.

*Description:* New Jersey Resources Corporation submits FERC–65A Notice of Change in Fact to Waiver Notification.

*Filed Date:* 5/7/26.

*Accession Number:* 20260507–5157.

*Comment Date:* 5 pm ET 5/28/26.

*Docket Numbers:* PH26–13–000.

*Applicants:* PowerConneX New Albany South Holdings 1–A, LLC, PowerConneX New Albany South Holdings 2–A, LLC.

*Description:* PowerConneX New Albany South Holdings 1–A, LLC, et al., submits FERC 65–A Exemption Notification.

*Filed Date:* 5/8/26.

*Accession Number:* 20260508–5284.

*Comment Date:* 5 pm ET 5/29/26.

*Docket Numbers:* PH26–14–000.

*Applicants:* PowerConneX New Albany South Holdings 1–A, LLC, PowerConneX New Albany South Holdings 2–A, LLC.

*Description:* PowerConneX New Albany South Holdings 1–A, LLC, et al., submit FERC 65–B Notice of Change in Fact to Waiver Notification.

*Filed Date:* 5/8/26.

*Accession Number:* 20260508–5285.

*Comment Date:* 5 pm ET 5/29/26.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: May 13, 2026.

**Carlos D. Clay,**

*Deputy Secretary.*

[FR Doc. 2026–09893 Filed 5–15–26; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP26–175–000]**

### Texas Eastern Transmission, LP; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Athens Optimization Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Athens Optimization Project (Project) involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Athens County, Ohio. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. 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 from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. 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 June 12, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on April 14, 2026, you will need to file those comments in Docket No. CP26–175–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Texas Eastern 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, Landowner Topics link.

**Public Participation**

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(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 (CP26–175–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link

to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202)502–6595 or *OPP@ferc.gov.*

**Summary of the Proposed Project**

Texas Eastern is proposing to abandon by removal four existing General Electric Frame 3 (GE) turbine units and associated infrastructure and to install two 20,470 horsepower new Solar Titan 130 turbine units and related ancillary equipment. The new Solar units would be installed in a new compressor building within the fenceline of the existing Athens Compressor Station (Station) located in Athens County, Ohio.

Additional activities include to abandon-in-place a large bore main gas pipeline, construct one service entrance building, one electrical control building, one warehouse building (to house spare parts and tooling), a gravel access loop road, and a graveled parking area. One existing generator building will be re-purposed as a switchgear building.

The Project would expand compression facilities at the Station to provide an additional 50,000 dekatherms per day (Dth/d) of incremental firm natural gas transportation capacity on Texas Eastern's pipeline system to serve Kentucky Utilities.

The general location of the project facilities is shown in appendix 1.[1]

**Land Requirements for Construction**

The Project would disturb about 32.8 acres of land for construction and operation. The Project would be located within Texas Eastern's existing Station fenceline area and include up to 21.1 acres of existing right-of-way as well as 11.7 acres of temporary right-of-way for construction equipment storage. Following construction, Texas Eastern would restore and maintain approximately 28.9 acres including a new permanent access road. The remaining acreage would be restored and reverted to previous use.

**NEPA Process and the Environmental Document**

Any environmental document 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;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then 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 EA or draft and final EIS will be available in electronic format in the public record through eLibrary[2] 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.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] 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.

**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 to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Environmental Mailing List**

The environmental mailing list 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

[1] 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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

[4] 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.

potentially affected by the proposed project.

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 CP26–175–000 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 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. 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.

(Authority: 18 CFR 2.1)

Dated: May 13, 2026.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2026–09922 Filed 5–15–26; 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 has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR26–57–000.
*Applicants:* Kinder Morgan Keystone Gas Storage LLC.
*Description:* § 284.123 Rate Filing: MBR Informational Filing (Monument) to be effective N/A.
*Filed Date:* 5/12/26.
*Accession Number:* 20260512–5108.
*Comment Date:* 5 pm ET 6/2/26.

*Docket Numbers:* PR26–58–000.
*Applicants:* Banquete Hub LLC.
*Description:* § 284.123 Rate Filing: MBR Info Filing Monument Acquisition to be effective N/A.
*Filed Date:* 5/12/26.
*Accession Number:* 20260512–5127.
*Comment Date:* 5 pm ET 6/2/26.

*Docket Numbers:* PR26–59–000.
*Applicants:* Kinder Morgan Texas Pipeline LLC.
*Description:* § 284.123 Rate Filing: KMTP MBR Info Filing Monument Acquisition to be effective N/A.
*Filed Date:* 5/12/26.
*Accession Number:* 20260512–5139.
*Comment Date:* 5 pm ET 6/2/26.

*Docket Numbers:* RP26–814–000.
*Applicants:* Alliance Pipeline L.P.
*Description:* Annual Report of Operational Purchases and Sales of Alliance Pipeline L.P.
*Filed Date:* 4/30/26.
*Accession Number:* 20260430–5572.
*Comment Date:* 5 pm ET 5/18/26.

*Docket Numbers:* RP26–815–000.
*Applicants:* Double E Pipeline, LLC.
*Description:* Annual System Balancing Adjustment of Double E Pipeline, LLC.
*Filed Date:* 4/30/26.
*Accession Number:* 20260430–5575.
*Comment Date:* 5 pm ET 5/19/26.

*Docket Numbers:* RP26–846–000.
*Applicants:* Tennessee Gas Pipeline Company, L.L.C.
*Description:* Compliance filing: TGP MBR Info Filing Monument Acquisition to be effective N/A.
*Filed Date:* 5/12/26.
*Accession Number:* 20260512–5145.
*Comment Date:* 5 pm ET 5/26/26.

*Docket Numbers:* RP26–847–000.
*Applicants:* Kern River Gas Transmission Company.
*Description:* § 4(d) Rate Filing: 2026 Pooling Title Transfer Filing to be effective 6/17/2026.
*Filed Date:* 5/13/26.
*Accession Number:* 20260513–5051.
*Comment Date:* 5 pm ET 5/26/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP12–609–000.
*Applicants:* Texas Gas Transmission, LLC.
*Description:* Report Filing: 2025 Operational Purchases and Sales Report Filing to be effective N/A.
*Filed Date:* 5/1/26.
*Accession Number:* 20260501–5269.
*Comment Date:* 5 pm ET 5/18/26.

*Docket Numbers:* RP13–212–000.
*Applicants:* Boardwalk Storage Company, LLC.
*Description:* Report Filing: 2025 Operational Purchases and Sales Report Filing to be effective N/A.
*Filed Date:* 5/1/26.
*Accession Number:* 20260501–5259.
*Comment Date:* 5 pm ET 5/18/26.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: May 13, 2026.

**Carlos D. Clay,**

*Deputy Secretary.*

[FR Doc. 2026–09894 Filed 5–15–26; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD26–7–000]**

### PJM Governance and Stakeholder Reforms; Notice of Commission-Led Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Chairman and Commissioner-led technical conference in the above-referenced proceeding. The purpose of this technical conference is to discuss PJM Interconnection, L.L.C.'s

(PJM) governance and stakeholder process, with a particular focus on identifying and evaluating actionable reforms to improve PJM's ability to address system needs in a timely and efficient manner. The Commission will not discuss any specific proceeding pending before the Commission at this technical conference.

The technical conference will convene on Thursday, July 23, 2026, in the Kevin J. McIntyre Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Information will follow regarding the self-nomination process for individuals interested in participating as panelists.

The technical conference will be open to the public. Advance registration is not required, and there is no fee for attendance. A supplemental notice will be issued prior to the conference with further details regarding the agenda and any changes in logistics. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The technical conference will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Commission provides technical support for the free webcasts. Please call 202–502–8680 or email *customer@ferc.gov* if you have any questions.

Commission technical conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY) or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact Alandro Valdez at *alandro.valdez@ferc.gov* or 202–502–8986. For legal information, please contact Emmett Barnes at *emmett.barnes@ferc.gov* or 202–502–8413.

(Authority: 16 U.S.C. 825h.)

Dated: May 12, 2026.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2026–09924 Filed 5–15–26; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. P–2725–076]**

### Oglethorpe Power Corporation; Notice of Application 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 Major License.

b. *Project No.:* P–2725–076.

c. *Date filed:* December 6, 2024.

d. *Applicant:* Oglethorpe Power Corporation.

e. *Name of Project:* Rocky Mountain Pumped Storage Project.

f. *Location:* On Heath Creek, near the Town of Rome, Floyd County, Georgia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ben Stanley, Oglethorpe Power Corporation, Senior Vice President of Plant Operations, 2100 East Exchange Place, Tucker, Georgia 30084; 770–270–7210 or *ben.stanley@opc.com.*

i. *FERC Contact:* David Gandy at 202–502–8560 or *david.gandy@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* on or before 5:00 p.m. Eastern Time on July 13, 2026; reply comments are due on or before 5:00 p.m. Eastern Time on August 26, 2026.

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 10,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Rocky Mountain Pumped Storage Hydroelectric Project (P–2725–076).

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis.

l. *The Rocky Mountain Pumped Storage Project consists of the following existing facilities:* (1) a 120-foot-high, 12,895-foot-long earth and rockfill upper dam; (2) a 221-acre upper reservoir with 10,650 acre-feet of storage and a normal operating pool elevation of 1,392 feet North American Vertical Datum of 1988 (NAVD 88); (3) a 35-foot-diameter, 567-foot-high concrete-lined power shaft; (4) a 35-foot-diameter, 1,935-foot-long concrete lined tunnel with two concrete lined bifurcations; (5) three 19-foot-diameter, 470-foot-long steel lined penstocks; (6) a 348-foot-long, 156-foot-wide, 175-foot-high powerhouse containing three reversible Francis pump-turbines, with a combined installed capacity of 904 megawatts; (7) three 230 kilovolt, 2.7-mile-long transmission lines; (8) a substation; and (9) appurtenant facilities.

The project has reserved storage water contained in two auxiliary pools (Pool I and Pool II) adjacent to the lower reservoir. Pool I's surface area is 400 acres and is formed by four dams, including: (a) a 25-foot-high earthen dam of unspecified length; (b) a 20-foot-high, 775-foot-long earth and rockfill dam; (c) a 50-foot-high, 700-foot-long earth and rockfill dam; and (d) a 50-foot-high, 405-foot-long earth and rockfill dam. Pool II's surface area is 200 acres and is formed by a 30-foot-high, 335-foot-long earth and rockfill dam.

Average annual generation (2018 to 2023) is 1,360,416.2 megawatt-hours (MWh), and the average annual pumping consumption is 1,812,719.3 MWh.

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 (*i.e.,* P–2725). For assistance, contact FERC Online Support.

All filings must: (1) bear in all capital letters the title ''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 of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing 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.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov*. You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *The applicant must file the following on or before 5:00 p.m. Eastern Time on July 13, 2026:* (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.

o. Final amendments to the application must be filed with the Commission on or before 5:00 p.m. Eastern Time on June 12, 2026.

(Authority: 18 CFR 2.1)

Dated: May 13, 2026.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2026–09920 Filed 5–15–26; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 8791–005]**

### R.J. Fortier Hydropower, Inc.; Notice of Reasonable Period of Time for Water Quality Certification Application

On May 8, 2026, Maine Department of Environmental Protection (Maine DEP) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section 401(a)(1) water quality certification as defined in 40 CFR 121.5, from Maine Rivers, on behalf of R.J. Fortier Hydropower, Inc., in conjunction with the above captioned project on January 13, 2026. Pursuant to the Commission's regulations,[1] we hereby notify the Maine DEP of the following:

*Date of Receipt of the Certification Request:* January 13, 2026.

*Reasonable Period of Time to Act on the Certification Request:* January 13, 2027.

If Maine DEP fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

(Authority: 18 CFR 2.1)

Dated: May 13, 2026.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2026–09919 Filed 5–15–26; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2716–051]**

### Virginia Electric and Power Company d/b/a Dominion Energy Virginia, Allegheny Generating Company, and Bath County Energy, LLC; Notice of Reasonable Period of Time for Water Quality Certification Application

On May 7, 2026, Virginia Electric and Power Company d/b/a Dominion Energy Virginia, Allegheny Generating Company, and Bath County Energy, LLC (Dominion) submitted to the Federal Energy Regulatory Commission (Commission) a notice from the Virginia Department of Environmental Quality (Virginia DEQ) that Virginia DEQ received a complete request for a Clean Water Act section 401(a)(1) water quality certification as defined in 40 CFR 121.5, from Dominion, in conjunction with the above captioned project on May 4, 2026. Pursuant to the Commission's regulations,[1] we hereby notify Virginia DEQ of the following:

*Date of Receipt of the Certification Request:* May 4, 2026.

*Reasonable Period of Time to Act on the Certification Request:* One year, May 4, 2027.

If Virginia DEQ fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

(Authority: 18 CFR 2.1)

Dated: May 13, 2026.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2026–09921 Filed 5–15–26; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC26–92–000.

*Applicants:* Long Ridge Energy Generation LLC, Long Ridge Retail Electric Supplier LLC.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Long Ridge Energy Generation LLC, et al.

*Filed Date:* 5/8/26.

*Accession Number:* 20260508–5278.

*Comment Date:* 5 pm ET 5/29/26.

*Docket Numbers:* EC26–93–000.

*Applicants:* AL Solar A, LLC, Boralex Energy Trading and Marketing Inc., Five Points Solar Park LLC, Milo Wind Project, LLC, Northern Electric Power Co., L.P., Roosevelt Wind Project, LLC,BIF Thunder Holdings Inc.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of AL Solar A, LLC, et al.

*Filed Date:* 5/7/26.

*Accession Number:* 20260507–5154.

*Comment Date:* 5 pm ET 5/28/26.

*Docket Numbers:* EC26–94–000.

*Applicants:* Entergy Mississippi, LLC, Greer Solar, LLC.

*Description:* Joint Application for Authorization Under Section 203 of the

[1] 18 CFR 6.1(b).

[1] 18 CFR 5.23(b)(2).

Federal Power Act of Entergy Mississippi, LLC, et al.

*Filed Date:* 5/1/26.

*Accession Number:* 20260501–5485.

*Comment Date:* 5 pm ET 5/22/26.

*Docket Numbers:* EC26–95–000.

*Applicants:* Roseton Generating LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act of Roseton Generating LLC.

*Filed Date:* 5/6/26.

*Accession Number:* 20260506–5174.

*Comment Date:* 5 pm ET 6/22/26.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

*Docket Numbers:* EL26–65–000.

*Applicants:* Freeman Solar, LLC v. PJM Interconnection, L.L.C.

*Description:* Complaint of Freeman Solar, LLC v. PJM Interconnection, L.L.C.

*Filed Date:* 5/12/26.

*Accession Number:* 20260512–5036.

*Comment Date:* 5 pm ET 6/1/26.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1107–012.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Notice of Change in Status of Pacific Gas and Electric Company.

*Filed Date:* 4/30/26.

*Accession Number:* 20260430–5678.

*Comment Date:* 5 pm ET 5/21/26.

*Docket Numbers:* ER10–2819–008; ER14–413–006; ER10–3147–007; ER21–2652–007; ER02–305–007; ER20–1970–003; ER22–2500–002; ER22–2501–002; ER22–2502–002; ER19–1778–004; ER14–1390–007; ER19–1639–004; ER10–2358–009; ER14–1397–007.

*Applicants:* Storm Lake Power Partners II, LLC, Storm Lake Power Partners I LLC, South Peak Wind LLC, Lake Benton Power Partners LLC, Glen Ullin Energy Center, LLC, DLS—Sylvan Project Co, LLC, DLS—Laskin Project Co, LLC, DLS—Jean Duluth Project Co, LLC, Diamond Spring, LLC, Condon Wind Power, LLC, Caddo Wind, LLC, AES Armenia Mountain Wind, LLC, ALLETE Clean Energy, Inc., ALLETE, Inc.

*Description:* Supplement to 02/02/2026, Notice of Change in Status of ALLETE, Inc. et al.

*Filed Date:* 4/30/26.

*Accession Number:* 20260430–5683.

*Comment Date:* 5 pm ET 5/21/26.

*Docket Numbers:* ER11–2029–012; ER10–2595–007; ER12–1400–010; ER10–2468–007; ER10–2596–019; ER10–2597–009; ER10–1821–025; ER12–2200–014; ER10–2598–003; ER21–44–010; ER17–993–018; ER20–660–015; ER18–95–015; ER24–2139–004; ER24–1687–004; ER17–989–018; ER25–1233–004; ER24–2920–003; ER10–1892–028; ER17–2084–010; ER20–967–008; ER11–4694–016; ER17–1946–018; ER24–438–004; ER25–2508–002; ER10–2739–041; ER12–1680–017; ER22–937–007; ER22–938–007; ER22–1241–007; ER11–113–020; ER23–618–006; ER13–2316–023; ER23–1829–005; ER14–19–024; ER20–1440–011.

*Applicants:* Yards Creek Energy, LLC, West Deptford Energy, LLC, Shady Oaks Wind 2, LLC, Seneca Generation, LLC, Sandy Ridge Wind 2, LLC, Sandy Ridge Wind, LLC, REV Energy Marketing, LLC, New Market Solar ProjectCo 2, LLC, New Market Solar ProjectCo 1, LLC, Minonk Wind, LLC, LS Power Marketing, LLC, LPH Marketing, LLC, Jade Meadow LLC, Helix Ironwood, LLC, GSG 6, LLC, Great Bay Solar II, LLC, Great Bay Solar 1, LLC, Columbia Energy LLC, Clearview Solar I, LLC, Algonquin Energy Services Inc., Chambersburg Energy, LLC, Carvers Creek LLC, Capon Bridge Solar, LLC, Buchanan Energy Services Company, LLC, Bolt Energy Marketing, LLC, Bath County Energy, LLC, Altavista Solar, LLC, Rolling Thunder I Power Partners, LLC, Mehoopany Wind Energy LLC, Goshen Phase II LLC, Fowler Ridge III Wind Farm LLC, Fowler Ridge II Wind Farm LLC, Fowler Ridge Wind Farm LLC, Flat Ridge 2 Wind Energy LLC, Flat Ridge Wind Energy, LLC, Cedar Creek II, LLC.

*Description:* Response to 01/29/2026, Deficiency Letter of Cedar Creek II, LLC, et al.

*Filed Date:* 5/4/26.

*Accession Number:* 20260504–5430.

Comment Date: 5 pm ET 5/26/26.

*Docket Numbers:* ER11–4436–000; ER10–2472–000; ER10–2473–000.

*Applicants:* Cheyenne Light, Fuel and Power Company, Black Hills Wyoming, LLC, Black Hills Power, Inc.

*Description:* Supplement to 05/06/2026, Notice of Change in Status of Black Hills Power, Inc., et al.

*Filed Date:* 5/8/26.

*Accession Number:* 20260508–5283.

*Comment Date:* 5 pm ET 5/29/26.

*Docket Numbers:* ER15–2255–003.

*Applicants:* Armenia Mountain Wind, LLC.

*Description:* Notice of Change in Status of Armenia Mountain Wind, LLC.

*Filed Date:* 4/30/26.

*Accession Number:* 20260430–5682.

*Comment Date:* 5 pm ET 5/21/26.

*Docket Numbers:* ER16–2520–004; ER19–8–004; ER17–318–004.

*Applicants:* Three Peaks Power, LLC, Sweetwater Solar, LLC, Grand View PV Solar Two LLC.

*Description:* Response to 12/22/2022, Deficiency Letter of Grand View PV Solar Two LLC, et al.

*Filed Date:* 5/4/26.

*Accession Number:* 20260504–5431.

*Comment Date:* 5 pm ET 5/26/26.

*Docket Numbers:* ER17–1609–008; ER20–2667–003.

*Applicants:* South Field Energy LLC, Carroll County Energy LLC.

*Description:* Notice of Change in Status of Carroll County Energy LLC, et al.

*Filed Date:* 4/30/26.

*Accession Number:* 20260430–5677.

*Comment Date:* 5 pm ET 5/21/26.

*Docket Numbers:* ER22–1089–007.

*Applicants:* Jackson Generation, LLC.

*Description:* Compliance filing: Compliance Filing of Tariff Record to Implement Settlement Rate to be effective 5/3/2022.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5078.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER22–1089–008.

*Applicants:* Jackson Generation, LLC.

*Description:* Compliance filing: Compliance Filing of Tariff Record to Implement Settlement Rate to be effective 4/1/2023.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5081.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER22–2817–004; ER22–2816–004; ER24–3130–002; ER24–3131–002.

*Applicants:* Two Hearted Solar, LLC, Apex Solar, LLC, PGR 2021 Lessee 17, LLC, Eastover Solar LLC.

*Description:* Notice of Change in Status of Eastover Solar LLC, et al.

*Filed Date:* 4/30/26.

*Accession Number:* 20260430–5681.

*Comment Date:* 5 pm ET 5/21/26.

*Docket Numbers:* ER23–759–000; ER26–2273–000.

*Applicants:* Sempra Gas & Power Marketing, LLC, Sempra Gas & Power Marketing, LLC.

*Description:* Response to 04/03/2026, Deficiency Letter of Sempra Gas & Power Marketing, LLC.

*Filed Date:* 5/4/26.

*Accession Number:* 20260504–5425.

*Comment Date:* 5 pm ET 5/26/26.

*Docket Numbers:* ER23–2837–004; ER23–2838–004; ER24–113–004; ER24–114–004; ER24–1039–004; ER24–1862–003; ER24–1863–003; ER24–2508–003; ER24–2509–003; ER24–3112–004; ER25–441–004; ER25–2818–003; ER25–2819–003.

*Applicants:* Ruby Solar, LLC, Adelite Solar, LLC, Richland Township Solar II,

LLC, Richland Township Solar, LLC, BCD 2024 Fund 5 Lessee, LLC, Envoy Solar, LLC, BCD 2024 Fund 3 Lessee, LLC, Kimmel Road Solar, LLC, Altona Solar, LLC, BCD 2024 Fund 1 Lessee, LLC, Salt Creek Township Solar, LLC, BCD 2023 Fund 1 Lessee, LLC, Earp Solar, LLC.

*Description:* Notice of Change in Status of Earp Solar, LLC, et al.

*Filed Date:* 4/30/26.

*Accession Number:* 20260430–5680.

*Comment Date:* 5 pm ET 5/21/26.

*Docket Numbers:* ER25–1962–005.

*Applicants:* Century Oaks Energy Storage, LLC.

*Description:* Notice of Change in Status of Century Oaks Energy Storage, LLC.

*Filed Date:* 5/1/26.

*Accession Number:* 20260501–5486.

*Comment Date:* 5 pm ET 5/22/26.

*Docket Numbers:* ER25–1980–001; ER25–3311–001.

*Applicants:* Montpelier Solar, LLC, Clinton Solar, LLC.

*Description:* Notice of Change in Status of Clinton Solar, LLC, et al.

*Filed Date:* 4/30/26.

*Accession Number:* 20260430–5679.

*Comment Date:* 5 pm ET 5/21/26.

*Docket Numbers:* ER26–1734–001.

*Applicants:* Kammer Juniata Transmission, LLC.

*Description:* Tariff Amendment: Kammer Juniata Response to Deficiency Letter.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5031.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–1820–001.

*Applicants:* American Electric Power Service Corporation, Southwest Power Pool, Inc.

*Description:* Tariff Amendment: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): American Electric Power Amended Order 898 Revisions to be effective 1/1/2025.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5058.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2508–000.

*Applicants:* Tri-State Generation and Transmission Association, Inc.

*Description:* § 205(d) Rate Filing: Notice of Cancellation of Rate Schedule No. 376 to be effective 7/12/2026.

*Filed Date:* 5/12/26.

*Accession Number:* 20260512–5167.

*Comment Date:* 5 pm ET 6/2/26.

*Docket Numbers:* ER26–2509–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to ISA, SA No. 6834, Queue No. AE2–113 to be effective 7/12/2026.

*Filed Date:* 5/12/26.

*Accession Number:* 20260512–5182.

*Comment Date:* 5 pm ET 6/2/26.

*Docket Numbers:* ER26–2510–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc. Capital Budget Quarterly Filing for Q1 2026.

*Filed Date:* 5/8/26.

*Accession Number:* 20260508–5279.

*Comment Date:* 5 pm ET 5/29/26.

*Docket Numbers:* ER26–2512–000.

*Applicants:* American Transmission Systems, Incorporated.

*Description:* § 205(d) Rate Filing: ATSI submits two amended Interconnection Agmts—SA Nos. 2852 & 5196 to be effective 7/13/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5025.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2513–000.

*Applicants:* MATL LLP.

*Description:* § 205(d) Rate Filing: Filing of SA LT–26–1 (TSR with AlbertaEx) to be effective 7/13/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5053.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2514–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: Corrections to Attachment V of the Tariff to Include GI Priority Process to be effective 3/1/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5073.

*Comment Date:* 5 pm ET 6/3/26.

*Docket Numbers:* ER26–2515–000.

*Applicants:* Black Hills Power, Inc.

*Description:* Initial rate filing: Provisional Large Generator Interconnection Agreement to be effective 5/4/2026.

*Filed Date:* 5/13/26.

*Accession Number:* 20260513–5080.

*Comment Date:* 5 pm ET 6/3/26.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: May 13, 2026.

**Carlos D. Clay,**

*Deputy Secretary.*

[FR Doc. 2026–09892 Filed 5–15–26; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–13287–01–OCSPP]**

### GDIT, SAVAN and Agile; Access to Confidential Business Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that information submitted to EPA's Office of Pollution Prevention and Toxics (OPPT) pursuant to the Toxic Substances Control Act (TSCA), including information that may be claimed as Confidential Business Information (CBI) by the submitter, may be transferred to or accessed by GDIT, SAVAN and Agile Decision Sciences (ADS), in accordance with the CBI regulations. GDIT, SAVAN and ADS have been awarded a contract to perform work in connection with TSCA and access to this information will enable GDIT, SAVAN and ADS to fulfill the obligations of the contract that will transition paper records into digital records through a process called digitization which includes material that has been classified as TSCA CBI.

**DATES:** Access to the confidential data will occur no sooner than May 26, 2026.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Nishar Pillai, Office of Finance and Administration, Office of the Chief Information Officer, Environmental Protection Agency, 1301 Constitution Ave NW, Washington, DC 20004, telephone number: (202)564–4635, email address: *pillai.nishar@epa.gov.*

*For general information:* The TSCA Assistance Information Service Hotline, Goodwill Vision Enterprises, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (800) 471–7127 or

(202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, 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?*

*EPA has established a docket for this action under* Docket ID no. EPA–HQ–OPPT–2003–0004. Publicly available docket materials are available electronically through *http://www.regulations.gov.* Additional instructions on commenting on and visiting the docket, along with more information about dockets generally, are available at *https://www.epa.gov/dockets.*

**II. What action is the agency taking?**

Under IMCS–6 solicitation number 68HERD23D0003, task order number 68HERD26F0008, ADS is responsible for digitizing the paper TSCA records, Under MAINES solicitation number 47QTCH18D0003 task order number 47QFCA22F0018 and Savan BPA solicitation number 68HERC23A0004 task order number 68HERC25F0098 Savan and GDIT are responsible for developing and maintaining data sync, the mechanism by which digitized records are uploaded to the Agency Records Management System (ARMS), and Savan is responsible for providing any technical support in ARMS if needed. This may result in incidental operational access to information submitted to the Agency under TSCA to support resolving technical issues and digitizing paper records, some of which may be claimed or determined to be CBI. In accordance with the requirements of 40 CFR 2.306(f), EPA has determined that the disclosure of CBI submitted to EPA under all sections of TSCA is necessary for GDIT, SAVAN and ADS to satisfactorily carry out the work required by the contract. Accordingly, GDIT, SAVAN and ADS personnel will be given access to information, including information submitted to EPA under all sections of TSCA, some of which may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters that EPA will provide GDIT, SAVAN and ADS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract takes place in accordance with EPA's *TSCA CBI Protection Manual* and/or any other EPA manual applicable to the protection of TSCA CBI.

Access to TSCA data, including CBI, will continue until all TSCA material has been digitized or the ends of their contracts on 12/24/2028 (ADS), 12/31/27 (Savan) and 03/28/2029 (GDIT), whichever occurs first. If the contract is extended, this access will also continue for the duration of the extended contract without further notice. In accordance with the requirements of 40 CFR 2.306(f), the contract prohibits disclosure of information to a third party without prior written approval from the Agency.

GDIT, SAVAN and ADS personnel will sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI. Records of information provided to GDIT, SAVAN and ADS will be maintained by EPA project officers for this contract. All information supplied to GDIT, SAVAN and ADS by EPA for use in connection with this contract will be returned to EPA when GDIT, SAVAN and ADS have completed the work.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: May 12, 2026.

**Douglas M. Troutman,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2026–09883 Filed 5–15–26; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1214; FR ID 347120]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

**DATES:** Written PRA comments should be submitted on or before July 17, 2026. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:** The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

*OMB Control Number:* 3060–1214.

*Title:* Part 52, Numbering Policies for Modern Communications, et al., WC Docket Nos. 13–97, et al.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 120 respondents; 160 responses.

*Estimated Time per Response:* 15–55 hours.

*Frequency of Response:* One-time; ongoing and bi-annual reporting requirements.

*Obligation to Respond:* Voluntary and mandatory. Statutory authority for these collections are contained in 47 U.S.C. 251(e)(1) of the Communications Act of 1934 and section 6(a) of the TRACED Act.

*Total Annual Burden:* 2,600 hours.

*Total Annual Cost:* $31,200.

*Needs and Uses:* In 2015, the FCC adopted the First Report and Order (FCC 15–70) establishing an authorization

process for interconnected Voice over internet Protocol (VoIP) providers which allows them to apply for the VoIP Numbering Authorization (Authorization) from the FCC that, once granted, permits them to obtain numbering resources directly from the Numbering Administrators. The FCC revised the Authorization process for applicants in the September 2023 Second Report and Order (FCC 23–75), and for existing authorization holders—that is, those interconnected VoIP providers that received their Authorization prior to August 8, 2024 (the effective date of the rules adopted in the Second Report and Order) in the December 2025 Third Report and Order (FCC 25–86). This collection covers the information and certifications that applicants and existing authorization holders must submit in order to comply with the Authorization process. The data, information, and documents acquired through this collection will allow interconnected VoIP providers to obtain numbers with minimal burden or delay while also preventing providers from obtaining numbers without first demonstrating that they can deploy and properly utilize such resources. This collection will also ensure that existing authorization holders comply with the necessary safeguards in order to maintain their Authorization. The revisions to this information collection are necessary to further stem the tide of illegal robocalls perpetrated by interconnected VoIP providers, protect the nation's numbering resources from abuse by foreign bad actors, advance important public safety and national security objectives ties to the use of our nation's limited numbering resources, and ensure compliance with other important FCC rules.

FEDERAL COMMUNICATIONS COMMISSION.

**Aleta Bowers,**

*Federal Register Liaison Officer. Office of the Secretary.*

[FR Doc. 2026–09840 Filed 5–15–26; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551–0001, not later than June 2, 2026.

*A. Federal Reserve Bank of Minneapolis* (Mark Nagle, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *Robert J. Mahar, Grand Forks, North Dakota;* to join the Mahar Family Control Group, a group acting in concert, to retain voting shares of First Holding Company Cavalier, Inc., and thereby indirectly retain voting shares of United Valley Bank, both of Cavalier, North Dakota.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Associate Secretary of the Board.*

[FR Doc. 2026–09890 Filed 5–15–26; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551–0001, not later than June 2, 2026.

*A. Federal Reserve Bank of New York* (Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *Bayerische Raiffeisen-Beteiligungs-Aktiengesellschaft, Beilngries, Germany;* to retain voting shares of BayWa AG, Munich, Germany, and thereby indirectly engage in extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Associate Secretary of the Board.*

[FR Doc. 2026–09891 Filed 5–15–26; 8:45 am]

**BILLING CODE;P**

## GENERAL SERVICES ADMINISTRATION

**[Notice-Q–2026–01; Docket No. 2026–0002; Sequence No. 4]**

## Federal Secure Cloud Advisory Committee Notification of Upcoming Meetings for 2026

**AGENCY:** Federal Acquisition Service (Q), General Services Administration (GSA).

**ACTION:** Meeting notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act (FACA), as amended, GSA is hereby giving notice of four (4) open public meetings of the Federal Secure Cloud Advisory Committee (FSCAC). Information on attending and providing public comment is under the **SUPPLEMENTARY INFORMATION** section.

**DATES:** The open public meetings will be held virtually on Monday, June 8, 2026, from 1:00 p.m. to 3:00 p.m., Eastern Time (ET), Monday, July 27, 2026, from 1:00 p.m. to 3:00 p.m., Eastern Time (ET), Monday, August 31, 2026, from 1:00 p.m. to 3:00 p.m., Eastern Time (ET), and Monday, November 2, 2026, from 1:00 p.m. to 3:00 p.m., Eastern Time (ET).

**ADDRESSES:** The meeting will be streamed live using a streaming platform. Registration is required and will be made available prior to the meeting online at *https://gsa.gov/fscac,* by selecting the ''Federal Secure Cloud Advisory Committee meetings'' tab on the left, then selecting ''Meeting agenda and registration'' under each respective meeting date. Upon registration, registrants will receive the webcast information via email before the meeting.

**FOR FURTHER INFORMATION CONTACT:** Ryan Hoesing, Designated Federal Officer (DFO), FSCAC, GSA, 202–577–1938, *fscac@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

GSA, in compliance with the FedRAMP Authorization Act of 2022 (the Act), established the FSCAC, a statutory advisory committee in accordance with the provisions of FACA, as amended (5 U.S.C. 10). The Federal Risk and Authorization Management Program (FedRAMP) within GSA is responsible for providing a standardized, reusable approach to security assessment and authorization for cloud computing products and services that process unclassified information used by agencies.

The FSCAC will provide advice and recommendations to the Administrator of GSA and the FedRAMP Director, the FedRAMP Board, and agencies on technical, financial, programmatic, and operational matters regarding the secure adoption of cloud computing products and services. The FSCAC will ensure effective and ongoing coordination of agency adoption, use, authorization, monitoring, acquisition, and security of cloud computing products and services to enable agency mission and administrative priorities. The purposes of the Committee are:

- To examine the operations of FedRAMP and determine ways that authorization processes can continuously be improved, including the following:
  - Measures to increase agency reuse of FedRAMP authorizations.
  - Proposed actions that can be adopted to reduce the burden, confusion, and cost associated with FedRAMP authorizations for cloud service providers (CSPs).
  - Measures to increase the number of FedRAMP authorizations for cloud computing products and services offered by small businesses concerns (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)).
  - Proposed actions that can be adopted to reduce the burden and cost of FedRAMP authorizations for agencies.
- Collect information and feedback on agency compliance with, and implementation of, FedRAMP requirements.
- Serve as a forum that facilitates communication and collaboration among the FedRAMP stakeholder community.

The FSCAC will meet no fewer than three (3) times a calendar year. Meetings shall occur as frequently as needed, called, and approved by the DFO.

### Purpose of the Meeting and Agenda

The June 8, 2026 public meeting will be dedicated to FedRAMP briefing the FSCAC members on programmatic changes that have occurred and have aligned with intended goals of the FSCAC. Additionally, FedRAMP will use the June 8th meeting to set the stage for the work it would like FSCAC to help support over the remainder of 2026. FedRAMP has made significant programmatic changes over the course of the last year that help reduce the burden, confusion, and cost associated with FedRAMP for cloud service providers (CSPs), opened the door for more small businesses to be able to pursue FedRAMP and as has engaged industry and agencies more than it has in previous years. FedRAMP will brief the FSCAC on how it has tackled these challenges and will call on the FSCAC to support agency adoption and reuse of FedRAMP.

The July 27, 2026 public meeting will be the first public-facing meeting for the FSCAC to advise the GSA Administrator who has delegated FSCAC Authority to the FedRAMP Director on how to ensure a continued increase in reuse and agency adoption of FedRAMP across the federal ecosystem.

The August 31, 2026 public meeting will be the second public-facing meeting for the FSCAC to advise the FedRAMP Director (as delegated by the GSA Administrator) on how to ensure a continued increase in reuse and agency adoption of FedRAMP across the federal ecosystem.

The November 2, 2026 public meeting will be the final public-facing meeting for the FSCAC to advise the FedRAMP Director (as delegated by the GSA Administrator) on how to ensure a continued increase in reuse and agency adoption of FedRAMP across the federal ecosystem and will finalize any potential recommendations to the the FedRAMP Director (as delegated by the GSA Administrator).

### Meeting Attendance

This virtual meeting is open to the public. The meeting materials, registration information, and agendas for the meetings will be made available prior to the meetings online at *https://gsa.gov/fscac,* by selecting the ''Federal Secure Cloud Advisory Committee meetings'' navigation on the left, and then selecting the ''Meeting agenda and registration'' under each corresponding meeting date. Registration for attending these virtual meetings will be open up until the meeting date and time. After registration, individuals will receive instructions on how to attend the meeting via email.

For information on services for individuals with disabilities, or to request accommodation for a disability, please email the FSCAC staff at *FSCAC@gsa.gov* at least 10 days prior to the meeting date. Live captioning will be provided virtually using the capabilities provided by the streaming service used for these meetings.

**Public Comment**

Members of the public attending will have the opportunity to provide oral public comment during each of the 2026 FSCAC meetings. Written public comments can be submitted at any time by completing the public comment form on our website, *https://gsa.gov/fscac,* located under the ''Get Involved'' section. All written public comments will be provided to FSCAC members in advance of each meeting if received 72 hours prior to the scheduled meeting. Specific times for public comment during each meeting will be posted for each individual meeting under the ''Meeting agenda and registration'' tab associated with each meeting at *https://gsa.gov/fscac.*

**Stephanie Shutt,**

*Chief of Staff, Federal Acquisition Service, General Services Administration.*

[FR Doc. 2026–09907 Filed 5–15–26; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–381]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by July 17, 2026.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier: __/OMB Control Number: __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

**Information Collection**

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers Certification Requirements; *Use:* This is a request for revision of form CMS–381 which is required for initial certification, during the recertification surveys and when the OPT/SLP requests any changes to its locations.

CMS is implementing a program whereby CORF, RHC, OPT/SLP providers and PXR suppliers may recertify every 6 years by self-attesting that they meet the CMS requirements instead of receiving a recertification survey by the State Survey Agencies (SAs). Because of this new program, we have changed the instructions to the CMS–381 form by deleting a reference to recertification surveys and replacing it with a reference to the ''recertification attestation process.''

After the start of the self-attestation program, the CMS–381 form will be completed when (1) new OPT/SLP providers enter the Medicare program (initial certification); (2) when existing OPT/OPS providers delete or add a service, or close or add an extension location; or (3) when existing OPT/SLP providers are recertified by the State Survey Agency (SA) through survey or attestation every 6 years.

For deemed OPT/SLP providers under a CMS-approved Accrediting Organization (AO), the CMS–381 will continue to be part of the reaccreditation surveys at least every 36 months. The OPT/SLP providers may render services on their already approved premises and the premises of other institutions (*e.g.,* skilled nursing facilities) or on a premise owned/leased/rented by the OPT/SLP. If the OPT/SLP bills the Medicare program for these services and renders these services in an area within the institution set aside for rehabilitation care, these premises are considered extension locations of the OPT/SLP. However, a patient's home is not considered an extension location.

Extension locations are considered part of the OPT/SLP provider's primary location and are subject to the same approval policy as is applicable to the OPT/SLP primary site. In addition to meeting applicable sections of the conditions of participation for all outpatient physical therapy/speech pathology providers, these extension

locations fall under the OPT/SLP provider agreement and are identified under the OPT/SLP provider number.

Form CMS–381 is used by the SA, AO, and by the CMS Survey Operations Group to identify extension locations where services are furnished by providers of outpatient physical therapy and speech-language pathology services. These locations must be known to surveyors to ensure the appropriate monitoring of providers' compliance with the Federal requirements. *Form Number:* CMS–381 (OMB control number: 0938–0273); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 501; *Total Annual Responses:* 501; *Total Annual Hours:* 229. (For policy questions regarding this collection contact Caecilia Andrews at 410–786–2190.)

**William N. Parham, III,**

*Director, Division of Information Collections and Regulatory Impact Analysis, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2026–09832 Filed 5–15–26; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Office of Management and Budget #: 0970–0428]**

### Submission for Office of Management and Budget Review; Case Plan Requirement, Title IV–E of the Social Security Act

**AGENCY:** Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

**ACTION:** Request for public comments.

**SUMMARY:** The Administration for Children and Families (ACF) is requesting a 3-year extension of the information collection Case Plan Requirement, Title IV–E of the Social Security Act, (Office of Management and Budget (OMB) #: 0970–0428, expiration September 30, 2026). There are no changes to the requirements, but burden estimates have been updated to reflect a reduction in average time to complete a case plan and the current numbers of children in foster care.

**DATES:** Comments due June 17, 2026.

**ADDRESSES:** The public may view and comment on this information collection request at: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202605-0970-005.* You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The case plan information collection is authorized in sections 422(b)(8)(A)(ii) and 471(a)(16), and defined in sections 475 and 475A of the Social Security Act (the Act). Statutory requirements in the Act mandate that states, territories, and tribes with an approved title IV–E plan develop a case review system and case plan for each child in the foster care system for whom the state, territory, or tribe receives title IV–E reimbursement of foster care maintenance payments. The case review system assures that each child has a case plan designed to achieve placement in a safe setting that is the least restrictive, most family-like setting available and near the child's parental home, consistent with the best interest and special needs of the child. States, territories, and tribes meeting these requirements also partly comply with title IV–B, section 422(b), of the Act, which assures certain protections for children in foster care. The case plan is a written document that provides a narrative description of the child-specific program of care. Federal regulations at 45 CFR 1356.21(g) and sections 475 and 475A of the Act delineate the specific information that must be addressed in the case plan. ACF does not specify a format for the case plan nor does ACF require submission of the document to the federal government. Case plan information is recorded in a format developed and maintained by the state, territorial, or tribal title IV–E agency.

*Respondents:* State, territorial, and tribal title IV–E agencies.

**Annual Burden Estimates**

Burden estimates have been adjusted to reflect one additional title IV–E agency, a decrease in the number of average hours to complete a case plan due to technology, fewer children entering foster care and an increased number of children exiting foster care. Overall, the estimated annual burden has decreased by about 32 percent.

| Instrument | Total number of respondents | Total number of responses per respondent | Average burden hours per response | Total burden hours | Annual burden hours |
|---|---|---|---|---|---|
| Case Plan Requirement | 67 | 19,490 | 3.8 | 4,962,154 | 1,654,051 |

**Authority:** 42 U.S.C. 622; 42 U.S.C. 671; 42 U.S.C. 675; 42 U.S.C. 675a.

**Mary C. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2026–09913 Filed 5–15–26; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, Agency for Healthcare Research and Quality (AHRQ), the authorities vested in the Secretary of Health and Human Services (the Secretary) to administer and implement the Department's supervisory framework governing support for, and oversight of, the U.S. Preventive Services Task Force (USPSTF or Task Force).

This delegation is made pursuant to Reorganization Plan No. 3 of 1966, as ratified by Congress in 1984, 42 U.S.C. 202, and other applicable authorities.

The Director, AHRQ, is delegated authority to provide day-to-day administrative oversight of AHRQ's support for the Task Force; to exercise concurrence authority, as the Secretary's designee, for routine Task Force recommendations, including review and

approval for purposes of final publication; to transmit non-routine recommendation packages to the Office of the Secretary, together with any supplemental policy analysis, within established timeframes; to prepare nomination slates for Task Force member appointments, including maintaining a reserve candidate pool and administering expedited selection procedures; to administer vacancy and acting authority designations within relevant AHRQ components in accordance with applicable law; and to implement and operationalize the USPSTF supervisory Standard Operating Procedure (SOP), including associated reporting and compliance activities.

Notwithstanding the authorities delegated herein, the Secretary retains the authority to appoint and remove Task Force members; to review and take final action on non-routine Task Force recommendations; to make any determination to withhold concurrence on Task Force recommendations; and to approve any material modifications to the supervisory framework governing the Task Force. These functions are reserved to the Secretary and may not be delegated.

This delegation shall be exercised in accordance with applicable Department policies, procedures, and guidelines. The authority delegated herein may not be redelegated. The Secretary retains the authority to promulgate regulations and to submit reports to Congress.

This delegation supersedes all prior delegations of authority relating to the administration, support, or supervision of the U.S. Preventive Services Task Force.

This delegation is effective immediately upon signature. I hereby affirm and ratify any actions taken by the Director of AHRQ, Roger D. Klein, or his subordinates that involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: May 13, 2026.

**Robert F. Kennedy, Jr.,**

*Secretary.*

[FR Doc. 2026–09841 Filed 5–15–26; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Substance Use Pharmacology.

*Date:* June 8, 2026.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *shiv.prasad@nih.gov.*

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Therapeutic Immune Regulation Study Section.

*Date:* June 22, 2026.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Yue Wu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 803C Bethesda, MD 20892, (301) 867–5309, *wuy25@csr.nih.gov.*

*Name of Committee:* Emerging Technologies and Training Neurosciences Integrated Review Group; Neuro Informatics, Computational and Data Analysis Study Section Neuro Informatics, Computational and Data Analysis.

*Date:* June 22–23, 2026.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Aurea D. De Sousa, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186 Bethesda, MD 20892, (301) 827–6829, *aurea.desousa@nih.gov.*

*Name of Committee:* Emerging Technologies and Training Neurosciences Integrated Review Group; Imaging and Bioengineering Technology for Visual Systems Study Section.

*Date:* June 22–23, 2026.

*Time:* 8:30 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Susan Gillmor, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 240–762–3076, *susan.gillmor@nih.gov.*

*Name of Committee:* Applied Therapeutics for Cancer Integrated Review Group; Mechanisms of Cancer Therapeutics C Study Section.

*Date:* June 22, 2026.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Gloria Huei-Ting Su, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–496–0465, *gloria.su@nih.gov.*

*Name of Committee:* Vascular and Hematology Integrated Review Group; Integrative Vascular Physiology and Pathology Study Section.

*Date:* June 22, 2026.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Manoj Kumar Valiyaveettil, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov.*

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group; Analytics and Statistics for Population Research Panel A Study Section.

*Date:* June 22–23, 2026.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Emily M. Kilroy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20817, (301) 594–0813, *kilroyem@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Training and Career Development: Neurosciences, Development, and Aging.

*Date:* June 22, 2026.

*Time:* 10:00 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009B, MSC 7850 Bethesda, MD 20892, (301) 435–1203, *laurent.taupenot@nih.gov.*

*Name of Committee:* Interdisciplinary Molecular Sciences and Training Integrated Review Group; Cellular and Molecular Technologies Study Section.

*Date:* June 22–23, 2026.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–455–2364, *tatiana.cohen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 13, 2026.

**Bruce A. George,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2026–09852 Filed 5–15–26; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Biomedical Imaging and Bioengineering.

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 meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Biomedical Imaging and Bioengineering, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Institute of Biomedical Imaging and Bioengineering.

*Date:* June 15–16, 2026.

*Open:* June 15, 2026, 9:00 a.m. to 9:30 a.m.

*Agenda:* Call to order and opening remarks from the Scientific Director; Remarks from the NIBIB Institute Director.

*Address:* Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Room 610, Bethesda, MD 20892.

*Meeting Format:* In Person.

Closed: June 15, 2026, 9:30 a.m. to 5:00 p.m.

*Agenda:* Review of confidentiality & conflict of interest procedures; Review and evaluate qualifications, performance, and competence of individual investigators.

*Address:* Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Room 610, Bethesda, MD 20892.

*Meeting Format:* In Person.

*Closed:* June 16, 2026, 9:30 a.m. to 1:30 p.m.

*Agenda:* Review and evaluate qualifications, performance, and competence of individual investigators.

*Address:* Hyatt Regency Bethesda, 7400 Wisconsin Ave, Bethesda, MD 20814.

*Meeting Format:* In Person.

*Contact Person:* Richard D. Leapman, Ph.D., Intramural Scientific Director, National Institute of Biomedical Imaging, and Bioengineering, National Institutes of Health, Building 13, Rm 3E 73, Bethesda, MD 20892, 301–496–2599, *leapmanr@mail.nih.gov.*

Dated: May 12, 2026.

**Margaret N. Vardanian,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2026–09865 Filed 5–15–26; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Fee for Fingerprints Collected by CBP

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** This notice announces that U.S. Customs and Border Protection (CBP) will begin collecting a fee for fingerprints collected by CBP from applicants seeking unescorted access to CBP security areas at airports. CBP collects fingerprints from applicants when the applicant submits a paper application or when the applicant is an eBadge applicant for whom CBP has not received fingerprints from the Transportation Security Administration (TSA) or the fingerprints CBP receives from TSA are unreadable or unusable. The fee is the total of the current Federal Bureau of Investigation (FBI) user fee for conducting fingerprint checks and the CBP administrative processing fee.

**DATES:** CBP will begin collecting the fee described in this notice after June 17, 2026.

**FOR FURTHER INFORMATION CONTACT:** Guy Cange, Branch Chief, Traveler Entry Program, Office of Field Operations, U.S. Customs and Border Protection, by telephone at (202) 403–4176, or email at *guy.h.cange@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department of Homeland Security (DHS) is responsible for securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States. *See* Homeland Security Act of 2002, Public Law 107–296, sec. 402, 116 Stat. 2135, 2177–78, as amended (6 U.S.C. 202). Within DHS, two components, U.S. Customs and Border Protection (CBP) and the Transportation Security Administration (TSA), have responsibilities supporting this mission by ensuring security at airports of entry. Specifically, CBP and TSA regulations provide for the designation of secured areas in airports as well as the requirements and procedures for obtaining and maintaining access to such areas.

The CBP security area regulations are set forth in subpart S of part 122 of title 19 of the Code of Federal Regulations (CFR). CBP security areas, or ''Customs security areas,'' are defined as the Federal Inspection Services (FIS) areas at airports accommodating international air commerce designated for processing passengers, crew, their baggage and effects arriving from, or departing to, foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the port director. *See* 19 CFR 122.181 (defining the term ''Customs security area''); 19 CFR 101.1 (defining the term ''Customs'' to mean CBP). Generally, persons located at, operating out of, or employed by any airport accommodating international air commerce who have unescorted access to a CBP security area must openly display or produce upon demand an approved access seal. 19 CFR 122.182(a). The requirements for the application for a CBP access seal

include the applicant filing CBP Form 3078—Application for Identification Card with the port director, in addition to the applicant's employer supporting the application with a written request and justification for issuance, the appropriate bond, and attestation of a completed background check. 19 CFR 122.182(c)(1) and (d). Additionally, the port director may require other submissions from the applicant, such as fingerprints, proof of citizenship or authorized residency, and a photograph. 19 CFR 122.182(c)(1). If the applicant is required to submit fingerprints, 19 CFR 122.182(c)(1)(i) provides that the port director will inform the applicant of the current Federal Bureau of Investigation (FBI) user fee for conducting fingerprint checks and the CBP administrative processing fee, the total of which must be tendered by, or on behalf of, the applicant with the application.

TSA regulations regarding secured areas are set forth in subparts B and C of 49 CFR part 1542. TSA requires that airports establish at least one secured area, which must be a security identification display area (SIDA). *See* 49 CFR 1542.101, 1542.103, 1542.205. TSA requires that an individual seeking unescorted access to a SIDA continuously display the personnel identification medium issued to that individual. 49 CFR 1542.207, 1542.211. Such identification medium has come to be known as a ''SIDA badge.'' TSA also requires that an individual seeking unescorted access to a SIDA undergo a fingerprint-based criminal history records check, which involves the airport operator collecting the applicant's fingerprints, which are ultimately submitted to TSA and the FBI. 49 CFR 1542.209.

However, a CBP access seal does not grant access to a TSA SIDA, and a SIDA badge does not grant access to a CBP security area. To receive access to both areas, applicants have needed to apply for a TSA SIDA badge through their Airport Badging Office (ABO) and then visit the airport's local CBP office to apply for a CBP access seal, as described above. Upon successful vetting by CBP, CBP may provide the ABO with a holographic sticker to affix to the applicant's SIDA badge, or the ABO may print the CBP access seal directly onto the SIDA badge. This process often results in inconsistent handling of applications and long waiting periods for approval. Therefore, CBP, in collaboration with TSA, developed the eBadge system through the Trusted Worker Program (TWP) to facilitate a faster and more uniform process of handling applications. *See* CBP, eBadge Trusted Worker Program, *https://www.cbp.gov/travel/ebadge-trusted-worker-program* (last modified Aug. 22, 2025).

With eBadge, applicants seeking access to CBP Security Areas and SIDA at airports can seek both CBP and TSA access privileges with one electronic application. First, the applicant may request access to the CBP security area during the SIDA badge application with TSA. After vetting and approving the applicant for a SIDA badge, TSA forwards the applicant's biographic information as well as fingerprints and other biometric data collected during the SIDA application process to CBP to vet the employees seeking access to CBP security areas. CBP uses the Automated Biometric Identification (IDENT) System to run the applicant's fingerprints received from TSA and other information through multiple databases and watch lists. In cases where IDENT cannot read the fingerprints, where the fingerprints were not submitted as part of the application, or where the fingerprints are otherwise unavailable, CBP can schedule the applicant for fingerprint collection and submit the applicant's fingerprints to the FBI for processing.

The FBI charges a user fee for performing fingerprint-based criminal history record information checks for requesting agencies and periodically publishes fee adjustments in the **Federal Register**. *See* 89 FR 70206, 70206–07 (Aug. 29, 2024). As of January 1, 2025, the FBI user fee for Centralized Billing Service Providers, such as CBP, is $10.00. *See* 89 FR 70207. As noted above, and pursuant to 31 U.S.C. 9701, CBP regulations provide for CBP to recover both the FBI user fee and a CBP administrative processing fee from the applicant. *See* 19 CFR 122.182(c)(1)(i). The legacy U.S. Customs Service rule, which finalized the provision allowing the collection of such fees from applicants, announced in the preamble that the fee, in 1993, would be the total of the FBI user fee and an administrative processing fee of 15% of the FBI user fee. 58 FR 15770, 15772 (Mar. 24, 1993). Additionally, the legacy rule and the subsequent Access to Customs Security Areas at Airports rule revised 19 CFR 122.182(c)(1)(i) to state that port directors will inform applicants of the current FBI user fee and administrative processing fee.[1]

Under the legacy fee formula, the administrative processing portion of this fee would be $1.50 (15% of the $10.00 FBI user fee) and the total fee according to the legacy formula would be $11.50 ($10.00+$1.50). However, this legacy fee calculation would not fully recover CBP's administrative processing costs for this fingerprinting service.

Through this notice, CBP is announcing the collection of the fee authorized by 19 CFR 122.182(c)(1)(i) and updating the legacy fee formula to reflect the cost of the new FBI fingerprinting user fee and CBP's processing costs. To update the amount of the CBP administrative processing fee, CBP calculates its costs per applicant requiring fingerprinting. CBP collects fingerprints from applicants for access to CBP security areas, that is, for a CBP access seal, when the applicant submits a paper application or when the applicant is an eBadge applicant for whom CBP has not received fingerprints from TSA or the fingerprints CBP receives from TSA are unreadable or unusable. It takes approximately 5 minutes (0.083 hours) for a CBP officer (CBPO) to perform the fingerprinting for an applicant. The wage rate for a CBPO in FY 2025 is $88.45 per hour.[2] Multiplying the wage rate by the time for a CBPO to perform the fingerprinting process results in an administrative cost to CBP of $7.37 per applicant requiring fingerprinting. Additionally, as a Centralized Billing Service Provider, CBP is currently charged a $10.00 fee per applicant whose fingerprints CBP sends to the FBI as part of a background check.[3] Adding the $10.00 FBI fee to the administrative processing costs borne by CBP ($7.37) shows that it currently costs CBP $17.37 per applicant that needs fingerprinting.

To fully recover CBP's costs, CBP must charge $7.37 per application requiring CBP fingerprinting services related to applications for CBP access seals plus the FBI user fee for Centralized Billing Service Providers ($10.00 in 2026). Applicants who do not need fingerprinting because CBP received usable fingerprints from TSA will not be charged by CBP for fingerprinting services.

[1] *See* 19 CFR 122.182(c)(1)(i). The legacy U.S. Customs Service rule, 58 FR 15770 (Mar. 24, 1993), identified the district director as the responsible party for informing applicants of the current fee. Among other revisions, the Access to Customs Security Areas at Airports rule, 67 FR 48977 (Jul. 29, 2002), revised this provision to identify the port director as the responsible party.

[2] CBP bases this wage on the FY 2025 fully loaded salary of the national average of CBPO Positions.

[3] This fee will change whenever the FBI announces in the **Federal Register** that the amount of the FBI user fee for Centralized Billing Service Providers has changed. The current FBI fee charged to Centralized Billing Service Providers is $10.00. 89 FR 70207.

**Collection of Fee for Fingerprints Collected by CBP**

Accordingly, the new fee under 19 CFR 122.182(c)(1)(i) for fingerprints collected by CBP is $17.37. The fee will change whenever the amount of the FBI user fee changes or administrative processing costs change. CBP will inform those required to submit the fee of the correct amount. CBP will begin collecting the new fee amount after June 17, 2026.

**Markwayne Mullin,**

*Secretary, U.S. Department of Homeland Security.*

[FR Doc. 2026–09879 Filed 5–15–26; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds of Customs Duties

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will decrease from the previous quarter. For the calendar quarter beginning April 1, 2026, the interest rate for underpayments will be 6 percent for both corporations and non-corporations. The interest rate for overpayments will be 6 percent for non-corporations and 5 percent for corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

**DATES:** The rates announced in this notice are applicable as of April 1, 2026.

**FOR FURTHER INFORMATION CONTACT:** Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 8899 E. 56th Street, Mail Stop 203J, Indianapolis, IN 46249; telephone (317) 298–1107.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2026–5, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2026, and ending on June 30, 2026. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%) for both corporations and non-corporations. For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will decrease from the previous quarter. These interest rates are subject to change for the calendar quarter beginning July 1, 2026, and ending on September 30, 2026.

For the convenience of the importing public and U.S. Customs and Border Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

| *Beginning date* | *Ending date* | *Underpayments* (percent) | *Overpayments* (percent) | *Corporate Overpay- ments* (Eff. 1–1–99) (percent) |
|---|---|---|---|---|
| 070174 | 063075 | 6 | 6 | |
| 070175 | 013176 | 9 | 9 | |
| 020176 | 013178 | 7 | 7 | |
| 020178 | 013180 | 6 | 6 | |
| 020180 | 013182 | 12 | 12 | |
| 020182 | 123182 | 20 | 20 | |
| 010183 | 063083 | 16 | 16 | |
| 070183 | 123184 | 11 | 11 | |
| 010185 | 063085 | 13 | 13 | |
| 070185 | 123185 | 11 | 11 | |
| 010186 | 063086 | 10 | 10 | |
| 070186 | 123186 | 9 | 9 | |
| 010187 | 093087 | 9 | 8 | |
| 100187 | 123187 | 10 | 9 | |
| 010188 | 033188 | 11 | 10 | |
| 040188 | 093088 | 10 | 9 | |
| 100188 | 033189 | 11 | 10 | |
| 040189 | 093089 | 12 | 11 | |
| 100189 | 033191 | 11 | 10 | |
| 040191 | 123191 | 10 | 9 | |
| 010192 | 033192 | 9 | 8 | |
| 040192 | 093092 | 8 | 7 | |
| 100192 | 063094 | 7 | 6 | |
| 070194 | 093094 | 8 | 7 | |
| 100194 | 033195 | 9 | 8 | |
| 040195 | 063095 | 10 | 9 | |
| 070195 | 033196 | 9 | 8 | |

| *Beginning date* | *Ending date* | *Underpayments* (percent) | *Overpayments* (percent) | *Corporate Overpay- ments* (Eff. 1–1–99) (percent) |
|---|---|---|---|---|
| 040196 | 063096 | 8 | 7 | |
| 070196 | 033198 | 9 | 8 | |
| 040198 | 123198 | 8 | 7 | |
| 010199 | 033199 | 7 | 7 | 6 |
| 040199 | 033100 | 8 | 8 | 7 |
| 040100 | 033101 | 9 | 9 | 8 |
| 040101 | 063001 | 8 | 8 | 7 |
| 070101 | 123101 | 7 | 7 | 6 |
| 010102 | 123102 | 6 | 6 | 5 |
| 010103 | 093003 | 5 | 5 | 4 |
| 100103 | 033104 | 4 | 4 | 3 |
| 040104 | 063004 | 5 | 5 | 4 |
| 070104 | 093004 | 4 | 4 | 3 |
| 100104 | 033105 | 5 | 5 | 4 |
| 040105 | 093005 | 6 | 6 | 5 |
| 100105 | 063006 | 7 | 7 | 6 |
| 070106 | 123107 | 8 | 8 | 7 |
| 010108 | 033108 | 7 | 7 | 6 |
| 040108 | 063008 | 6 | 6 | 5 |
| 070108 | 093008 | 5 | 5 | 4 |
| 100108 | 123108 | 6 | 6 | 5 |
| 010109 | 033109 | 5 | 5 | 4 |
| 040109 | 123110 | 4 | 4 | 3 |
| 010111 | 033111 | 3 | 3 | 2 |
| 040111 | 093011 | 4 | 4 | 3 |
| 100111 | 033116 | 3 | 3 | 2 |
| 040116 | 033118 | 4 | 4 | 3 |
| 040118 | 123118 | 5 | 5 | 4 |
| 010119 | 063019 | 6 | 6 | 5 |
| 070119 | 063020 | 5 | 5 | 4 |
| 070120 | 033122 | 3 | 3 | 2 |
| 040122 | 063022 | 4 | 4 | 3 |
| 070122 | 093022 | 5 | 5 | 4 |
| 100122 | 123122 | 6 | 6 | 5 |
| 010123 | 093023 | 7 | 7 | 6 |
| 100123 | 123124 | 8 | 8 | 7 |
| 010125 | 033126 | 7 | 7 | 6 |
| 040126 | 063026 | 6 | 6 | 5 |

**Jeffrey Caine,**

*Chief Financial Officer, U.S. Customs and Border Protection.*

[FR Doc. 2026–09871 Filed 5–15–26; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2026–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having an effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

**DATES:** The date of July 7, 2026 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

**FOR FURTHER INFORMATION CONTACT:** David N. Bascom, Acting Director, Engineering and Modeling Division, Federal Insurance Directorate, Resilience, FEMA, 400 C Street SW, Washington, DC 20472, or (email) *david.bascom@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Assistant Administrator, Federal Insurance Directorate, Resilience has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Elizabeth Asche,**

*Assistant Administrator, Federal Insurance Directorate, Resilience, Federal Emergency Management Agency, Department of Homeland Security.*

| Community | Community map repository address |
|---|---|
| **Decatur County, Georgia and Incorporated Areas Docket No.: FEMA–B–2509** | |
| City of Attapulgus | Bainbridge City Hall, 101 South Broad Street, Bainbridge, GA 39818. |
| City of Bainbridge | Bainbridge City Hall, 101 South Broad Street, Bainbridge, GA 39818. |
| City of Climax | Bainbridge City Hall, 101 South Broad Street, Bainbridge, GA 39818. |
| Town of Brinson | Bainbridge City Hall, 101 South Broad Street, Bainbridge, GA 39818. |
| Unincorporated Areas of Decatur County | Bainbridge City Hall, 101 South Broad Street, Bainbridge, GA 39818. |
| **Dougherty County, Georgia and Incorporated Areas Docket No.: FEMA–B–2509** | |
| City of Albany | Dougherty County Planning and Development, 240 Pine Avenue, Suite 300, Albany, GA 31701. |
| Unincorporated Areas of Dougherty County | Dougherty County Planning and Development, 240 Pine Avenue, Suite 300, Albany, GA 31701. |
| **Lowndes County, Georgia and Incorporated Areas Docket No.: B–2238 and B–2507** | |
| City of Hahira | City Hall, 102 South Church Street, Hahira, GA 31632. |
| City of Remerton | City Hall, 1757 Poplar Street, Remerton, GA 31601. |
| City of Valdosta | City Hall Annex, 300 North Lee Street, Valdosta, GA 31601. |
| Unincorporated Areas of Lowndes County | Lowndes County Judicial and Administrative Complex, 327 North Ashley Street, Valdosta, GA 31601. |
| **Parke County, Indiana and Incorporated Areas Docket No.: FEMA–B–2481** | |
| Unincorporated Areas of Parke County | Parke County Plan Commission, 116 W. High Street, Room 105, Rockville, IN 47872. |
| **City of Suffolk, Virginia (Independent City) Docket No.: FEMA–B–2464** | |
| City of Suffolk | City Hall, 442 W. Washington Street, Suffolk, VA 23434. |
| **Pocahontas County, West Virginia and Incorporated Areas Docket No.: FEMA–B–2477** | |
| Town of Durbin | Town Hall, 4559 Staunton Parkersburg Turnpike, Durbin, WV 24954. |
| Town of Marlinton | Town Hall, 709 Second Avenue, Marlinton, WV 24954. |
| Unincorporated Areas of Pocahontas County | Pocahontas County Offices, 900 C Tenth Avenue, Marlinton, WV 24954. |

[FR Doc. 2026–09851 Filed 5–15–26; 8:45 am]
**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2025–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having an effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

**DATES:** The date of June 10, 2026, has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

**FOR FURTHER INFORMATION CONTACT:** David N. Bascom, Acting Director, Engineering and Modeling Division,

Federal Insurance Directorate, Resilience, FEMA, 400 C Street SW, Washington, DC 20472, or (email) *david.bascom@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Assistant Administrator, Federal Insurance Directorate, Resilience has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Elizabeth Asche,**

*Assistant Administrator, Federal Insurance Directorate, Resilience Federal Emergency Management Agency, Department of Homeland Security.*

| Community | Community map repository address |
|---|---|
| **Santa Barbara County, California and Incorporated Areas Docket No.: FEMA–B–2449** | |
| City of Buellton | City Hall, 107 West Highway 246, Buellton, CA 93427. |
| City of Carpinteria | City of Carpinteria Public Works Department, 5775 Carpinteria Avenue, Carpinteria, CA 93013. |
| City of Santa Barbara | City of Santa Barbara Community Development Department, Building and Safety Division, 630 Garden Street, Santa Barbara, CA 93101. |
| City of Solvang | Department of Public Works, 411 2nd Street, Solvang, CA, 93463. |
| Unincorporated Areas of Santa Barbara County | Naomi Schwartz County Office Building, 130 East Victoria Street, Suite 200, Santa Barbara, CA 93101. |
| **Saguache County, Colorado and Incorporated Areas Docket No.: FEMA–B–2511** | |
| Town of Saguache | Town Hall, 504 San Juan Avenue, Saguache, CO 81149. |
| Unincorporated Areas of Saguache County | Saguache County Administration Building, 505 3rd Street, Saguache, CO 81149. |
| **City and County of Honolulu, Hawaii Docket No.: FEMA–B–2482** | |
| City and County of Honolulu | Department of Planning and Permitting, 650 South King Street, 7th Floor, Honolulu, HI 96813. |
| **Teton County, Idaho and Incorporated Areas Docket No.: FEMA–B–2480** | |
| City of Driggs | City Hall, 60 South Main Street, Driggs, ID 83422. |
| City of Tetonia | City Office, 3192 Perry Avenue, Tetonia, ID 83452. |
| City of Victor | City Hall, 138 North Main Street, Victor, ID 83455. |
| Unincorporated Areas of Teton County | Teton County Courthouse, 150 Courthouse Drive, Driggs, ID 83422. |
| **Van Buren County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2500** | |
| Township of Decatur | Township Hall, 103 E. Delaware Street, Decatur, MI 49045. |
| Township of Hamilton | Hamilton Township Hall, 52333 Territorial Road W, Decatur, MI 49045. |
| Township of Keeler | Keeler Township Hall, 64121 Territorial Road W, Hartford, MI 49057. |
| Township of Lawrence | Township Hall, 411 N. Paw Paw Street, Lawrence, MI 49064. |
| Township of Paw Paw | Township Hall, 114 N. Gremps Street, Paw Paw, MI 49079. |
| Township of Porter | Porter Township Hall, 88040 M–40 Highway, Lawton, MI 49065. |
| Township of Waverly | Waverly Township Hall, 42114 M–43 Highway, Paw Paw, MI 49079. |
| Village of Decatur | Village Hall, 114 N. Phelps Street, Decatur, MI 49045. |
| **Olmsted County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2427** | |
| City of Rochester | Olmsted County Planning, Land Use, and Zoning Department, 2122 Campus Drive SE, Suite 100, Rochester, MN 55904. |
| **Hillsborough County, New Hampshire (All Jurisdictions) Docket No.: FEMA–B–2403** | |
| Town of Antrim | Planning Department, 66 Main Street, Antrim, NH 03440. |
| Town of Bennington | Town Hall, 7 School Street, Bennington, NH 03442. |
| Town of Deering | Town Hall, 762 Deering Center Road, Deering, NH 03244. |
| Town of Francestown | Town Hall, 27 Main Street, Francestown, NH 03043. |
| Town of Greenfield | Town Office, 7 Sawmill Road, Greenfield, NH 03047. |
| Town of Hancock | Town Hall, 50 Main Street, Hancock, NH 03449. |

| Community | Community map repository address |
|---|---|
| Town of Hillsborough | Planning Department, 27 School Street, Hillsborough, NH 03244. |
| Town of New Ipswich | Town Hall, 661 Turnpike Road, New Ipswich, NH 03071. |
| Town of Peterborough | Planning Department, 1 Grove Street, Peterborough, NH 03458. |
| Town of Sharon | Town Hall, 432 NH Route 123, Sharon, NH 03458. |
| Town of Temple | Town Hall, 423 Route 45, Temple NH 03084. |
| Town of Weare | Town Hall, 15 Flanders Memorial Road, Weare, NH 03281. |
| Town of Windsor | Town Hall, 14 White Pond Road, Windsor, NH 03244. |
| **Boone County, Nebraska and Incorporated Areas Docket No.: FEMA–B–2489** | |
| City of Albion | City Office, 420 West Market Street, Albion, NE 68620. |
| City of St. Edward | City Hall, 1302 State Highway 39, St. Edward, NE 68660. |
| Unincorporated Areas of Boone County | Boone County Courthouse, 222 South 4th Street, Albion, NE 68620. |
| Village of Cedar Rapids | City Hall, 425 West Main Street, Cedar Rapids, NE 68627. |
| Village of Petersburg | Village Office, 203 East Widaman Avenue, Petersburg, NE 68652. |
| Village of Primrose | Village Hall, 229 Commercial Street, Primrose, NE 68655. |
| **Alamance County, North Carolina and Incorporated Areas Docket No.: FEMA–B–2463** | |
| Town of Gibsonville | Planning Department, 129 West Main Street, Gibsonville, NC 27249. |
| Unincorporated Areas of Alamance County | Alamance County Planning Department, 201 West Elm Street, Graham, NC 27253. |
| **Caswell County, North Carolina and Incorporated Areas Docket No.: FEMA–B–2463** | |
| Town of Milton | Town Hall, Government Center, Planning Department, 173 Broad Street, Milton, NC 27305. |
| Town of Yanceyville | Municipal Services Building, 158 East Church Street, Yanceyville, NC 27379. |
| Unincorporated Areas of Caswell County | Caswell County Government Office, Planning Department, 215 County Park Road, Yanceyville, NC 27379. |
| **Davidson County, North Carolina and Incorporated Areas Docket No.: FEMA–B–2463** | |
| Unincorporated Areas of Davidson County | Davidson County Government Center, Planning and Zoning Department, 913 Greensboro Street, Suite 305, Lexington, NC 27292. |
| **Forsyth County, North Carolina and Incorporated Areas Docket No.: FEMA–B–2463** | |
| Town of Kernersville | Town Hall, Planning Department, 134 East Mountain Street, Kernersville, NC 27284. |
| Unincorporated Areas of Forsyth County | Forsyth County Bryce A. Stuart Municipal Building, Erosion Control, 100 East 1st Street, Winston-Salem, NC 27101. |
| Village of Tobaccoville | Forsyth County Bryce A. Stuart Municipal Building, Erosion Control, 100 East 1st Street, Winston-Salem, NC 27101. |
| **Guilford County, North Carolina and Incorporated Areas Docket No.: FEMA–B–2463** | |
| City of Greensboro | Stormwater Division, Water Resources, 2602 South Elm-Eugene Street, Greensboro, NC 27406. |
| City of High Point | City Hall, 211 South Hamilton Street, High Point, NC 27261. |
| Town of Jamestown | Town Hall, 301 East Main Street, Jamestown, NC 27282. |
| Town of Oak Ridge | Town Hall, 8315 Linville Road, Suite B, Oak Ridge, NC 27310. |
| Town of Pleasant Garden | Kirkman Municipal Building/Town Hall, 4920 Alliance Church Road, Pleasant Garden, NC 27313. |
| Town of Sedalia | Town Hall, 6121 Burlington Road, Sedalia, NC 27342. |
| Town of Stokesdale | Town Hall, 8325 Angel Pardue Road, Stokesdale, NC 27357. |
| Town of Summerfield | Planning Office, 4117 Oak Ridge Road, Summerfield, NC 27358. |
| Unincorporated Areas of Guilford County | Guilford County Planning Department, 400 West Market Street, Greensboro, NC 27402. |
| **Randolph County, North Carolina and Incorporated Areas Docket No.: FEMA–B–2463** | |
| Unincorporated Areas of Randolph County | Randolph County Planning Department, 204 East Academy Street, Asheboro, NC 27205. |

| Community | Community map repository address |
|---|---|
| **Rockingham County, North Carolina and Incorporated Areas Docket No.: FEMA–B–2463** | |
| City of Eden | City Hall, Planning and Community Development, 308 East Stadium Drive, Eden, NC 27288. |
| City of Reidsville | City Hall, 230 West Morehead Street, Reidsville, NC 27320. |
| Town of Madison | Town Hall, 120 North Market Street, Madison, NC 27025. |
| Town of Mayodan | Town Hall, 210 West Main Street, Mayodan, NC 27027. |
| Unincorporated Areas of Rockingham County | Rockingham County Governmental Complex, Planning and Inspections Department, 371 NC Highway 65 #100, Reidsville, NC 27320. |
| **Stokes County, North Carolina and Incorporated Areas Docket No.: FEMA–B–2463** | |
| City of King | City Hall, 229 South Main Street, King, NC 27021. |
| Unincorporated Areas of Stokes County | Stokes County Administration Building, Department of Planning, 1014 Main Street, Danbury, NC 27016. |
| **Richland County, North Dakota and Incorporated Areas Docket No.: FEMA–B–1925 & FEMA–B–2461** | |
| City of Wahpeton | City Hall, 1900 4th Street N, Wahpeton, ND 58075. |
| Township of Abercrombie | Abercrombie Township Hall, 111 Galchutte Avenue, Wahpeton, ND 58075. |
| Township of Center | Township of Center Clerk's Office, 17624 78th Street SE, Wahpeton, ND 58075. |
| Township of Dwight | 7345 177th Avenue SE, Wahpeton, ND 58075. |
| Township of Fairmount | Fairmount Fire District Hall, 136 Main Avenue, Fairmount, ND, 58030. |
| Township of Summit | Township of Summit Clerk's Office, 8765 182nd Avenue SE, Wahpeton, ND 58075. |
| Unincorporated Areas of Richland County | Richland County Courthouse, 418 2nd Avenue N, Wahpeton, ND 58075. |
| **Tulsa County, Oklahoma and Incorporated Areas Docket Nos.: FEMA–B–2303 and B–2478** | |
| City of Tulsa | Stormwater Design Office, 175 East 2nd Street, Suite 450, Tulsa, OK 74103. |
| **Caldwell County, Texas and Incorporated Areas Docket No.: FEMA–B–2489** | |
| City of Lockhart | City Hall, 308 West San Antonio Street, Lockhart, TX 78644. |
| City of Luling | City Hall, 509 East Crockett Street, Luling, TX 78648. |
| City of Mustang Ridge | Mustang Ridge Laws Municipal Building, 12800 U.S. Highway 183 South, Buda, TX 78610. |
| City of Niederwald | City Hall, 8807 Niederwald Strasse, Niederwald, TX 78640. |
| City of San Marcos | Engineering Department, City Hall, 630 East Hopkins Street, San Marcos, TX 78666. |
| City of Uhland | City Hall, 15 North Old Spanish Trail, Uhland, TX 78640. |
| Unincorporated Areas of Caldwell County | Caldwell County Sanitation Department, 1700 FM 2720, Lockhart, TX 78644. |
| **Freestone County, Texas and Incorporated Areas Docket No.: FEMA–B–2470** | |
| City of Fairfield | City Hall, 527 East Commerce Street, Fairfield, TX 75840. |
| City of Oakwood | City Hall, 135 East Broad Street, Oakwood, TX 75855. |
| City of Streetman | City Hall, 204 East Main Street, Streetman, TX 75859. |
| City of Teague | City Hall, 105 South 4th Avenue, Teague, TX 75860. |
| City of Wortham | City Hall, 108 West Main Avenue, Wortham, TX 76693. |
| Town of Kirvin | Freestone County Courthouse, 118 East Commerce Street, Room 205, Fairfield, TX 75840. |
| Unincorporated Areas of Freestone County | Freestone County Courthouse, 118 East Commerce Street, Room 205, Fairfield, TX 75840. |

[FR Doc. 2026–09848 Filed 5–15–26; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2026–0002; Internal Agency Docket No. FEMA–B–2605]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The current effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Assistant Administrator, Federal Insurance Directorate, Resilience reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** David N. Bascom, Acting Director, Engineering and Modeling Division, Federal Insurance Directorate, Resilience, FEMA, 400 C Street SW, Washington, DC 20472, or (email) *david.bascom@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Elizabeth Asche,**

*Assistant Administrator, Federal Insurance Directorate, Resilience, Federal Emergency Management Agency, Department of Homeland Security.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Alabama: Madison | City of Huntsville (25–04–3822P) | The Honorable Thomas Battle, Jr., Mayor, City of Huntsville, P.O. Box 308, Huntsville, AL 35804 | City Hall, P.O. Box 308, Huntsville, AL 35804 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 9, 2026 ..... | 010153 |
| Florida: | | | | | | |
| Alachua ..... | Unincorporated areas of Alachua County (25–04–4427P) | Michele Lieberman, County Manager, Alachua County, 12 Southeast, 1st Street Gainesville, FL 32601 | Public Works Department, 5620 Northwest 120th Lane, Gainesville, FL 32653 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 ..... | 120001 |
| Brevard ..... | City of Palm Bay (25–04–3696P) | The Honorable Rob Medina, Mayor, City of Palm Bay, 120 Malabar Road Southeast, Palm Bay, FL 32907 | City Hall, 120 Malabar Road Southeast, Palm Bay, FL 32907 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 ..... | 120404 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Clay | City of Green Cove Springs (25–04–5404P) | Steve Kennedy, Manager, City of Green Cove Springs ,321 Walnut Street, Green Cove Springs, FL 32043 | City Hall, 321 Walnut Street, Green Cove Springs, FL 32043 | *https://msc.fema.gov/portal/advanceSearch* | May. 1, 2026 | 120065 |
| Lake | City of Groveland (24–04–2030P) | Michael Hein, Manager, City of Groveland, 156 South Lake Avenue, Groveland, FL 34736 | City Hall, 156 South Lake Avenue, Groveland, FL 34736 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 21, 2026 | 120135 |
| Lake | City of Leesburg (25–04–4860P) | The Honorable Alan Reisman, Mayor, City of Leesburg, 501 West Meadow Street, Leesburg, FL 34748 | City Hall, 501 West Meadow Street, Leesburg, FL 34748 | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 27, 2026 | 120136 |
| Lake | Unincorporated areas of Lake County (24–04–2030P) | Jennifer Barke, Lake County Manager, 315 West Main Street, Tavares, FL 32778 | Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 21, 2026 | 120421 |
| Lee | City of Cape Coral (25–04–1807P) | The Honorable John Gunter, Mayor, City of Cape Coral, 1015 Cultural Park Boulevard, Cape Coral, FL 33990 | City Hall, 1015 Cultural Park Boulevard, Cape Coral, FL 33990 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 21, 2026 | 125095 |
| Lee | Unincorporated areas of Lee County (25–04–1807P) | David Harner, Lee County Manager, 2115 2nd Street, Fort Myers, FL 33901 | Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 21, 2026 | 125124 |
| Monroe | Unincorporated areas of Monroe County (25–04–5374P) | The Honorable Jim Scholl, Mayor, Monroe County, Board of Commissioners, 530 Whitehead Street, Key West, FL 33040 | Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 125129 |
| Monroe | Village of Islamorada (25–04–6836P) | The Honorable Sharon Mahoney, Mayor, Village of Islamorada, 86800 Overseas Highway Islamorada, FL 33036 | Building Department, 86800 Overseas Highway, Islamorada, FL 33036 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 120424 |
| Osceola | Unincorporated areas of Osceola County (25–04–0716P) | Don Fisher, Manager, Osceola County, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741 | Osceola County Community Development Department, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741 | *https://msc.fema.gov/portal/advanceSearch* | May. 1, 2026 | 120186 |
| Palm Beach | Unincorporated areas of Palm Beach County (25–04–1349P) | Joseph Abruzzo, Palm Beach County Administrator, 301 North Olive Avenue, West Palm Beach, FL 33401 | Palm Beach County Vista Center, Building Division Office, 2300 North Jog Road, West Palm Beach, FL 33411 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 | 120192 |
| Palm Beach | Unincorporated areas of Palm Beach County (25–04–2095P) | Joseph Abruzzo, Palm Beach County Administrator, 301 North Olive Avenue, West Palm Beach, FL 33401 | Palm Beach County Vista Center, Building Division Office, 2300 North Jog Road, West Palm Beach, FL 33411 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 120192 |
| Sarasota | City of North Port (25–04–3258P) | Jerome Fletcher, Manager, City of North Port, 4970 City Hall Boulevard, North Port, FL 34286 | City Hall, 4970 City Hall Boulevard, North Port, FL 34286 | *https://msc.fema.gov/portal/advanceSearch* | May. 4, 2026 | 120279 |
| Georgia: Glynn | Unincorporated areas of Glynn County (24–04–2833P) | William Fallon, Manager, Glynn County, 1725 Reynolds Street, Suite 302, Brunswick, GA 31520 | Glynn County Clerk's Office, 1725 Reynolds Street, Suite 302, Brunswick, GA 31520 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 130092 |
| Kansas: | | | | | | |
| Johnson | City of Mission Hills (25–07–0263P) | The Honorable David Dickey, Mayor, City of Mission Hills, 6300 State Line Road, Mission Hills, KS 66208 | City Hall, 6300 State Line Road, Mission Hills, KS 66208 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 28, 2026 | 200171 |
| Johnson | City of Prairie Village (25–07–0263P) | The Honorable Eric Mikkelson, Mayor, City of Prairie Village, 7700 Mission Road, Prairie Village, KS 66208 | Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 28, 2026 | 200175 |
| North Carolina: | | | | | | |
| Brunswick | Town of Leland (24–04–7093P) | The Honorable Brenda Bozeman, Mayor, Town of Leland, 102 Town Hall Drive, Leland, NC 28451 | Planning and Inspections, 102 Town Hall Drive, Leland, NC 28451 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 | 370471 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Brunswick ..... | Unincorporated areas of Brunswick County (24–04–7093P) | Mike Forte, Chair, Brunswick County Board of Commissioners, P.O. Box 249, Bolivia, NC 28422 | Brunswick County Floodplain Management, 75 Courthouse Drive, Building I, Bolivia, NC 28422 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 ..... | 370295 |
| Mecklenburg .. | City of Charlotte (25–04–1331P) | The Honorable Vi Alexander Lyles, Mayor, City of Charlotte 600 East 4th Street, Charlotte, NC 28202 | Mecklenburg County Stormwater Services Department, 2145 Suttle Avenue, Charlotte, NC 28208 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 2, 2026 ..... | 370159 |
| Minnesota: Ramsey. | City of New Brighton (24–05–0956P) | The Honorable Kari Niedfeldt-Thomas, Mayor, City of New Brighton, 803 Old Highway 8 Northwest, New Brighton, MN 55112 | City Hall 803 Old Highway 8 Northwest, New Brighton, MN 55112 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 21, 2026 ..... | 270380 |
| Nebraska: Lancaster. | City of Lincoln (25–07–0320P) | The Honorable Leirion Gaylor Baird, Mayor, City of Lincoln, 555 South 10th Street, Lincoln, NE 68508 | City Hall, 555 South 10th Street, Lincoln, NE 68508 | *https://msc.fema.gov/portal/advanceSearch* | May. 4, 2026 ..... | 315273 |
| New Jersey: Camden. | Borough of Gibbsboro (25–02–0385P) | The Honorable Edward G. Campbell, III, Mayor, Borough of Gibbsboro, 49 Kirkwood Road, Gibbsboro, NJ 08026 | Borough Hall, 49 Kirkwood Road, Gibbsboro, NJ 08026 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 ..... | 340545 |
| New Mexico: Bernalillo. | City of Albuquerque (25–06–1638P) | The Honorable Tim Keller Mayor, City of Albuquerque P.O. Box 1293 Albuquerque NM 87103 | Albuquerque Government Center 1 Civic Plaza Albuquerque NM 87102 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 29, 2026 ..... | 350002 |
| Oklahoma: | | | | | | |
| Tulsa ..... | City of Broken Arrow (25–06–0409P) | Michael Spurgeon, Manager, City of Broken Arrow, 220 South 1st Street, Broken Arrow, OK 74012 | City Hall, 485 North Poplar Avenue, Broken Arrow, OK 74012 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 ..... | 400236 |
| Tulsa ..... | City of Tulsa (24–06–2324P) | The Honorable Monroe Nichols IV, Mayor, City of Tulsa, 175 East 2nd Street, Tulsa, OK 74103 | City Hall, 175 East 2nd Street, Suite 450, Tulsa, OK 74103 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 ..... | 405381 |
| Pennsylvania: Bucks. | Borough of, Morrisville, (25–03–0814P) | James J. Dillon, Interim Borough Manager, Borough of, Morrisville, 35 Union Street, Morrisville, PA 19067 | Borough Hall, 35 Union Street, Morrisville, PA 19067 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 ..... | 420194 |
| Texas: | | | | | | |
| Bastrop ..... | City of Elgin (24–06–2254P) | Isaac Turner, Interim City Manager, City of Elgin, P.O. Box 591, Elgin, TX 78621 | City Hall, 310 North Main Street, Elgin, TX 78621 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 ..... | 480023 |
| Bastrop ..... | Unincorporated areas of Bastrop County (24–06–2254P) | The Honorable Gregory Klaus, Bastrop County Judge, 804 Pecan Street, Bastrop, TX 78602 | Bastrop County Floodplain Management, 211 Jackson Street, Bastrop, TX 78602 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 ..... | 481193 |
| Collin ..... | City of Celina (25–06–1111P) | The Honorable Ryan Tubbs, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009 | City Hall, 142 North Ohio Street, Celina, TX 75009 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 ..... | 480133 |
| Collin ..... | City of Celina (25–06–1321P) | The Honorable Ryan Tubbs Mayor, City of Celina 142 North Ohio Street Celina, TX 75009 | City Hall 142 North Ohio Street Celina, TX 75009 | *https://msc.fema.gov/portal/advanceSearch* | May 4, 2026 ..... | 480133 |
| Collin ..... | City of Celina (25–06–2559P) | The Honorable Ryan Tubbs, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009 | City Hall, 142 North Ohio Street, Celina, TX 75009 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 ..... | 480133 |
| Collin ..... | City of Frisco (25–06–1569P) | The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034 | Engineering Development Department, 6101 Frisco Square Boulevard, Frisco, TX 75034 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 ..... | 480134 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Collin | Unincorporated areas of Collin County (25–06–1321P) | The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, 1st Floor, McKinney, TX 75071 | Collin County Engineering Building, 4690 Community Avenue, Suite 200, McKinney, TX 75071 | *https://msc.fema.gov/portal/advanceSearch* | May 4, 2026 | 480130 |
| Denton | City of Celina (25–06–1900P) | The Honorable Ryan Tubbs, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009 | City Hall, 142 North Ohio Street, Celina, TX 75009 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 480133 |
| Denton | City of Fort Worth (25–06–0622P) | The Honorable Mattie Parker, Mayor, City of Fort Worth, 100 Fort Worth Trail, Fort Worth, TX 76102 | City Hall, 100 Fort Worth Trail, Fort Worth, TX 76102 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 480596 |
| Denton | Unincorporated areas of Denton County (25–06–0622P) | The Honorable Andy Eads Denton County Judge 1 Courthouse Drive Denton, TX 76208 | Denton County Development Services 3900 Morse Street Denton, TX 76208 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 480774 |
| Denton | Unincorporated areas of Denton County (25–06–1900P) | The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive Denton, TX 76208 | Denton County Development Services, 3900 Morse Street, Denton, TX 76208 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 480774 |
| Guadalupe | City of Cibolo (25–06–0322P) | The Honorable Mark Allen, Mayor, City of Cibolo, 200 South Main Street, Cibolo, TX 78108 | Public Works Department, 108 Cibolo Drive, Cibolo, TX 78108 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 27, 2026 | 480267 |
| Rockwall | City of Rockwall (25–06–0733P) | The Honorable Tim McCallum, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087 | City Hall, 385 South Goliad Street, Rockwall, TX 75087 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 24, 2026 | 480547 |
| Tarrant | City of Fort Worth (25–06–2323P) | The Honorable Mattie Parker, Mayor, City of Fort Worth, 100 Fort Worth Trail, Fort Worth, TX 76102 | Department of Transportation and Public Works, 100 Fort Worth Trail, Fort Worth, TX 76102 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 | 480596 |
| Wisconsin: | | | | | | |
| Kenosha | City of Kenosha (25–05–2231X) | The Honorable David Bogdala, Mayor, City of Kenosha, 625 52nd Street, Room 300, Kenosha, WI 53140 | City Hall, 625 52nd Street, Room 308, Kenosha, WI 53140 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 22, 2026 | 550209 |
| Kenosha | Unincorporated areas of Kenosha County (25–05–2231X) | The Honorable Samantha Kerkman, Kenosha County Executive, 1010 56th Street, Kenosha, WI 53140 | Kenosha County Center, 19600 75th Street, Suite 185–3, Bristol, WI 53104 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 22, 2026 | 550523 |
| Outagamie | Unincorporated areas of Outagamie County (24–05–2691P) | The Honorable Thomas M. Nelson, Executive, Outagamie County, 320 South Walnut Street, Appleton, WI 54911 | Outagamie County Government Center, 320 South Walnut Street, Appleton, WI 54911 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 21, 2026 | 550302 |

[FR Doc. 2026–09850 Filed 5–15–26; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Docket ID FEMA–2025–0002; Internal Agency Docket No. FEMA–B–2603]**

## Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The current effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these

changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Assistant Administrator, Federal Insurance Directorate, Resilience reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** David N. Bascom, Acting Director, Engineering and Modeling Division, Federal Insurance Directorate, Resilience, FEMA, 400 C Street SW, Washington, DC 20472, or (email) *david.bascom@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Elizabeth Asche,**

*Assistant Administrator, Federal Insurance Directorate, Resilience, Federal Emergency Management Agency, Department of Homeland Security.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Arizona: | | | | | | |
| Graham ..... | Town of Thatcher (24–09–0863P) | The Honorable Jenny Howard, Mayor, Town of Thatcher, 3700 West Main Street, Thatcher, AZ 85552 | Public Works Department, 3700 West Main Street, Thatcher, AZ 85552 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 30, 2026 ..... | 040117 |
| Graham ..... | Unincorporated areas of Graham County (24–09–0863P) | The Honorable Clay Mack, Chair, Graham County Board of Supervisors, 921 West Thatcher Boulevard, Safford, AZ 85546 | Graham County General Services Building, 921 West Thatcher Boulevard, Safford, AZ 85546 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 30, 2026 ..... | 040032 |
| Maricopa ..... | City of Buckeye (25–09–0055P) | The Honorable Eric Orsborn, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326 | City Hall, 945 North 215th Avenue, Suite 137, Buckeye, AZ 85326 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 ..... | 040039 |
| Maricopa ..... | City of Buckeye (25–09–0372P) | The Honorable Eric Orsborn, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326 | City Hall, 945 North 215th Avenue, Suite 137, Buckeye, AZ 85326 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 ..... | 040039 |
| Maricopa ..... | City of Buckeye (25–09–0623P) | The Honorable Eric Orsborn, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326 | City Hall, 945 North 215th Avenue, Suite 137, Buckeye, AZ 85236 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 ..... | 040039 |
| Maricopa ..... | City of Chandler (25–09–0313P) | The Honorable Kevin Hartke, Mayor, City of Chandler, 175 South Arizona Avenue, Chandler, AZ 85225 | City Hall, 175 South Arizona Avenue, Chandler, AZ 85225 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 9, 2026 ..... | 040040 |
| Maricopa ..... | City of Glendale (25–09–0021P) | The Honorable Jerry P. Weiers, Mayor, City of Glendale, 9494 West Maryland Avenue, Glendale, AZ 85305 | City Hall, 200 West Washington Street, Phoenix, AZ 85003 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 10, 2026 ..... | 040045 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Maricopa ..... | City of Phoenix (25–09–0641P) | The Honorable Kate Gallego, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003 | City Hall, 200 West Washington Street, Phoenix, AZ 85003 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 10, 2026 ..... | 040051 |
| Maricopa ..... | City of Scottsdale (25–09–0723P) | The Honorable Lisa Borowsky, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251 | Stormwater and Floodplain Management, 7447 East Indian School Road, Scottsdale, AZ 85251 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 30, 2026 ..... | 045012 |
| Maricopa ..... | Unincorporated areas of Maricopa County (25–09–0021P) | Jennifer Pokorski, Maricopa County Manager, 301 West Jefferson Street, Phoenix, AZ 85003 | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 10, 2026 ..... | 040037 |
| Maricopa ..... | Unincorporated areas of Maricopa County (25–09–0055P) | Jennifer Pokorski, Maricopa County Manager, 301 West Jefferson Street, Phoenix, AZ 85003 | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 ..... | 040037 |
| Maricopa ..... | Unincorporated areas of Maricopa County (25–09–0623P) | Jennifer Pokorski, Maricopa County Manager, 301 West Jefferson Street, Phoenix, AZ 85003 | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 ..... | 040037 |
| Pima ..... | City of Tucson (23–09–0429P) | The Honorable Regina Romero, Mayor, City of Tucson, 255 West Alameda Street, Tucson, AZ 85701 | Planning and Development Services, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 13, 2026 ..... | 040076 |
| Pima ..... | Unincorporated Areas of Pima County (23–09–0429P) | Jan Lesher, County Administrator, Pima County, 115 North Church Avenue, Suite 231,Tucson, AZ 85701 | Pima County Regional Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 13, 2026 ..... | 040073 |
| Pinal ..... | Town of Florence (25–09–0443P) | The Honorable Keith Eaton, CBO, CFM, CFO, Mayor, Town of Florence, 775 North Main Street, Florence, AZ 85132 | Town of Florence, 775 North Main Street, Florence, AZ 85132 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 ..... | 040084 |
| California: | | | | | | |
| Alameda ..... | City of Livermore (24–09–0948P) | Marianna Burch, City Manager, City of Livermore, 1051 South Livermore Avenue, Livermore, CA 94550 | City Hall, 1051 South Livermore Avenue,Livermore, CA 94550 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 29, 2026 ..... | 060008 |
| Alameda ..... | City of Pleasanton (24–09–0948P) | The Honorable Jack Balch, Mayor, City of Pleasanton, P.O. Box 520, Pleasanton, CA 94566 | City Hall, 123 Main Street, Pleasanton, CA 94566 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 29, 2026 ..... | 060012 |
| Alameda ..... | Unincorporated areas of Alameda County (24–09–0948P) | Susan S. Muranishi, Alameda County Administrator, 1221 Oak Street, Oakland, CA 94612 | Alameda County Public Works Agency, 399 Elmhurst Street, Hayward, CA 94544 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 29, 2026 ..... | 060001 |
| Contra Costa .. | City of Concord (25–09–0389P) | The Honorable Carlyn Obringer, Mayor, City of Concord, 1950 Parkside Drive, Concord, CA 94519 | City Hall, 1950 Parkside Drive, Concord, CA 94519 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 22, 2026 ..... | 065022 |
| Contra Costa .. | Unincorporated areas of Contra Costa County (25–09–0389P) | Monica Nino, Contra Costa County Administrator, 1025 Escobar Street, Martinez, CA 94553 | Contra Costa County Public Works Department, 255 Glacier Drive, Martinez, CA 94553 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 22, 2026 ..... | 060025 |
| Fresno ..... | Unincorporated areas of Fresno County (26–09–0081P) | Paul Nerland, Fresno County Administrative Officer, 2220 Tulare Street, 6th Floor, Fresno, CA 93721 | Fresno County Clerk Office, 2220 Tulare Street, Fresno, CA 93721 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 30, 2026 ..... | 065029 |
| Orange ..... | Unincorporated areas of Orange County (25–09–0245P) | Michelle Aguirre, CEO, Orange County, 400 West Civic Center Drive, Santa Ana, CA 92701 | Orange County Public Works, 601 North Ross Street, Santa Ana, CA 92701 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 6, 2026 ..... | 060212 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Placer | City of Lincoln (24–09–1115P) | The Honorable Holly Andreatta, Mayor, City of Lincoln, 600 6th Street, Lincoln, CA 95648 | City Hall, 600 6th Street, Lincoln, CA 95648 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 | 060241 |
| Placer | Unincorporated areas of Placer County (24–09–1115P) | Daniel Chatigny, County Executive Officer, Placer County, 175 Fulweiler Avenue, Auburn, CA 95603 | Placer County, Public Works Department, 3091 County Center Drive, Auburn, CA 95603 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 | 060239 |
| Riverside | Unincorporated areas of Riverside County (24–09–0652P) | The Honorable V. Manuel Perez, Chair, Riverside County Board of Supervisors, 4080 Lemon Street, 5th Floor, Riverside, CA 92501 | Riverside County Flood Control District Building, 1995 Market Street, Riverside, CA 92501 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 | 060245 |
| San Bernardino. | City of Colton (24–09–0652P) | The Honorable Frank J. Navarro, Mayor, City of Colton, 650 North La Cadena Drive, Colton, CA 92324 | Corporate Yard, 160 South 10th Street, Colton, CA 92324 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 | 060273 |
| Tulare. | City of Farmersville (25–09–0374P) | The Honorable Tina Hernandez, Mayor, City of Farmersville, 909 West Visalia Road, Farmersville, CA 93223 | City Hall, 909 West Visalia Road, Farmersville, CA 93223 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 29, 2026 | 060405 |
| Tulare | Unincorporated areas of Tulare County(25–09–0374P) | Jason T. Britt, County Administrative Officer, Tulare County, 2800 West Burrel Avenue, Visalia, CA 93291 | Tulare County, Administration Building, 2800 West Burrel Avenue, Visalia, CA 93291 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 29, 2026 | 065066 |
| Ventura | City of Camarillo (25–09–0983P) | Greg Ramirez, City Manager, City of Camarillo, 601 Carmen Drive, Camarilla, CA 93010 | City Hall, 601 Carmen Drive, Camarillo, CA 93010 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 9, 2026 | 065020 |
| Ventura | City of Thousand Oaks (25–09–0238P) | Andrew Powers, City Manager, City of Thousand Oaks, 2100 East Thousand Oaks Boulevard, Thousand Oaks, CA 91362 | City Hall, 2100 East Thousand Oaks Boulevard, Thousand Oaks, CA 91362 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 29, 2026 | 060422 |
| Ventura | Unincorporated areas of Ventura County (25–09–0983P) | The Honorable Janice S. Parvin, Chair, Board of Directors, Ventura County, 980 Enchanted Way, Suite 203, Simi Valley, CA 93065 | Ventura County Government Center, 800 South Victoria Avenue, Ventura, CA 93009 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 9, 2026 | 060413 |
| Colorado: | | | | | | |
| Adams | City of Thornton (25–08–0358P) | The Honorable Jan Kulmann, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229 | City Hall, 9500 Civic Center Drive,Thornton, CO 80229 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 10, 2026 | 080007 |
| Adams | Unincorporated areas of Adams County (25–08–0358P) | The Honorable Lynn Baca, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, Brighton, CO 80601 | Adams County Community and Economic Development, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 10, 2026 | 080001 |
| Arapahoe | Unincorporated areas of Arapahoe County (25–08–0088P) | The Honorable Leslie Summey, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120 | Arapahoe County, Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 | 080011 |
| Boulder | Unincorporated areas of Boulder County, (25–08–0480P) | The Honorable Marta Loachamin, Chair, Boulder County Board of Commissioners, Post Office Box 471, Boulder, CO 80306 | Boulder County Community, Planning and Permitting Building, 2045 13th Street, Boulder, CO 80302 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 13, 2026 | 080023 |
| Denver | City and County of Denver, (25–08–0088P) | The Honorable Mike Johnston, Mayor, City and County of Denver, 1437 North Bannock Street, Room 350, Denver, CO 80202 | City and County of Denver, Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 17, 2026 | 080046 |
| Idaho: | | | | | | |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Ada | City of Eagle (25–10–0597P) | The Honorable Brad Pike, Mayor, City of Eagle, 660 East Civic Lane, Eagle, ID 83616 | City Hall, 660 East Civic Lane, Eagle, ID 83616 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 | 160003 |
| Ada | City of Star (25–10–0597P) | The Honorable Trevor A. Chadwick, Mayor, City of Star, 10769 West State Street, Star, ID 83669 | City Hall, 10769 West State Street, Star, ID 83669 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 | 160236 |
| Ada | Unincorporated areas of Ada County (25–10–0597P) | The Honorable Rod Beck, Chair, Ada County Board of Commissioners, 200 West Front Street, Boise, ID 83702 | Ada County Courthouse, 200 West Front Street, Boise, ID 83702 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 23, 2026 | 160001 |
| Canyon | Unincorporated areas of Canyon County (24–10–0254P) | The Honorable Brad Holton, Chair, Canyon County Board of County Commissioners, 1115 Albany Street, Room 101, Caldwell, ID 83605 | Canyon County Development Services Department, 111 North 11th Avenue, Room 310, Caldwell, ID 83605 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 20, 2026 | 160208 |
| Nevada: | | | | | | |
| Clark | Unincorporated areas of Unincorporated Areas (25–09–0382P) | The Honorable Tick Segerblom, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155 | Clark County Clerk's Office, 500 South Grand Central Parkway, Las Vegas, NV 89155 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 14, 2026 | 320003 |
| Lyon | City of Fernley (25–09–0167P) | The Honorable Neal E. McIntyre, Mayor, City of Fernley, 595 Silver Lace Boulevard, Fernley, NV 89408 | Public Works Department, 595 Silver Lace Boulevard, Fernley, NV 89408 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 13, 2026 | 320038 |
| Oregon: | | | | | | |
| Benton | Unincorporated areas of Benton County (25–10–0121P) | Rachel McEneny, Benton County Administrator, P.O. Box 3020, Corvallis, OR 97339 | Benton County Community Development Department, 4500 Southwest Research Way, Corvallis, OR 97333 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 29, 2026 | 410008 |
| Clackamas | City of Happy Valley (25–10–0093P) | Jason Tuck, ICMA–CM, City Manager, City of Happy Valley, 1600 Southeast Misty Drive, Happy Valley, OR 97086 | City Hall, 1600 Southeast Misty Drive, Happy Valley, OR 97086 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 13, 2026 | 410026 |
| Washington | City of Tualatin (25–10–0157P) | Sherilyn Lombos, City Manager, City of Tualatin, 18880 Southwest Martinazzi Avenue, Tualatin, OR 97062 | City Offices, 18880 Southwest Martinazzi Avenue, Tualatin, OR 97062 | *https://msc.fema.gov/portal/advanceSearch* | April 15, 2026 | 410277 |
| North Dakota: Cass | City of Horace (25–08–0230P) | The Honorable Jeff Trudeau, Mayor, City of Horace, P.O. Box 99, Horace, ND 58047 | City Hall, 215 Park Drive East, Horace, ND 58047 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 13, 2026 | 380022 |
| South Dakota: | | | | | | |
| Lawrence | City of Spearfish (25–08–0037P) | The Honorable John Senden, Mayor, City of Spearfish, 625 North 5th Street, Spearfish, SD 57783 | City Hall, 625 North 5th Street, Spearfish, SD 57783 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 30, 2026 | 460046 |
| Meade | City of Sturgis (25–08–0221P) | The Honorable Kevin Forrester, Mayor, City of Sturgis, 1040 Harley-Davidson Way, Sturgis, SD 57785 | Administrative Building, 1040 Harley-Davidson Way, Sturgis, SD 57785 | *https://msc.fema.gov/portal/advanceSearch* | May 6, 2026 | 460055 |
| Utah: | | | | | | |
| Davis | City of Layton (24–08–0321P) | The Honorable Joy Petro, Mayor, City of Layton, 437 North Wasatch Drive, Layton, UT 84041 | Engineering Division, 437 North Wasatch Drive, Layton, UT 84041 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 14, 2026 | 490047 |
| Weber. | City of Ogden (25–08–0165P) | The Honorable Benjamin K. Nadolski, Mayor, City of Ogden, 2549 Washington Boulevard, Ogden, UT 84401 | City Hall, 2549 Washington Boulevard, Ogden, UT 84401 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 10, 2026 | 490189 |
| Washington: | | | | | | |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Date of modification | Community No. |
|---|---|---|---|---|---|---|
| Clark | City of Washougal (24–10–0232P) | David Scott, City Manager, City of Washougal, 1701 C Street, Washougal, WA 98671 | City Hall, 1701 C Street, Washougal, WA 98671 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 9, 2026 | 530028 |
| Clark | Unincorporated areas of Clark County (24–10–0232P) | Kathleen Otto, County Manager, Clark County, P.O. Box 9810, Vancouver, WA 98666 | Clark County Public Service Center, 1300 Franklin Street, Vancouver, WA 98666 | *https://msc.fema.gov/portal/advanceSearch* | Apr. 9, 2026 | 530024 |

[FR Doc. 2026–09847 Filed 5–15–26; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0047]**

### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Employment Eligibility Verification

**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 July 17, 2026.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0047 in the body of the letter, the agency name and Docket ID USCIS–2006–0068. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0068.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, John R. Pfirrmann-Powell, Acting Deputy 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–2006–0068 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

#### Overview of This Information Collection:

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–9; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit; Not-for-profit institutions. The Form I–9 was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, making employment of unauthorized aliens unlawful and diminishing the flow of illegal workers in the United States.

(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 annual respondents for the information collection I–9 Employers is 62,063,950 and the estimated hour burden per response is 0.35 hours; the estimated total number of annual respondents for the information collection I–9 Employees is 62,063,950 and the estimated hour burden per response is 0.15 hours; and the estimated total number of annual respondents for the information collection by Record Keeping is 27,200,000 and the estimated hour burden per response is 0.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden associated with this collection is 35,655,796 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. Any requirements to support the verification process are already available through other approved collections of information that may be employment related or occur as a part of the hiring process. There is no submission to USCIS of materials which eliminates mailing and photocopying costs.

Dated: May 12, 2026.

**John R. Pfirrmann-Powell,**

*Acting Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2026–09846 Filed 5–15–26; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0160]**

### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: E-Verify+

**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 July 17, 2026.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0160 in the body of the letter, the agency name and Docket ID USCIS–2023–0011. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2023–0011.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, John R. Pfirrmann-Powell, Acting Deputy 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–2023–0011 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* E-Verify+.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* E-Verify+; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit; Not-for-profit institutions. E-Verify+ was developed as a demonstration project to further integrate the Form I–9, Employment Eligibility Verification, process with the E-Verify electronic employment eligibility confirmation process to create a more secure and less burdensome employment eligibility verification process overall for employees and employers.

(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 annual respondents for the information collection E-Verify+ Employers, Recruiters and Referrers for a fee, and State Employment Agencies is 189,015 and the estimated hour burden per response is 0.05 hours; the estimated total number of annual respondents for the information collection E-Verify+ Employees (New User Account Creation) is 11,668,584 and the estimated burden per response is 0.17 hours; the estimated total number of annual respondents for the information collection E-Verify+ Employees (Employment Eligibility Verification) is 13,231,050 and the estimated burden per response is 0.08 hours; and the estimated total number of annual respondents for the information collection by Record Keeping and Audits is 13,248,648 and the estimated burden per response is 0.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden associated with this collection is 5,955,966 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. This is a voluntary program. Any requirements to support the verification process are already available through other approved collections of information that may be employment related or occur as a part of the hiring process

Dated: May 13, 2026.

**John R. Pfirrmann-Powell,**

*Acting Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2026–09845 Filed 5–15–26; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–R7–MB–2026–1884; FXMB12310700000–267–FF07M01000; OMB Control Number 1018–0168]**

### Agency Information Collection Activities; Northeast Region Alaska Native Handicrafts

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act, we, the U.S. Fish and Wildlife Service, are proposing to renew an information collection without change.

**DATES:** Comments will be accepted on or before July 17, 2026. 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. To ensure your comment is received and considered, you must submit it using one of the methods identified in the **ADDRESSES** section of this document. Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered.

**ADDRESSES:** *Comment submission:* All submissions must include the docket number [FWS–R7–MB–2026–1884] for this document. You must submit comments using one of the following methods:

- *Electronic submission:* Federal eRulemaking Portal at: *https://www.regulations.gov.* In the Search box, enter FWS–R7–MB–2026–1884, which is the docket number for this action. Then click the Search button. On the resulting page, you may submit a comment by clicking on ''Comment.'' Please ensure that you have found the correct document before submitting your comments.
- *U.S. mail:* Service Information Collection Clearance Officer, Attn: Docket No. FWS–R7–MB–2026–1884, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered. We will not accept comments via email, fax, or hand delivery. We are not required to consider comments that are submitted after the comment period ends or that are submitted via a method outside of these instructions. Comments containing profanity, vulgarity, threats, or other inappropriate content will not be considered. We will post all comments at *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Madonna Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the information collection request (ICR) at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

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. As part of our continuing effort to reduce paperwork and respondent burdens, we are soliciting comments from the public and other Federal agencies on the proposed ICR described below. We are especially interested in public comments addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The Migratory Bird Treaty Act of 1918 (16 U.S.C. 712(1)) authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.'' Article II(4)(b) of the Protocol between the United States and Canada amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States (Protocol) provides a legal basis for Alaska Native people to be able to sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. The Protocol also dictates that sales would be allowed in strictly limited situations, pursuant to a regulation by a competent authority in cooperation with management bodies. The Protocol does not authorize the taking of migratory birds for commercial purposes.

In 2017, we issued a final rule (July 24, 2017, 82 FR 34263), developed under a co-management process

involving the Alaska Department of Fish and Game and Alaska Native representatives, that amended the permanent migratory bird subsistence harvest regulations at 50 CFR 92.6 to enable Alaska Native people to sell authentic native articles of handicraft or clothing that contain inedible byproducts from migratory birds that were taken for food during the Alaska migratory bird subsistence harvest season. The sale by Alaska Native people of a limited number of handicrafts containing inedible migratory bird parts provides a small source of additional income that we conclude is necessary for the ''essential needs'' of Alaska Native people in predominantly rural Alaska. This limited opportunity for sale is consistent with the language of the Protocol and is expressly noted in the Letter of Submittal dated May 20, 1996, for the Treaty Protocol, specifically Article II(4)(b) of the Protocol, to be consistent with the customary and traditional uses of Alaska Native people. The activity by Alaska Native people is also consistent with the preservation and maintenance of migratory bird stocks.

Alaska Native artists will show eligibility with a Tribal enrollment card, Bureau of Indian Affairs card, or membership in the Silver Hand program. The State of Alaska Silver Hand program helps Alaska Native artists promote their work in the marketplace and enables consumers to identify and purchase authentic Alaska Native art. The Silver Hand insignia indicates that the artwork on which it appears is created by hand in Alaska by an individual Alaska Native artist. Only original contemporary and traditional Alaska Native artwork, not reproductions or manufactured work, may be identified and marketed with the Silver Hand insignia. To be eligible for a 2-year Silver Hand permit, an Alaska Native artist must be a full-time resident of Alaska, be at least 18 years old, and provide documentation of membership in a federally recognized Alaska Native tribe. The Silver Hand insignia may only be attached to original work that is produced in the State of Alaska.

The final rule requires that FWS Form 3–2484 (a simple certification which is not subject to the PRA) or a Silver Hand insignia accompany each Alaska Native article of handicraft or clothing that contains inedible migratory bird parts. It also requires all consignees, sellers, and purchasers to retain this documentation with each item and produce it upon the request of a law enforcement officer. The final rule also requires that artists maintain adequate records of the certification or Silver Hand insignia with each item and requires artists and sellers/consignees to provide the documentation to buyers. These recordkeeping and third-party notification requirements are subject to the PRA and require OMB approval.

The public may request copies of a Form 3–2484 contained in this information collection by sending a request to the Service Information Collection Clearance Officer (see **ADDRESSES**).

*Title of Collection:* Alaska Native Handicrafts, 50 CFR 92.6.

*OMB Control Number:* 1018–0168.

*Form Numbers:* 3–2484.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Individuals and private sector (businesses).

*Total Estimated Number of Annual Respondents:* 2 (placeholder of 1 respondent associated with the regulatory requirement for each respondent category).

*Total Estimated Number of Annual Responses:* 2.

*Estimated Completion Time per Response:* 5 minutes.

*Total Estimated Number of Annual Burden Hours:* 0.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Madonna Baucum,**

*Information Collection Clearance Officer, U.S. Fish and Wildlife Service.*

[FR Doc. 2026–09896 Filed 5–15–26; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–DTS#–42725; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting electronic comments on the significance of properties nominated before April 25, 2026, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by June 2, 2026.

**ADDRESSES:** Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State≤.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 2013, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 2013, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 25, 2026. Pursuant to 36 CFR 60.13, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

*KEY:* State, County, Property Name, Multiple Name(if applicable), Address/Boundary, City, Vicinity, Reference Number.

**ARKANSAS**

**Pulaski County**

Sorrells-Thompson House, (World War II Home Front Efforts in Arkansas, MPS), 6317 Longwood Road, Little Rock, MP100013088

**OKLAHOMA**

**Noble County**

Kerr Homestead Dugout, Address Restricted, Morrison vicinity, SG100013089

**Woods County**

Ranger Theater, 416 Flynn Street, Alva, SG100013090

**SOUTH CAROLINA**

**Charleston County**

River Road, East of the intersection of Bohicket Road and Betsy Kerrison Parkway (S–10–20) and east of the intersection of State Road S–10–54 (Chisolm Road) and Main Road, Johns Island, SG100013094

Additional documentation has been received for the following resource(s):

**IOWA**

**Scott County**

Iowa Soldiers' Orphans' Home (Additional Documentation), Address Restricted, Davenport, AD82002641

**KENTUCKY**

**Montgomery County**

William Smith House (Name Change, Additional Documentation), SR 1, Mount Sterling, AD80001660

(Authority: 36 CFR 60.13)

**Sherry A. Frear,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

[FR Doc. 2026–09886 Filed 5–15–26; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–CONC–36347; PPWOBSADC0, PPMVSCS1Y.Y00000]**

### Notice of Intent To Extend Concession Contracts at Big South Fork National River & Recreation Area and Fire Island National Seashore

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service (NPS) announces its intent to extend the concession contracts identified in the table below for operations at Big South Fork National River & Recreation Area and Fire Island National Seashore. The NPS will extend each listed contract until the ''Extension Expiration Date'' column or until a new contract becomes effective, whichever occurs first.

**DATES:** The National Park Service intends that the concession contract extensions will be effective on the dates shown in the tables below, as applicable.

**FOR FURTHER INFORMATION CONTACT:** Kurt Rausch, Program Chief, Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Washington, DC 20240; Telephone: 202–513–7156.

**SUPPLEMENTARY INFORMATION:** Under 36 CFR 51.23, NPS proposes to extend each contract listed in table 1 until the date shown in the ''Extension Expiration Date'' column or until the effective date of a new contract, whichever comes first. NPS determined that the proposed extensions are necessary to avoid an interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such an interruption. The extension of the existing contracts does not confer or affect any rights with respect to the award of new contracts.

The publication of this notice reflects the intent of the NPS but does not bind NPS to extend the contracts listed below.

TABLE 1—CONCESSION CONTRACTS EXTENDED UNTIL THE EXPIRATION DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT, WHICHEVER COMES FIRST

| Park unit | CONCID | Concessioner | Extension effective date | Extension expiration date |
|---|---|---|---|---|
| Big South Fork NR&RA | BISO001–14 | Wilderness Lodging, LLC | 6/17/2026 | 6/16/2027 |
| Fire Island NS | FIIS007–22 | Love Watch Hill & Sailors Haven, Inc | 1/1/2027 | 12/31/2028 |

**Nicole Woody,**

*Acting Associate Director, Business Services.*

[FR Doc. 2026–09904 Filed 5–15–26; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–776 and 731–TA–1761 (Final)]**

### Unwrought Palladium From Russia; Revised Schedule for the Subject Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**DATES:** May 14, 2026.

**FOR FURTHER INFORMATION CONTACT:** Nitin Joshi ((202) 708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** Effective February 19, 2026, the Commission established a schedule for the conduct of the final phase of the subject investigations (91 FR 8899, February 24, 2026). The Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows. On May 22, 2026, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 27, 2026, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules.

For further information concerning this proceeding see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

*Authority:* These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 14, 2026.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2026–09934 Filed 5–15–26; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–1714]**

### Bulk Manufacturer of Controlled Substances Application: Benuvia Operations, LLC

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Benuvia Operations, LLC. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 17, 2026. Such persons may also file a written request for a hearing on the application on or before July 17, 2026.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on April 22, 2026, Benuvia Operations, LLC., 3950 North Mays Street, Round Rock, Texas 78665, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug Code | Schedule |
|---|---|---|
| Ibogaine | 7260 | I |
| Lysergic acid diethylamide | 7315 | I |
| Marihuana Extract | 7350 | I |
| Tetrahydrocannabinols | 7370 | I |
| Mescaline | 7381 | I |
| 3,4-Methylenedioxyamphetamine | 7400 | I |
| 3,4-Methylenedioxymethamphetamine | 7405 | I |
| 5-Methoxy-N–N-dimethyltryptamine | 7431 | I |
| Dimethyltryptamine | 7435 | I |
| Psilocybin | 7437 | I |
| Psilocyn | 7438 | I |
| 5-Methoxy-N,N-diisopropyltryptamine | 7439 | I |
| Amphetamine | 1100 | II |
| Lisdexamfetamine | 1205 | II |
| Cocaine | 9041 | II |
| Ecgonine | 9180 | II |
| Remifentanil | 9739 | II |

The company plans to bulk manufacture the listed controlled substances for internal research and dosage formulation development. No other activities for these drug codes are authorized for this registration.

**Thomas Prevoznik,**

*Deputy Assistant Administrator.*

[FR Doc. 2026–09930 Filed 5–15–26; 8:45 am]

**BILLING CODE;P**

## DEPARTMENT OF JUSTICE

**[OMB 1140–0NEW]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested; New Information Collection: Title—Cigarettes and Smokeless Tobacco Record-Keeping and Reporting Requirements

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following new information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** ATF encourages comments on this information collection. You may submit written comments until midnight on July 17, 2026.

**ADDRESSES:** Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to Andrew Blacker, Office of Chief Counsel, by email to *andrew.blacker@atf.gov,* or by mail to 99 New York Avenue NE; Washington, DC 20226. Identify comments by information collection title ''Cigarettes and Smokeless Tobacco Record-Keeping and Reporting Requirements.''

You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection.*

**FOR FURTHER INFORMATION CONTACT:** If you have questions or need a different copy of the proposed information collection instrument with instructions or additional information, contact: Andrew Blacker, Office of Chief Counsel, either by mail at 99 New York Avenue NE; Washington, DC 20226, by email at *Andrew.blacker@atf.gov,* or by telephone at 202–648–9446.

**SUPPLEMENTARY INFORMATION:** We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including

validity of the methodology and assumptions used;
—Evaluate whether, and if so, how, the quality, utility, and clarity of the collected information can be enhanced; and
—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

**Overview of This Information Collection:**

1. *Abstract:* The Contraband Cigarette Trafficking Act and ATF regs at 27 CFR 646 require that each person who ships, sells, or distributes cigarettes or smokeless tobacco must keep copies of invoices, bills of lading, or other suitable commercial records relating to each disposition of more than 10,000 cigarettes or smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages, and must report the purchaser or recipient's name; destination street address; and quantity of cigarettes distributed.

2. *Type of information collection:* new information collection.

3. *Title of the form/collection:* Cigarettes and Smokeless Tobacco Record-Keeping and Reporting Requirements.

4. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number:* none.

*Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice.

5. *Affected public who will be asked or required to respond, as well as the obligation to respond:*

*Affected public:* private sector-for-profit institutions.

*Obligation to respond:* mandatory per the Patriot Improvement and Reauthorization Act of 2005, which amended the Contraband Cigarette Trafficking Act (CCTA) (18 U.S.C. 2341–2346).

6. *Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 14,311 respondents retain information to be in compliance with this IC once annually. However, it will not take respondents any time to respond because, to comply with this information collection, respondents simply retain their regular commercial business records for five years.

7. *Estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 0 total hours, which is equal to 14,311 (total respondents) * 0 (# of responses per respondent) * 0 (0 minutes).

8. *Estimate of the total annual other cost burden associated with the collection, if applicable:* $0.

ESTIMATED TOTAL HOURLY BURDEN

| Activity | Number of respondents | Frequency | Total annual responses | Time per response (hours) | Total annual burden (hours) |
|---|---|---|---|---|---|
| Record Keeping | 14,311 | 1 | 14,311 | 0 | 0 |
| Reporting to ATF | 14,311 | 0 | 0 | 0 | 0 |

*Revisions to this information collection:*

This is a new information collection.

If you require additional information, contact: Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Management Two Constitution Square, 145 N Street NE, 4W–218; Washington, DC.

Dated: May 14, 2026.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2026–09878 Filed 5–15–26; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

**[OMB Control No. 1240–0016].**

### Proposed Revision of Information Collection: Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlement

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor (DOL)is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled ''Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlement''. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** All comments must be received on or before [July 17, 2026.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

*Electronic Submissions:* Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for WCPO–2026–0331. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.

• If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

*Written/Paper Submissions:* Submit written/paper submissions in the following way:

• *Mail/Hand Delivery:* Mail or visit DOL–OWCP, Division of Federal Employees' Compensation, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210.

• OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Anjanette Suggs, Office of Workers' Compensation Programs, at *suggs.anjanette@dol.gov@dol.gov* (email); (202) 354–9660 (phone).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The information requested on the CA–1032 is obtained from each claimant receiving continuing compensation on the periodic disability roll. The form requests information on the claimant's earnings, dependents, third party settlements, and other Federal benefits received. The Office of Workers' Compensation Programs (OWCP) sends this form out each year to every claimant on the disability roll. This information is necessary because the Federal Employees' Compensation Act (FECA) states:

(1) Compensation must be adjusted to reflect a claimant's earnings while in receipt of benefits (5 U.S.C. 8106).

(2) Compensation is payable at the augmented rate of 75 percent only if the claimant has one or more dependents as defined by the FECA (5 U.S.C. 8110).

(3) Compensation may not be paid concurrently with certain benefits from other Federal Agencies, such as the Office of Personnel Management, Social Security, and the Veterans Administration (5 U.S.C. 8116). At times, benefits may be reduced.

(4) Compensation must be adjusted to reflect any settlement from a third party responsible for the injury for which the claimant is being paid compensation (5 U.S.C. 8132).

(5) An individual convicted of any violation related to fraud in the application for, or receipt of, any compensation benefit, forfeits (as of the date of such conviction) any entitlement to such benefits, for any injury occurring on or before the date of conviction (5 U.S.C. 8148 (a)).

(6) No Federal compensation benefit can be paid to any individual for any period during which such individual is incarcerated for any felony conviction (5 U.S.C. 8148 (b)(1)).

In accordance with 20 CFR 10.528, OWCP periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee, who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss under 5 U.S.C. 8105 or 8106 is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.

*See: https://www.dol.gov/owcp/dfec/regs/statutes/feca.htm*

## II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection related to the Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlement. OWCP is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP/DFEC's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP located at 200 Constitution Avenue NW, Room S–3323, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

## III. Current Actions

This information collection request concerns the Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlement, Form CA–1032. OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Office of Workers' Compensation Programs.

*OMB Number:* 1240–0016.

*Affected Public:* Individuals or Households.

*Number of Respondents:*42,219.

*Number of Responses:* 42,219.

*Annual Burden Hours:* 14,059.

*Annual Respondent or Recordkeeper Cost:* $24,179.00.

OWCP Forms: Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlement.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

**Anjanette Suggs,**

*Certifying Officer.*

[FR Doc. 2026–09835 Filed 5–15–26; 8:45 am]

**BILLING CODE 4510–CH–P**

## MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m. to 3:00 p.m. (EDT), Tuesday, June 2, 2026.

**PLACE:** 1717 K Street NW, 9th Floor, McKay Meeting Room, Washington, DC 20006.

**STATUS:** Parts of this regular meeting of the Board of Trustees will be open to the public. The rest of the meeting will be closed to the public. Members of the public who would like to observe the public session of this meeting may request remote access by contacting Sara Moeller at *moeller@udall.gov* prior to June 2, 2026, to obtain the teleconference connection information.

**MATTERS TO BE CONSIDERED:** (1) Call to Order and Chair's Remarks; (2) Trustees' Remarks; (3) Executive Director's Remarks; (4) Consent Agenda Approval (Minutes of the December 16, 2025, Board of Trustees Meeting; Board Reports submitted for Education Programs, Finance and Internal Controls, John S. McCain III National Center for Environmental Conflict Resolution, and Udall Center for Studies in Public Policy, including the Native Nations Institute for Leadership, Management, and Policy and Special Collections at the University of Arizona Libraries; and Board takes notice of any new and updated personnel policies and internal control methodologies); (5) Vote on Proposed Executive Session (solely to discuss internal personnel

rules and practices of the agency, and at least a portion of that discussion is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy); (6) University of Arizona Partner Program Updates; (7) IT Security Audit Update; (8) Education Programs 30th Anniversary Updates; (9) Annual Trustee Ethics Training; and (10) Executive Session.

**PORTIONS OPEN TO THE PUBLIC:** All agenda items except as noted below.

**PORTIONS CLOSED TO THE PUBLIC:** Executive Session.

**CONTACT PERSON FOR MORE INFORMATION:** Sara Moeller, Chief Operating Officer, 434 E University Blvd., Suite 300, Tucson, AZ 85705, (520) 345–3562.

Dated: May 14, 2026.

**David P. Brown,**

*Executive Director, Morris K. Udall and Stewart L. Udall Foundation.*

[FR Doc. 2026–09939 Filed 5–14–26; 4:15 pm]

**BILLING CODE 6820–FN–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[NASA Document Number: 26–027; NASA Docket Number: NASA–2026–0168]**

### Name of Information Collection: Financial Assistance Awards/Grants and Cooperative Agreements

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of revision of a previously approved information collection.

**SUMMARY:** NASA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Comments are due by July 17, 2026.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice at *http://www.regulations.gov* and search for NASA Docket NASA–2026–0168.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546, phone 256–714–8575, or email *hq-ocio-pra-program@mail.nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This information collection is required to assist NASA make informed decisions when selecting proposals to carry out its mission, as well as to ensure proper accounting of Federal funds and property awarded under financial assistance awards in accordance with Title 2 of the Code of Federal Regulations (CFR) Part 200 (2 CFR 200) and 2 CFR part 1800 for awards issued to non-profits, institutions of higher education, government, and commercial firms.

NASA is committed to effectively performing the Agency's communication function in accordance with Section 203(a)(3) of the National Aeronautics and Space Act of 1958 (as amended) dictates that NASA ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof'', and to enhance public understanding of, and participation in, the nation's aeronautical and space program.

#### II. Methods of Collection

Electronic.

#### III. Data

*Title:* Financial Assistance Awards/Grants and Cooperative Agreements.

*OMB Number:* 2700–0092.

*Type of review:* Revision of a Previously Approved Information Collection.

*Affected Public:* Non-profits, institutions of higher education, government, and for-profit entities.

*Estimated Annual Number of Activities:* 300.

*Estimated Number of Respondents per Activity:* 36.

Annual Responses: 10,800.

*Estimated Time per Response:* 120 hours.

*Estimated Total Annual Burden Hours:* 1,296,000.

#### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Stayce Hoult,**

*PRA Clearance Officer, National Aeronautics and Space Administration.*

[FR Doc. 2026–09882 Filed 5–15–26; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[NASA Document Number: 26–028]**

### Name of Information Collection: NASA STEM Gateway (Universal Registration and Data Management System)

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Revision of a currently approved collection.

**SUMMARY:** NASA, as part of its continuing effort to reduce paperwork and respondent burden, under the Paperwork Reduction Act, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

**DATES:** Comments are due by June 17, 2026.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review-Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546 or email *hq-ocio-pra-program@mail.nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

Based on continued user feedback provided during operations of the NASA STEM Gateway (Universal Registration and Data Management System) and increased utilization,

NASA plans to develop updates/enhancements to improve information collected in compliance with policy guidance and the overall user experience in the NASA STEM Gateway. The NASA STEM Gateway (Universal Registration and Data Management System) is a comprehensive tool designed to allow learners (*i.e.,* students, educators, non-students or educators, and awardee principal investigators) to apply to NASA STEM engagement opportunities (*e.g.,* internships, fellowships, challenges, educator professional development, experiential learning activities, etc.) in a single location. NASA personnel manage the selection of applicants and implementation of engagement opportunities within the NASA STEM Gateway. The information collected will be used by the NASA Office of STEM Engagement (OSTEM) and other NASA offices to review applications for participation in NASA STEM engagement opportunities. The information is reviewed by OSTEM project and activity managers, as well as NASA mentors who would be hosting students. This information collection will consist of profile information (*e.g.,* name, contact information, citizenship, education or affiliate organization, etc.) and the NASA STEM Engagement opportunity application information. In addition to supporting applicant review and participant selection, individual learner profile data will enable NASA OSTEM to fulfill federally mandated reporting on its STEM engagement activities and report relevant participant information as needed for Agency performance goals and success criteria (annual performance indicators).

**II. Methods of Collection**

The NASA STEM Gateway is an online/web-based tool built on a Salesforce platform.

**III. Data**

*Title:* NASA STEM Gateway (Universal Registration and Data Management System).

*OMB Number:* 2700–0180.

*Type of review:* Renewal of a previously approved information collection

*Affected Public:* Individuals. Eligible students or educators, and/or awardee principal investigators may voluntarily apply for an internship or fellowship experience at a NASA facility, or register for a STEM engagement opportunity (*e.g.,* challenges, educator professional development, experiential learning activities, etc.). Parents/caregivers of eligible student applicants (at least 14 years of age but under the age of 18) may voluntarily provide consent for their eligible student applicants to apply.

*Estimated Annual Number of Activities:* 50.

*Estimated Number of Respondents per Activity:* 6,300.

*Annual Responses:* 315,000 responses.

*Estimated Time per Response:* 20 minutes (avg).

*Estimated Total Annual Burden Hours:* 105,000 hours.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Stayce Hoult,**

*PRA Clearance Officer, National Aeronautics and Space Administration.*

[FR Doc. 2026–09888 Filed 5–15–26; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–259, 50–260, 50–296, and 72–052; NRC–2026–2509]**

### Tennessee Valley Authority; Browns Ferry Nuclear Power Plant; Independent Spent Fuel Storage Installation; Exemption

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) issued a one-time exemption to Tennessee Valley Authority (TVA), permitting Browns Ferry Nuclear Power Plant (BFN) to allow use of the Vacuum Drying System (VDS) for one Holtec FW (CoC–1032) system canister (MPC–0431), despite exceeding the per assembly Region 2 decay heat limit per the requirements of CoC 1032 Appendix B, Table 2.3–4, ''MPC–89 Heat Load Data''. This exemption will allow BFN to complete the loading of the MPC in the cask for ISFSI storage.

**DATES:** The exemption was issued on May 11, 2026.

**ADDRESSES:** Please refer to Docket ID NRC–2026–2509 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–2509. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the exemption is attached.

*Authority:* 42 U.S.C. 2011 *et seq.*

Dated: May 14, 2026.

For the Nuclear Regulatory Commission.

**Yoira Diaz Sanabria,**

*Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety, and Safeguards.*

*Attachment—Exemption.*

**NUCLEAR REGULATORY COMMISSION**

**Docket Nos. 50–259, 50–260, 50–296, and 72–052; Tennessee Valley Authority (TVA); Browns Ferry Nuclear Power Plant (BFN); Independent Spent Fuel Storage Installation; Exemption**

**I. Background**

TVA is the holder of Facility Operating Licenses Nos. DPR–33, DPR–52, and DPR–68, which authorize operation of the Browns Ferry Nuclear Power Plant (BFN), units 1, 2, and 3 in Tennessee, pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities.'' The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect. Consistent with 10 CFR part 72, subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites,'' a general license is issued for the storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. TVA is authorized to operate nuclear power reactors under 10 CFR part 50 and holds a 10 CFR part 72 general license for storage of spent fuel at the BFN ISFSI. Under the terms of the general license, TVA stores spent fuel at its BFN ISFSI using the HI–STORM FW System in accordance with Certificate of Compliance (CoC) No. 1032, Amendment No. 0 Revision 1.

**II. Request/Action**

By letter dated May 10, 2026 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML26130A001), TVA requested an expedited exemption from the requirements of 10 CFR 72.212(b)(3), 72.212(b)(5)(i), and 72.212(b)(11) that require BFN to comply with the terms, conditions, and specifications of CoC No. 72–1032, Amendment No. 0 Revision 1 (ML16112A306)(Package) and allow use of Vacuum Drying System (VDS) for Multi-Purpose Canister (MPC)-0431 prior to loading into a HI–STORM FW storage cask. If approved, TVA's exemption request would accordingly allow BFN to complete the loading of the MPC in the cask for ISFSI storage, despite exceeding the per assembly Region 2 decay heat limit per the requirements of CoC 1032 Appendix B Table 2.3–4, ''MPC–89 Heat Load Data''. TVA uses the Holtec HI–STORM FW MPC storage system (model MPC–89CBS), certified under CoC No. 1032, Amendment 0, Revision 1, at the BFN under its general license. During dry cask campaign 18, TVA identified a failure of the Forced Helium Dehydration (FHD) system while processing MPC–0431. Following completion of fuel loading, lid installation, and hydrostatic testing, blowdown was performed as expected; however, upon initiating drying operations, the FHD blower experienced elevated differential pressure and sheath temperature, resulting in repeated system trips. Subsequent borescope inspections verified proper engagement of the vent and drain port plugs, and TVA determined that the MPC drain line had become disengaged from the lid coupling and had settled onto the baseplate. This condition restricted airflow and prevented effective FHD drying and helium backfill.

As an interim measure, TVA isolated MPC–0431 under a helium blanket within the HI–TRAC VW transfer cask, placing the canister in a temporary analyzed condition. TVA notes that this off-normal configuration requires continuous monitoring of canister pressure and temperature and could introduce additional operational risk, including increased industrial hazards, radiological dose, and dependence on temporary confinement boundaries such as valve seats and O-rings. TVA consulted with the certificate holder, Holtec International, which recommended the use of the VDS as an alternative moisture-removal method. TVA notes that VDS applies vacuum at each port and is capable of achieving drying and helium backfill even in the presence of restricted flow through a single port. As explained in the application for expedited review, VDS equipment is expected to be available at BFN for moisture removal beginning May 13, 2026. This equipment is provided by Holtec for a limited time to support MPC processing.

Dry storage in the HI–STORM FW system is a passive design that provides the required safety functions of heat removal, criticality control, shielding, and confinement. TVA performed a site-specific, steady-state thermal evaluation for MPC–0431 under VDS conditions using the licensing-basis MPC–89 thermal model and the analytical methodology described in the HI–STORM FW Final Safety Analysis Report (FSAR).

For the evaluation, TVA applied a bounding heat-load distribution consisting of 0.256 kW per cell in Region 1, 0.440 kW per cell in Region 2, and 0.252 kW per cell in Region 3, for a total canister heat load of 29.98 kW, which is conservative relative to the actual configuration. The acceptance criteria required the peak cladding temperature to remain below the applicable limit in FSAR Table 2.2.3 for high-burnup fuel and all MPC component temperatures to remain below their respective short-term operational limits.

The staff reviewed TVA's steady-state thermal evaluation for VDS operation and finds that the calculated peak cladding temperature and all MPC component temperatures remain below the corresponding limits specified in Table 2.2.3 of the HI–STORM FW FSAR. Based on these results, the staff concludes that VDS drying of MPC–0431 at BFN can be conducted without imposed time restrictions. Therefore, an exemption is warranted to allow BFN to use VDS for MPC–0431 prior to loading into a HI–STORM FW storage cask, even though, the terms, conditions and specifications of the CoC will not be met.

**III. Discussion**

Pursuant to 10 CFR 72.7, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

*A. The Exemption Is Authorized by Law*

This exemption would allow TVA to deviate from Holtec CoC No. 1032, Amendment No. 0 Revision 1, Appendix B, Table 2.3–4 (MPC–89 Heat Load Data) and allow use of VDS for MPC–0431 prior to loading into a HI–STORM FW storage cask.

TVA is requesting an exemption from the provisions in 10 CFR part 72 that require the licensee to comply with the terms, conditions, and specifications of the CoC for the approved cask model it uses. Section 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR part 72. This authority to grant exemptions is consistent with the Atomic Energy Act of 1954, as amended, and is not otherwise inconsistent with NRC's regulations or other applicable laws. Additionally, no other law prohibits the activities that would be authorized by the exemption. Therefore, the NRC concludes that there is no statutory prohibition on the issuance of the requested exemption, and the NRC is authorized to grant the exemption by law.

*B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security*

This exemption would allow TVA to deviate from Holtec CoC No. 1032, Amendment No. 0, Revision 1, Appendix B, Table 2.3–4 (MPC–89 Heat Load Data) and allow use of VDS for MPC–0431 prior to loading into a HI–STORM FW storage cask. In support of this exemption request, TVA asserts that issuance of the exemption would not endanger life or property or the common defense and security because the safety assessment demonstrates that the TVA's proposed use of the VDS provides adequate thermal control, maintains confinement integrity, and does not pose an undue risk to the safe processing of the loaded cask.

For these reasons, the NRC staff has determined that under the requested exemption, the storage system will continue to meet the safety requirements of 10 CFR part 72 and the offsite dose limits of 10 CFR part 20, ''Standards for Protection Against Radiation'', and, therefore, will not endanger life or property or the common defense and security.

The staff reviewed TVA's exemption request and concluded, as discussed below, that the proposed exemption from certain requirements of 10 CFR part 72 will not cause CoC No. 1032 to encounter conditions beyond those for which it has already been evaluated and demonstrated to meet the applicable safety requirements in 10 CFR part 72.

The staff's evaluation focused on the application and those calculations and

analyses submitted with the application. The staff followed the guidance in NUREG–2215 to complete its safety evaluation. The NRC's staff evaluation includes thermal and materials safety areas, which are the relevant technical disciplines affected by this exemption.

Thermal Evaluation

The licensee conducted a comprehensive thermal analysis of the current cask configuration, utilizing a loading pattern designed to encompass the BFN MPC–0431 cask. This approach ensured that the analysis would address a most challenging operational scenario, relevant to the cask's performance.

The NRC staff reviewed the applicant's thermal models used throughout the analysis. As part of this evaluation, the staff examined the code inputs to verify the selection of appropriate material properties and boundary conditions. This step was crucial in ensuring the models reflected realistic conditions and accurately represented the thermal behavior of the storage system.

The staff also reviewed the suitability of the code models and underlying assumptions. The staff's evaluation focused on whether the models and assumptions could reliably capture the heat transfer characteristics inherent to the HI–STORM FW storage system's geometry, as well as the specific scenario of vacuum drying.

To further validate the applicant's analysis, the staff performed energy and mass balance checks. These checks were complemented by an assessment of the convergence of the thermal analysis under vacuum drying conditions, ensuring the reliability and accuracy of the results.

Additional sensitivity analyses were performed by adjusting critical assumptions within the model. This procedure was instrumental in confirming the correct characterization of heat transfer mechanisms and supported the robustness of the overall analysis.

Based on the comprehensive review and verification procedures, the staff concludes that the maximum temperatures reported in the exemption request are acceptable. This finding demonstrates compliance with regulatory requirements and confirms the thermal safety of the cask configuration under the analyzed conditions.

Materials Evaluation

As noted in II. Request/Action, the applicant stated that 16 of the high burnup fuel assemblies have decay heats that exceed the limits for vacuum drying under HI–STORM FW Amendment 0 Revision 1 Technical Specifications Appendix B, Table 2.3–4. Subsequently, the applicant provided a specific analysis for the vacuum drying of MPC 0431 that showed the maximum fuel cladding temperature would be below the 400 °C temperature limit for the high burnup fuel specified in Table 2.2.3 of the HI–STORM FW FSAR. In addition, the supplemental analysis showed that all during the vacuum drying operation, all MPC components remain below the short-term operation temperature limits specified in Table 2.2.3 of the HI–STORM FW FSAR.

The staff reviewed the information provided by the applicant and compared the operations conducted and planned for MPC 0431 against the approved HI–STORM FW FSAR and Technical Specifications and the guidance in NUREG–2215, ''Standard Review Plan for Spent Fuel Dry Storage Systems and Facilities.'' The staff determined that the results of the supplemental analysis provided by the applicant showed that the peak cladding temperature limits and MPC component temperature limits were below the maximum temperatures listed in the HI–STORM FW FSAR and Technical Specifications.

The staff also reviewed the guidance in NUREG–2215 on spent fuel and loading operations. Specifically, the staff reviewed the following guidance in NUREG–2215 Chapter 8, ''Materials Evaluation,'' and Chapter 11, ''Operation Procedures and Systems Evaluation.''

- Section 8.5.15.2.4, ''Maximum (Peak) Cladding Temperature,'' which states that the maximum calculated fuel cladding temperature should not exceed 400°C (752 °F) for normal conditions of storage and short-term loading operations including drying, backfilling with inert gas, and transfer of the cask to the storage pad.
- Section 8.5.15.2.5, ''Thermal Cycling during Drying Operations,'' which states that repeated thermal cycling (repeated heatup or cooldown cycles) during loading operations is limited to less than 10 cycles, where cladding temperature variations during each cycle do not exceed 65 °C (117 °F).
- Section 8.5.15.2.6, ''Cover Gas,'' which provides options for evaluating cladding oxidation including the option to maintain the fuel rods in an inerted environment such as argon, nitrogen gas, or helium to prevent oxidation.
- Section 11.5.2.6, ''Draining and Drying,'' which states that the container should be drained of as much water as practicable and evacuated to less than or equal to 4.0x10–4 MPa (4 millibar, 3.0 millimeters of mercury or Torr). After evacuation, adequate moisture removal should be verified by maintaining a constant pressure over a period of about 30 minutes without vacuum pump operation (or the vacuum pump is running but is isolated from the container with its suction vented to atmosphere).

The staff determined that the HI–STORM FW FSAR, Technical Specifications, and the specific analysis for the vacuum drying of MPC 0431 are consistent with the NRC guidance. Therefore, the staff determined that the applicant's exemption request is acceptable.

*C. The Exemption Is Otherwise in the Public Interest*

TVA requests exemption from meeting the requirements of 10 CFR 72.212(b)(3), 72.212(b)(5)(i), and 72.212(b)(11) that require BFN to comply with the terms, conditions, and specifications of CoC No. 72–1032, Amendment No. 0, Revision 1 (ML16112A306)(package) and allow use of VDS for MPC–0431 prior to loading into a HI–STORM FW storage cask.

According to TVA, the exemption is in the public interest because it would allow for safe storage of spent nuclear fuel at the BFN ISFSI. TVA indicates that the current condition at BFN involves non-safety equipment maintaining stable temperature and pressure for the loaded MPC. There is no redundancy to this equipment, so 24-hour continuous monitoring is necessary, which over an extended period of time adds risk of additional radiological dose to personnel. TVA also identified that the only alternative to obtaining the exemption (defueling the MPC–0431) would introduce substantially more risk than the proposed action. Defueling the canister has not been previously performed at BFN and would require additional handling of the loaded storage system, removal of the canister lid, creation of contaminated waste, and exposure of the spent fuel to additional thermal cycles. Additionally, defueling the canister would introduce the risk of dropping a fuel assembly in the spent fuel pool. These activities would subject personnel to increased radiation exposure and potentially further limit operational flexibility at BFN. Delaying resolution of MPC–0431 condition could affect the licensee's broader ability to manage spent fuel handling activities.

Upon staff's review, staff concludes that approving the exemption is in the public interest.

Environmental Consideration

The NRC staff also considered whether there would be any significant environmental impacts associated with the exemption. The staff has determined that this action is categorically excluded under 10 CFR 51.22(d)(7), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff have made this finding because granting the exemption would result in no changes other than a change in process operations or equipment, and as such, will not cause any ground disturbance, effluent changes, increased additional exposure or increased accident consequences. Therefore, pursuant to 10 CFR 51.22, no environmental impact statement or environmental assessment need be prepared in connection with granting an exemption to allow BFN to complete the loading of the MPC in the cask for ISFSI storage.

**IV. Conclusion**

Based on these considerations, the NRC has determined that, pursuant to 10 CFR 72.7, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC grants TVA an exemption from the requirements of §§ 10 CFR 72.212(b)(3), 72.212(b)(5)(i), and 72.212(b)(11) to deviate from Holtec CoC No. 1032, Amendment No. 0, Revision 1, Appendix B, Table 2.3–4 (MPC–89 Heat Load Data) and allow use of VDS for MPC–0431 prior to loading into a HI–STORM FW storage cask.

This exemption is effective upon issuance.

Dated: May 11, 2026.

For the Nuclear Regulatory Commission.

/RA/

Shana Helton,

*Director, Division of Fuel Management, Office of Nuclear Material Safety, and Safeguards.*

[FR Doc. 2026–09887 Filed 5–15–26; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 1106249; NRC–2026–2213]**

## UniTech Services Group LLC; Application for Name Change and Request for Consent to the Indirect Transfer of Control of Export License

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application dated April 23, 2026, submitted by UniTech Services Group, Inc. to change its corporate name to UniTech Services Group LLC and providing consent to the indirect transfer of control of Export License XW023 from current parent company UniFirst Corporation to Cintas Corporation. The NRC is providing notice of the opportunity to comment, request a hearing, and petition for leave to intervene on UniTech Services Group LLC's, application and its request for consent to an indirect transfer of control. These actions will amend the existing license authorizing the export of radioactive waste to Canada by changing the name on the license from UniTech Services Group, Inc. to UniTech Services Group LLC, and provide written consent to the licensee for the indirect transfer of control.

**DATES:** Submit comments by June 17, 2026. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date. A request for a hearing or petition for leave to intervene must be filed by June 17, 2026.

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

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–2213. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearing.Docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. eastern time (ET) Federal workdays; telephone: 301–415–1677.

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

**FOR FURTHER INFORMATION CONTACT:** Shannon Doane, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7000; email: *Shannon.Doane@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2026–2213 when contacting the NRC about the availability of information for these actions. You may obtain publicly available information related to these actions by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–2213.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* XW023/01 is available in ADAMS under Accession No. ML26118A089 and the March 13, 2026, correspondence is available under Accession No. ML26131A206.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

*B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2026–2213 in your comment submission.

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

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

### II. Discussion

UniTech Services Group, Inc. was issued export license XW023 on April 30, 2018, authorizing the export of up to 10,000 metric tons of tools, metals, and other solid materials contaminated with byproduct materials, to be returned to Canada. On March 10, 2026, the licensee converted from a corporation to a limited liability company and changed the licensee's name to UniTech Services Group LLC. By letter dated March 13, 2026, UniTech Services Group LLC, requested the NRC's written consent to the indirect transfer of control of UniTech Services Group, Inc.'s ultimate parent company, UniFirst Corporation, to Cintas Corporation as part of a proposed merger and acquisition (ADAMS Accession No. ML26131A206).[1] On April 23, 2026, UniTech Services Group LLC, submitted a complete Form 7 to the NRC, requesting amendment XW023/01 to reflect the name change.

[1] Although the letter included an attached Form 7, the form was not submitted in compliance with 10 CFR part 110.51(a)(1) and therefore no licensing action related to the indirect transfer of control was initiated at that time.

### III. Opportunity To Comment

The NRC is providing notice of the receipt of the application and the request for consent to the indirect transfer of control and is providing the opportunity to submit written comments concerning the actions in this notice. Within 30 days from the date of publication of this notice, persons may submit written comments regarding the name change and the indirect license transfer of control, as provided in section 110.81 of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the ''Addresses'' section of this notice.

### IV. Opportunity To Request a Hearing and Petition for Leave to Intervene

Within 30 days after the date of publication of this notice any person may file a request for a hearing or petition for leave to intervene with respect to the actions in this notice. A hearing request or intervention petition must include the information specified in 10 CFR 110.82(b). Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner in accordance with 10 CFR 110.89(a), either by delivery, by mail, or filed with the NRC electronically in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). Detailed guidance on electronic submissions may be found in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals.html*).

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

The information concerning this application for an Export license follows.

NRC Export License Application

| Application Information | |
|---|---|
| Name of Applicant | UniTech Services Group LLC (formerly UniTech Services Group, Inc.). |
| Date of Application | April 23, 2026. |
| Date Received | April 23, 2026. |
| Application No. | XW023/01. |
| Docket No. | 11006249. |
| ADAMS Accession No. | ML26118A089. |
| **Description of Material** | |
| Material Type | Tools, metals, and other solid materials contaminated with byproduct materials. |
| Total Quantity | 10,000 tons. |
| End Use | Disposal in Canada. |
| Country of Destination | Canada. |

*Authority:* 42 U.S.C. 2011 *et seq.*

Dated: May 13, 2026.

For the Nuclear Regulatory Commission.

**Jody Martin,**

*Deputy Director, Office of International Programs.*

[FR Doc. 2026–09827 Filed 5–15–26; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2026–0001]**

## Sunshine Act Meetings

**TIME AND DATE:** Weeks of May 18, 25, and June 1, 8, 15, 22, 2026. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

**PLACE:** The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please contact the Reasonable Accommodations Resource by email at *Reasonable_Accommodations.Resource@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

**STATUS:** Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

**MATTERS TO BE CONSIDERED:**

**Week of May 18, 2026**

There are no meetings scheduled for the week of May 18, 2026.

**Week of May 25, 2026—Tentative**

There are no meetings scheduled for the week of May 25, 2026.

**Week of June 1, 2026—Tentative**

*Friday, June 5, 2026*

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Rob Krsek: 301–415–1766)

*Additional Information:* The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via

webcast at the Web address—*https://video.nrc.gov/.*

**Week of June 8, 2026—Tentative**

*Tuesday, June 9, 2026*

10:00 a.m. Meeting With the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Jeff Lynch: 301–415–5041)

*Additional Information:* The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

**Week of June 15, 2026—Tentative**

There are no meetings scheduled for the week of June 15, 2026.

**Week of June 22, 2026—Tentative**

There are no meetings scheduled for the week of June 22, 2026.

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 13, 2026.

For the Nuclear Regulatory Commission.

**Wesley W. Held,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2026–09867 Filed 5–14–26; 11:15 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–7513; NRC–2021–0193]**

## In the Matter of Kairos Power LLC; Hermes Test Reactor; Extension of Latest Date for Completion of Construction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Order; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has approved the Kairos Power LLC (Kairos) request to amend Construction Permit No. CPTR–6 for the Hermes test reactor facility in Oak Ridge, Tennessee. The approved amendment extends the latest date for completion of the construction of the Hermes test reactor facility from December 31, 2026, to April 30, 2029.

**DATES:** The Order was issued on May 13, 2026.

**ADDRESSES:** Please refer to Docket ID NRC–2021–0193 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0193. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The Kairos request to amend Construction Permit No. CPTR–6 is available in ADAMS under Package Accession No. ML26083A275.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Cayetano Santos Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7270; email: *Cayetano.Santos@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

**Authority:** 42 U.S.C. 2011 *et seq.*

Dated: May 14, 2026.

For the Nuclear Regulatory Commission.

**Cayetano Santos,**

*Senior Project Manager, Advanced Reactor Licensing Branch 1, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.*

**UNITED STATES OF AMERICA**

**NUCLEAR REGULATORY COMMISSION**

In the Matter of Kairos Power LLC (Hermes Test Reactor Facility)
Docket No. 50–7513
Construction Permit No. CPTR–6

**Order**

**I.**

Kairos Power LLC (Kairos, licensee, permit holder) is the holder of Construction Permit (CP) No. CPTR–6, which the U.S. Nuclear Regulatory Commission (NRC, the Commission) issued on December 14, 2023 (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML23338A260), for the construction of the Hermes test reactor facility in Oak Ridge, Tennessee. CP No. CPTR–6 includes December 31, 2026, as the latest date for completion of the construction of the Hermes test reactor facility and expires on the latest date of completion. The Hermes test reactor facility is currently under construction.

By letter dated March 24, 2026 (ML26083A275), Kairos submitted to the NRC a license amendment request in accordance with section 50.90, ''Application for amendment of license, construction permit, or early site permit,'' of title 10 of the *Code of Federal Regulations* (10 CFR) and 10 CFR 50.55(b). The license amendment request seeks to extend the latest date for completion of the construction of the Hermes test reactor facility from December 31, 2026, to April 30, 2029.

**II.**

Upon review of the license amendment request, the NRC staff determined that Kairos had shown good cause for extending the latest date for completion of the construction of the Hermes test reactor facility from December 31, 2026, to April 30, 2029. The staff also determined that the license amendment request involves no significant hazards consideration. The staff prepared an environmental assessment and finding of no significant impact for the requested extension of the latest date for completion of construction and published it in the **Federal Register** on April 21, 2026 (91 FR 21335). On the basis of the environmental assessment, the staff concluded that the requested extension will not have a significant effect on the quality of the human environment. The findings set forth above are supported by an NRC staff safety evaluation dated May 13, 2026, which is available at ML26085A103.

**III.**

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. The scope of this order extending the latest date for completion of construction and any proceeding hereunder is limited to direct challenges to the CP holder's asserted reasons that show good cause for the extension. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing

instructions in section IV of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

**IV.**

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ML13031A056), and on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals.html*).

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to: (1) request a digital identification (ID) certificate which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket is created, the participant must submit adjudicatory documents in the Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. eastern time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed in order to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless otherwise excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The attorney for the permit holder is Ryan K. Lighty, Partner, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington DC 20004–2541.

**V.**

Accordingly, pursuant to Section 161 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201; and 10 CFR 50.90 and 10 CFR 50.55(b), *it is hereby ordered* that CP No. CPTR–6 is amended to extend the latest date for completion of the construction of the Hermes test reactor facility from December 31, 2026, to April 30, 2029.

This order is effective upon issuance.

Dated: May 13, 2026.

For the Nuclear Regulatory Commission.

Jonathan Greives,

*Director, Division of Advanced Reactors and Non-Power, Production and Utilization Facilities, Office of Nuclear Reactor Regulation.*

[FR Doc. 2026–09880 Filed 5–15–26; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### 736th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the U.S. Nuclear Regulatory Commission's (NRC) Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on June 3 through 5, 2026. In addition, the ACRS is implementing Section 4.(b) of Executive Order (E.O.) 14300, ''Ordering the Reform of the Nuclear Regulatory Commission,'' dated May 23, 2025, which states, in part, that the functions of the ACRS shall be reduced to the minimum necessary to fulfill ACRS's statutory obligations and that review by ACRS of permitting and licensing issues shall focus on issues that are truly novel and noteworthy. The ACRS will only undertake other work as directed by the Commission in accordance with Sections 29 and 182b of the Atomic Energy Act.

The Committee will be conducting meetings that will include some Members being physically present at the headquarters of the NRC while other Members participate remotely. Interested members of the public are encouraged to participate remotely in any open sessions via Microsoft Teams or via phone at 301–576–2978, passcode

767 509 196#. A more detailed agenda, including the Microsoft Teams link, may be found at the ACRS public website at *https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html.* If you would like the Microsoft Teams link forwarded to you, please contact: *Quynh.Nguyen@nrc.gov* or *Lawrence.Burkhart@nrc.gov.*

**Wednesday, June 3, 2026**

8:30 a.m.–8:35 a.m.: *Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–1:00 p.m.: *Clinch River Construction Permit Application Review—Staff Safety Evaluation* (Open/Closed)—The Committee will hear presentations from and have discussions with NRC staff and applicant representatives, if necessary, regarding the subject topic. [NOTE: Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

1:00 p.m.–5:00 p.m.: *Committee Deliberation on the Clinch River Construction Permit Application Review* (Open/Closed)—The Committee will deliberate on the above subject topic. [NOTE: Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

**Thursday, June 4, 2026**

8:30 a.m.–10:30 a.m.: *Planning and Procedures Session/Future ACRS Activities/Reconciliation of ACRS Comments and Recommendations/Preparation of Reports* (Open/Closed)—The Committee will discuss planning and procedures topics including items proposed for consideration by the Full Committee during future ACRS meetings; deliberate; and proceed to preparation of reports. [NOTE: Pursuant to 5 U.S.C. 552b(c)(2), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS.]. [NOTE: Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

10:30 a.m.–5:00 p.m.: *Preparation of Reports and Continuation of Discussions on Previous Meeting Topics* (Open/Closed)—The Committee will proceed with preparation of reports and continue discussions with NRC staff regarding the subject topic. [NOTE: Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.].

**Friday, June 5, 2026**

1:00 p.m.–5:00 p.m.: *Preparation of Reports and Continuation of Discussions on Previous Meeting Topics* (Open/Closed)—The Committee will proceed with preparation of reports and continue discussions with NRC staff regarding the subject topic. [NOTE: Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on July 22, 2025 (90 FR 34522). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the ACRS Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the cognizant ACRS staff if such rescheduling would result in major inconvenience. Registration for this meeting is not required.

An electronic copy of each presentation should be emailed to the cognizant ACRS staff at least three days before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the ACRS Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

Please contact the Designated Federal Officer if you would like to submit a request for physical or electronic meeting accommodation.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* the ACRS public website, or by calling the PDR at 1–800–397–4209 *or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays,* or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System, which is accessible from the NRC website at *https://www.nrc.gov/reading-rm/adams.html* or *https://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Dated: May 14, 2026.

For the Nuclear Regulatory Commission

**Russell E. Chazell,**

*Federal Advisory Committee Management Officer, Office of the Secretary.*

[FR Doc. 2026–09914 Filed 5–15–26; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–528, STN 50–529, STN 50–530, and 72–44; NRC–2026–1618]**

## In the Matter of Arizona Public Service Company; El Paso Electric Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3 and Independent Spent Fuel Storage Installation; Indirect Transfer of Control of Licenses

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Order; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the indirect transfer of control of El Paso Electric Company's possession-only non-operating interests in Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation. The indirect transfer of control would result from the acquisition of an approximately 33.3 percent membership interest in IIF US Holding 2 GP, LLC by a private individual subsequent to the retirement and relinquishment of an approximately 33.3 percent IIF US 2 GP, LLC membership interest held by a different private individual. After the transaction, Arizona Public Service Company would continue to own a 29.1 percent tenant-in-common interest and continue to hold both operating and possession rights in the Palo Verde NRC licenses.

**DATES:** The order was issued on May 5, 2026, and is effective for one year.

**ADDRESSES:** Please refer to Docket ID NRC–2026–1618 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–1618. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The order and the NRC staff safety evaluation supporting the order are available in ADAMS under Package Accession No. ML22003A102.

• *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jason J. Drake, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8378; email: *Jason.Drake@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the order is attached.

**Authority:** 42 U.S.C. 2011 *et seq.*

Dated: May 14, 2026.

For the Nuclear Regulatory Commission.

**Jason Drake,**

*Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

*Attachment*—Order Approving Indirect Transfer of Control of Licenses.

**UNITED STATES OF AMERICA**

**NUCLEAR REGULATORY COMMISSION**

In the Matter of Arizona Public Service Company, El Paso Electric Company, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 and Independent Spent Fuel Storage Installation

Docket Nos. STN 50–528, STN 50–529, STN 50–530, and 72–44

License Nos. NPF–41, NPF–51, and NPF–74

**Order Approving Indirect Transfer of Control of Licenses**

**I.**

Arizona Public Service Company (APS) is the licensed operator and a licensed co-owner of Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI). Palo Verde is located in Maricopa County, Arizona. The other licensed co-owners (tenants-in-common), Salt River Project Agricultural Improvement and Power District; Southern California Edison Company; El Paso Electric Company (EPE); Public Service Company of New Mexico; Southern California Public Power Authority; and Los Angeles Department of Water and Power, hold possession-only rights for these licenses (*i.e.,* they are not licensed to operate the facility).

**II.**

By application dated January 28, 2026 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML26029A458), EPE requested, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80, ''Transfer of licenses,'' and 72.50, ''Transfer of license,'' that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the indirect transfer of control of the Palo Verde NRC licenses.

According to the application, EPE currently owns a 15.8 percent tenant-in-common interest and holds possession-only rights in the Palo Verde NRC licenses. The proposed indirect transfer of control of EPE's possession-only non-operating interests in the Palo Verde NRC licenses would result from the acquisition of an approximately 33.3 percent membership interest in IIF US Holding 2 GP, LLC (IIF US 2 GP), the general partner of IIF US Holding 2 LP, by a private individual, Rudolph Wynter, a U.S. citizen, subsequent to the retirement and relinquishment of an approximately 33.3 percent IIF US 2 GP membership interest held by Chrisopher Ward, a U.S. citizen.

APS owns a 29.1 percent tenant-in-common interest and holds both operating and possession rights in the Palo Verde NRC licenses. Further, APS operates each of the Palo Verde units and the ISFSI pursuant to the operating rights granted to it under the license of each Palo Verde unit. The remaining tenant-in-common co-owners that hold possession-only rights in the Palo Verde NRC licenses are: Salt River Project Agricultural Improvement and Power District (25.423333 percent of Unit 1, 18.2833333 percent of Unit 2, and 17.49 percent of Unit 3); Southern California Edison Company (15.8 percent of each unit); Public Service Company of New Mexico (2.266667 percent of Unit 1, 9.4066667 percent of Unit 2, and 10.2 percent of Unit 3); Southern California Public Power Authority (5.91 percent of each unit); and Los Angeles Department of Water and Power (5.7 percent of each unit).

According to the application, the proposed transaction would involve the issuance of the approximately 33.3 percent interest in IIF US 2 GP, which would be relinquished by Christopher Ward, to Rudolph Wynter. As a result of the proposed transaction, Rudolph Wynter would become an approximately 33.3 percent owner of IIF US 2 GP and indirect owner of EPE. The approximately 33.3 percent interests of each of Rita J. Sallis and Anne Cleary in IIF US 2 GP would be unaffected by the proposed transaction.

After the proposed transaction, APS would continue to own a 29.1 percent tenant-in-common interest and continue to hold both operating and possession rights in the Palo Verde NRC licenses. Further, APS would continue to operate each of the Palo Verde units and the ISFSI pursuant to the operating rights granted to it under the license of each Palo Verde unit. Also, as before the proposed transaction, no entity would own 50 percent or more of the voting interests. Accordingly, after the proposed transaction, there would be no change in the control of the operation of Palo Verde; APS would continue to make all technical decisions that do not require approval from all owners of Palo Verde.

No physical changes or operational changes were proposed in the application.

A notice of consideration of approval of the application and opportunity to comment, request a hearing, and petition for leave to intervene on the application was published in the **Federal Register** (FR) on April 3, 2026 (91 FR 16990). The NRC did not receive any comments or hearing requests on the application.

Under 10 CFR 50.80 and 10 CFR 72.50, no license for a production or utilization facility or ISFSI, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that the proposed indirect transfer of control of EPE's possession-only non-operating interests in the Palo Verde NRC licenses is acceptable. The proposed transferee is qualified to be the indirect holder of the licenses and the indirect transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by an NRC staff safety evaluation dated the same date as this Order, which is available at ADAMS Accession No. ML26105A790.

**III.**

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the application regarding the proposed indirect transfer of control is approved for Palo Verde Units 1, 2, and 3 and the Palo Verde ISFSI.

*It is further ordered* that after receipt of all required regulatory approvals of the proposed indirect transfer action, the applicant shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt prior to the closing of

the indirect transfer. Should the proposed indirect transfer not be completed within 1 year from the date of this Order, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated January 28, 2026, and the NRC staff safety evaluation dated the same date as this Order, which are available for public inspection electronically through ADAMS in the NRC Library at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *PDR.Resource@nrc.gov.*

Dated: May 5, 2026.

For the Nuclear Regulatory Commission.

**Aida Rivera-Varona,**

*Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2026–09881 Filed 5–15–26; 8:45 am]

**BILLING CODE 7590–01–P**

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Privacy Act of 1974; System of Records

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Occupational Safety and Health Review Commission (OSHRC) is publishing a notice for its new Privacy Act system of records. This system includes records from OSHRC's Administrative Grievance System and its Alternative Dispute Resolution (ADR) Program.

**DATES:** Comments must be received by OSHRC on or before June 17, 2026. The new system of records will become effective on that date, without any further notice in the **Federal Register**, unless comments or government approval procedures necessitate otherwise.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Email: OSHRC_Privacy@oshrc.gov.* Include ''PRIVACY ACT SYSTEM OF RECORDS'' in the subject line of the message.
- *Mail:* One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.
- *Hand Delivery/Courier:* same as mailing address.

*Instructions:* All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as ''PRIVACY ACT SYSTEM OF RECORDS.''

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, Senior Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606–5410, or via email at *OSHRC_Privacy@oshrc.gov.*

**SUPPLEMENTARY INFORMATION:** The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires federal agencies such as OSHRC to publish in the **Federal Register** notice of any new or modified system of records.

Based on a review of the agency's records, its current system of records notices (SORNs), and applicable governmentwide SORNs (including *Equal Employment Opportunity in the Federal Government Complaint and Appeal Records,* EEOC/GOVT–1), the agency has determined that no SORN fully covers Privacy Act records that OSHRC maintains to implement its Administrative Grievance System and its Alternative Dispute Resolution Program. A new SORN, titled *Administrative Grievance and Alternative Dispute Resolution Records,* OSHRC–10, is therefore published below to cover these records.

The notice for new OSHRC–10, provided below in its entirety, is as follows.

**SYSTEM NAME AND NUMBER:**

Administrative Grievance and Alternative Dispute Resolution Records, OSHRC–10.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Office of the Executive Director, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.

**SYSTEM MANAGER(S):**

Human Resources Specialist (administrative grievance records) and the Equal Employment Opportunity (EEO) Director (alternative dispute resolution records), OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457; (202) 606–5100.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 571–584; 41 U.S.C. 7103(h); 44 U.S.C. 3101; 29 CFR part 1614; 5 CFR part 771.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of this system is to collect, maintain, and store information related to (1) administrative grievances filed by current and former OSHRC employees, and (2) requests for participation in the agency's Alternative Dispute Resolution (ADR) Program from current and former OSHRC employees and contractors.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system of records covers current and former OSHRC employees who have filed administrative grievances with the agency under 5 CFR part 771, as well as current and former OSHRC employees and contractors who have used the agency's ADR program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The categories of records in this system include administrative grievance files, which contain (1) the names of complainants, their employment titles, and signatures; (2) the names, addresses, and telephone numbers of any complainants' representatives; (3) the names of any witnesses and any personal information included in their statements; (4) facts pertaining to any alleged grievances or claims, which could include birthdate, sex, race, and any other relevant personal information; and (5) the names of fact finders and any personal information included in their decisions. The categories of records also include the names of individuals requesting ADR and personal information such as contact information included in their written requests.

**RECORD SOURCE CATEGORIES:**

Information in this system comes from the individual to whom it applies, but also from statements made by witnesses and parties, and the reports of fact finders and decisions of deciding officials.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected, and to the extent disclosure of any medical and/or genetic information is in compliance with Section 501 of the Rehabilitation Act of 1973 and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008. With respect to medical and genetic information protected under the

Rehabilitation Act and/or GINA, records will be withheld or redacted to comply with the specific confidentiality and disclosure requirements set forth by the U.S. Equal Employment Opportunity Commission at 29 CFR pt. 1630 (Rehabilitation Act) and 29 CFR pt. 1635 (GINA). With these limitations, records may be disclosed as a routine use:

(1) To the Department of Justice (DOJ), or to a court or adjudicative body before which OSHRC is authorized to appear, when any of the following entities or individuals—(a) OSHRC, or any of its components; (b) any employee of OSHRC in his or her official capacity; (c) any employee of OSHRC in his or her individual capacity where DOJ (or OSHRC where it is authorized to do so) has agreed to represent the employee; or (d) the United States, where OSHRC determines that litigation is likely to affect OSHRC or any of its components—is a party to litigation or has an interest in such litigation, and OSHRC determines that the use of such records by DOJ, or by a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation.

(2) To an appropriate agency, whether federal, state, or local, charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes civil, criminal or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

(3) To a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an OSHRC decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit.

(4) To an authorized appeal grievance examiner, formal complaints manager, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee, only to the extent that the information is relevant and necessary to the case or matter.

(5) To OPM in accordance with the agency's authority to evaluate and oversee federal personnel management.

(6) To OMB in connection with the review of private relief legislation at any stage of the legislative coordination and clearance process, as set forth in Circular No. A–19.

(7) To a Member of Congress or to a person on his or her staff acting on the Member's behalf when a written request is made on behalf and at the behest of the individual who is the subject of the record.

(8) To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

(9) To appropriate agencies, entities, and persons when (a) OSHRC suspects or has confirmed that there has been a breach of the system of records; (b) OSHRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OSHRC (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSHRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(10) To NARA, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(11) To another Federal agency or Federal entity, when OSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Paper records are stored in locked file cabinets in folders at OSHRC's National Office in Washington, DC, and electronic records are stored on a shared OSHRC drive, which only the system manager can access.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrieved manually and electronically by name.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Administrative grievance records and ADR records are retained and disposed of in accordance with NARA's General Records Schedule (GRS) 2.3, Item 60 and Item 70, respectively.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: PAPER RECORDS ARE MAINTAINED IN LOCKED FILE CABINETS, AND ACCESS IS LIMITED TO PERSONNEL WHO REQUIRE ACCESS TO PERFORM THEIR OFFICIAL FUNCTIONS. ACCESS TO ELECTRONIC RECORDS MAINTAINED ON AN OSHRC SHARED DRIVE IS RESTRICTED TO THE SYSTEM MANAGER.**

**RECORD ACCESS PROCEDURES:**

Individuals who wish to request access to their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.4 (procedures for requesting notification of and access to personal records).

**CONTESTING RECORD PROCEDURES:**

Individuals who wish to contest their records should notify: Privacy Officer, OSHRC, 1120 20th Street, NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on the specific procedures for contesting the content of a record, refer to 29 CFR 2400.6 (procedures for amending personal records), and 29 CFR 2400.7 (procedures for appealing).

**NOTIFICATION PROCEDURES:**

Individuals interested in requesting notification about their records should notify: Privacy Officer, OSHRC, 1120 20th Street, NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.4 (procedures for requesting notification of and access to personal records).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None.

**Nadine N. Mancini,**

*General Counsel, Senior Agency Official for Privacy.*

[FR Doc. 2026–09869 Filed 5–15–26; 8:45 am]

**BILLING CODE 7600–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2026–240 and K2026–239; MC2026–242 and K2026–240; MC2026–243 and K2026–241]**

### 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:* May 21, 2026.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *https://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. Public Proceeding(s)
III. Summary Proceeding(s)

### I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

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]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such 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 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. 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 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests. The comment due date discussed below does not apply to Section III proceedings (Docket Nos. MC2026–240 and K2026–239; MC2026–242 and K2026–240; MC2026–243 and K2026–241).

### II. Public Proceeding(s)

1. *Docket No(s).:* MC2026–240 and K2026–239; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 113 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 13, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; Comments Due: May 21, 2026.

### III. Summary Proceeding(s)

1. *Docket No(s).:* MC2026–242 and K2026–240; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 987, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 13, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s).:* MC2026–243 and K2026–241; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 988, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 13, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

**Danielle LeFlore,**

*Legal Assistant.*

[FR Doc. 2026–09889 Filed 5–15–26; 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. RM2026–5 and K2026–232; Order No. 9570]**

### Streamlined Negotiated Service Agreement Review and New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is acknowledging a recent Postal Service filing requesting the Commission initiate a rulemaking to support the establishment of a new non-published rates product, Global Expedited Package Services—Non-Published Rates 18 to the Competitive product list. This document invites public comment on the advance review portion of the Postal Service's filing and takes other administrative steps.

**DATES:** *Comments are due:* May 19, 2026.

**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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I. Introduction
II. Postal Service Petition
III. Notice and Comment
IV. Ordering Paragraphs

## I. Introduction

On May 11, 2026, the Postal Service filed a petition to initiate a proceeding for a streamlined option rulemaking to support the establishment of a new non-published rates (NPR) product, Global Expedited Package Services—Non-Published Rates 18 (GEPS—NPR 18), and its request to add GEPS—NPR 18 to the Competitive product list, pursuant to 39 U.S.C. 3633 and 3642, and 39 CFR 3035.105, 3041.205, and 3041.320.[1]

## II. Postal Service Petition

*Background.* The Commission adopted rules for streamlined option rulemakings in Docket No. RM2023–5 to ''address elements of 39 U.S.C. [ ] 3642 review and 39 U.S.C. [ ] 3633 pre-implementation review that are broadly applicable to qualifying [negotiated service agreements (NSAs)], and not particular to individual qualifying NSAs.'' [2] Specifically, such proceedings are used to establish eligibility criteria specifying the ways in which qualifying NSAs will be permitted to vary from existing offerings, to review a proposed financial model for qualifying NSAs that accounts for the financial impact of any such variations, and to establish minimum rates for qualifying NSAs. Order No. 7353 at 4.

*Streamlined option rulemaking.* In accordance with 39 CFR 3041.205(c), the Postal Service submitted proposed *Mail Classification Schedule* (MCS) changes, a supporting financial model, and the minimum rates for GEPS—NPR 18. Petition at 1, 3–4. The Postal Service states that GEPS—NPR 18 offers discounts for Priority Mail Express International (PMEI), Priority Mail International (PMI), and First-Class Package International Service (FCPIS). *Id.* at 3. The Postal Service asserts that the financial model for GEPS—NPR 18 includes minimum rates that demonstrate compliance with 39 U.S.C. 3633, 39 CFR 3035.105, 3041.205(c)(1), and 3041.205(d). *Id.*

*NPR NSAs.* Requests to add conforming NPR NSA products to the Competitive product list are reviewed in public proceedings. *See* Order No. 7353 at 5. If an NPR NSA product is approved, one or more included contracts using an approved contract template may be subsequently added to the product without requiring further approval from the Commission. *See* 39 CFR 3041.320(h).

The Postal Service states that the GEPS—NPR 18 contract template is ''very similar'' to the GEPS—NPR 17 contract template that the Commission reviewed in Order Nos. 8864 and 8923.[3] However, the Postal Service specifically identifies the following differences: (1) the addition of paragraphs (c) and (d) in Article 10, ''which include additional obligations of the Mailer in relation to postage payment through an Enterprise Payment Account under Option B,'' (2) the addition of a few words in Article 35 ''concerning the period of time for certain document retention,'' (3) ''the addition of terms specific to postage payment through an Enterprise Payment Account under Option B'' in Article 37 concerning fraud, and (4) the deletion of one word before ''Agreement—Tables'' in the footer of Tables 1–3 in the GEPS—NPR 18 contract template. Petition at 7–8. The Postal Service states that it discusses how the changes to Articles 10 and 37 comply with 39 CFR 3041.320(f) in Attachment 3. *Id.* at 8. The Postal Service also states that ''[t]he major differences between GEPS—NPR 18 and GEPS—NPR 17 are in the Management Analysis, the financial model, and the rates.'' *Id.*

*Supporting materials.* The Postal Service filed the following materials in support of its Petition: (1) a proposed financial model that includes minimum rates for GEPS—NPR 18; (2) Attachment 1, an application for non-public treatment of materials filed under seal; (3) Attachment 2A, Governors' Decision No. 19–1; (4) Attachment 2B, proposed revisions to MCS section 2510.8 Global Expedited Package Services (GEPS)—Non-Published Rates in legislative format; (5) Attachment 2C, the Management Analysis for GEPS—NPR 18, which provides a narrative explanation of how, in the Postal Service's view, the proposed financial model complies with statutory and regulatory requirements; (6) Attachment 2D, a sworn statement of a Postal Service executive required by 39 CFR 3041.320(e)(9); (7) Attachment 3, which explains why, in the Postal Service's view, the Petition is in accordance with 39 CFR 3041.205 and 3041.320; and (8) Attachment 4, the GEPS—NPR 18 contract template. *Id.* at 3–6; *see id.* Attachments 1–4.

## III. Notice and Comment

The Commission establishes Docket Nos. RM2026–5 and K2026–232 for consideration of matters raised by the Petition. Interested persons may submit comments. Comments are due no later than May 19, 2026. More information on the proceedings may be accessed via the Commission's website at *https://www.prc.gov.*

Pursuant to 39 U.S.C. 505, Samuel Robinson is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings. The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. RM2026–5 and K2026–232 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Streamlined-Option Rulemaking Concerning a Request to Add Global Expedited Package Services—Non-Published Rates 18 (GEPS—NPR 18) to the Competitive Products List, Including a Proposal for a GEPS—NPR 18 Model Contract Template and an Application for Non-Public Treatment of Materials Filed Under Seal, filed May 11, 2026.

2. Comments by interested persons are due no later than May 19, 2026.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Samuel Robinson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these dockets.

4. This order, or abstract thereof, shall be published in the **Federal Register**.

[1] Petition of the United States Postal Service for the Initiation of a Streamlined-Option Rulemaking Concerning a Request to Add Global Expedited Package Services—Non-Published Rates 18 (GEPS—NPR 18) to the Competitive Products List, Including a Proposal for a GEPS—NPR 18 Model Contract Template and an Application for Non-Public Treatment of Materials Filed Under Seal, May 11, 2026 (Petition). The Postal Service also concurrently filed Library Reference USPS–RM2026–5–NP1. Notice of the United States Postal Service of Filing USPS–RM2026–5–NP1, May 11, 2026.

[2] Docket No. RM2023–5, Final Order Amending Rules Regarding Competitive Negotiated Service Agreements, August 9, 2024, at 4 (Order No. 7353).

[3] *Id.* at 7 (citing Docket Nos. RM2025–8 and K2025–1321, Order Authorizing Streamlined Review for Global Expedited Package Services (GEPS)—Non-Published Rates 17 (GEPS—NPR 17), Adding GEPS—NPR 17 to the Competitive Product List, and Providing Further Guidance, May 29, 2025 (Order No. 8864); Docket Nos. RM2025–8 and K2025–1321, Order Conditionally Granting Motion for Waiver and Approving Amended Contract Template for Global Expedited Package Services (GEPS)—Non-Published Rates 17, June 20, 2025 (Order No. 8923)).

By the Commission.

**Ashley Demchak,**

*Alternate Federal Register Liaison.*

[FR Doc. 2026–09834 Filed 5–15–26; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL SERVICE

### International Product Change—Global Expedited Package Services—Non-Published Rates

**AGENCY:** Postal Service.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a petition with the Postal Regulatory Commission to add Global Expedited Package Services—Non-Published Rates 18 (GEPS—NPR 18) to the Competitive Products List.

**DATES:** Date of notice: May 18, 2026.

**FOR FURTHER INFORMATION CONTACT:** Christopher C. Meyerson, 202–268–7820.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service hereby gives notice that, pursuant to 39 U.S.C. 3642, on May 11, 2026, it filed with the Postal Regulatory Commission a *Petition of the United States Postal Service for the Initiation of a Streamlined-Option Rulemaking Concerning a Request to Add Global Expedited Package Services—Non-Published Rates 18 (GEPS—NPR 18) to the Competitive Product List, including a Proposal for a GEPS—NPR 18 Model Contract Template and an Application for Non-Public Treatment of Materials Filed Under Seal.* Documents are available at *www.prc.gov,* Docket Nos. RM2026–5 and K2026–232.

**Daria Valan,**

*Attorney, Ethics and Legal Compliance.*

[FR Doc. 2026–09873 Filed 5–15–26; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105476; File No. SR–NasdaqTX–2026–023]**

### Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted CAT Costs of the National Market System Plan Governing the Consolidated Audit Trail for May 1, 2026 Through December 31, 2026

May 13, 2026.

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 May 7, 2026, Nasdaq Texas, LLC (''Nasdaq Texas'' 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 establish fees for Industry Members [3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from May 1, 2026 through December 31, 2026. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or the ''Company'') and referred to as CAT Fee 2026–1, and would be described in a section of the Exchange's fee schedule entitled ''Consolidated Audit Trail Funding Fees.'' The fee rate for CAT Fee 2026–1 would be $0.000001 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2026–1 in June 2026 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in May 2026. As described further below, CAT Fee 2026–1 is anticipated to be in place for eight months, and is anticipated to recover approximately two-thirds of the costs set forth in the reasonably budgeted CAT costs for 2026.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaqtx/rulefilings,* and at the principal office of the Exchange.

### 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

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[4] On November 15, 2016, the Commission approved the CAT NMS Plan.[5] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On March 16, 2026, the Commission approved the CAT Funding Model after concluding that the model satisfied the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* Rule General 7, Section 1. *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* Rule General 7 (Consolidated Audit Trail Compliance).

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

[6] Section 11.1(b) of the CAT NMS Plan.

requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (''Historical CAT Assessment'' fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (''CAT Fees'').[8]

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. ''The Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs').'' [9] In establishing a CAT Fee, the Operating Committee will calculate a ''Fee Rate'' for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

The CAT Fees to be paid by CEBBs and CEBSs are designed to contribute toward the recovery of two-thirds of the budgeted CAT costs for the relevant period.[10] The CAT Funding Model is designed to require that the Participants contribute to the recovery of the remaining one-third of the budgeted CAT costs.[11] Participants would be subject to the same Fee Rate as CEBBs and CEBSs.[12] While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[13] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[14] Accordingly, this filing does not address Participant CAT fees as they are described in the CAT NMS Plan.[15]

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2026–1 to recover the reasonably budgeted CAT costs for the period from May 1, 2026 through December 31, 2026 in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [16] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [17] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2026–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

CAT Fee 2026–1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.[18] The CAT NMS Plan defines a ''CAT Executing Broker'' to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.[19]

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange:

[7] Securities Exchange Act Rel. No. 105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 19, 2026) (''CAT Funding Model Approval Order''). This CAT Funding Model replaced the prior funding model that was approved by the Commission on September 6, 2023. Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023).

[8] Under the CAT Funding Model, the Operating Committee may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing only establishes CAT Fee 2026–1 related to reasonably budgeted CAT costs for the period from May 1, 2026 through December 31, 2026 as described herein; it does not address any other potential CAT Fees related to CAT costs. Any such other CAT Fee will be subject to a separate fee filing. In addition, under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing does not address any Historical CAT Assessments.

[9] Section 11.3(a) of the CAT NMS Plan.

[10] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[11] Section 11.3(a)(ii)(A) of the CAT NMS Plan.

[12] Section 11.3(a)(ii) of the CAT NMS Plan.

[13] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[14] CAT Funding Model Approval Order at 13448.

[15] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[16] Section 11.1(b) of the CAT NMS Plan.

[17] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[18] In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was appropriate. In reaching this conclusion, the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 13413.

[19] Section 1.1 of the CAT NMS Plan. In its approval order for the CAT Funding Model, the Commission ''recognize[d] that Industry Members may pass-through CAT fees for customer executed volume.'' *See* CAT Funding Model Approval Order at 13424.

[20] *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.2.0-r2 (Feb. 24, 2026), *https://www.catnmsplan.com/sites/default/files/2026-02/02.24.2026-CAT_Reporting_Technical_Specifications_for_Participants_4.2.0-r2.pdf* (''CAT Reporting Technical Specifications for Plan Participants'').

EQUITY ORDER TRADE (EOT) [20]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 12.*n*.8/13.*n*.8 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order on this side of the trade.<br>Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction.<br>This must be provided if orderID is provided ... | C |

OPTION TRADE (OT) [21]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 16.*n*.13/17.*n*.13 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order. | R |

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange:

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) [22]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 26 ..... | reportingExecutingMpid ..... | Member Alias ..... | MPID of the executing party ..... | R |
| 28 ..... | contraExecutingMpid ..... | Member Alias ..... | MPID of the contra-side executing party. ..... | C |

(2) Calculation of Fee Rate 2026–1

The Operating Committee determined the Fee Rate to be used in calculating CAT Fee 2026–1 (''Fee Rate 2026–1'') by dividing the reasonably budgeted CAT costs (''Budgeted CAT Costs 2026–1'') for the period from May 1, 2026 through December 31, 2026 (''CAT Fee 2026–1 Period'') by the reasonably projected total executed share volume of all transactions in Eligible Securities for the eight-month recovery period, as discussed in detail below.[23] Based on this calculation, the Operating Committee has determined that Fee Rate 2026–1 would be $0.000003799483243631228 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of $0.000001 per executed equivalent share that will be assessed to CEBBs and CEBSs, as also discussed in detail below.

(A) CAT Fee 2026–1 Period

CAT LLC proposes to implement CAT Fee 2026–1. CAT LLC proposes to commence CAT Fee 2026–1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2026–1 ''would be calculated as described in paragraph (II)'' of Section 11.3(a)(i)(A) of the CAT NMS Plan,[24] which states that ''[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.'' [25] For CAT Fee 2026–1, the reasonably budgeted CAT costs for ''the remainder of the year'' are the reasonably budgeted CAT costs from May 1, 2026 through December 31, 2026 as set forth in the updated annual budget for 2026 for CAT LLC approved by the Operating Committee on March 31, 2026 (''Updated 2026 CAT Budget'').[26]

(B) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities will be counted as 0.01 executed equivalent share.[27]

(C) Budgeted CAT Costs 2026–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted

[21] *See* Table 52, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

[22] *See* Table 62, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

[23] Section 11.3(a)(i) of the CAT NMS Plan.

[24] Section 11.3(a)(i)(A)(IV) of the CAT NMS Plan.

[25] Section 11.3(a)(i)(A)(II) of the CAT NMS Plan.

[26] The Updated 2026 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2026-04/03.31.26-CAT-2026-Budget.pdf*).

[27] Section 11.3(a)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that ''the use of executed equivalent share volume provides an appropriate basis for the calculation of CAT fees.'' CAT Funding Model Approval Order at 13413.

during the year by the Operating Committee.'' [28] Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that:

[w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

In accordance with the requirements under the CAT NMS Plan, the Operating Committee approved an annual budget for 2026 for CAT LLC (''Original 2026 CAT Budget'') on December 11, 2025.[29] On March 31, 2026, the Operating Committee approved an updated budget for 2026, referred to as the Updated 2026 CAT Budget. The Updated 2026 CAT Budget includes actual costs for each category for January and February 2026, with updated estimated costs for the remainder of the year. The updated costs for May through December as included in the Updated 2026 CAT Budget (*i.e.,* Budgeted CAT Costs 2026–1) are the costs used in calculating CAT Fee 2026–1.[30] The 2026 CAT budgets, both the Original 2026 CAT Budget and the Updated 2026 CAT Budget, were prepared on the accrual basis of accounting.[31]

As described in detail below, the Budgeted CAT Costs 2026–1 would be $15,149,648. CEBBs collectively will be responsible for one-third of the Budgeted CAT Costs 2026–1 (which is $5,049,882.67), and CEBSs collectively will be responsible for one-third of the Budgeted CAT Costs 2026–1 (which is $5,049,882.67).

The following describes in detail the Budgeted CAT Costs 2026–1 for CAT Fee 2026–1. The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing the following:

the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.[32]

Each of the costs described below is reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

The following table breaks down the Budgeted CAT Costs 2026–1 into the categories set forth in Section 11.3(a)(iii)(B) of the CAT NMS Plan.[33] The Budgeted CAT Costs 2026–1 reflect the costs for May through December as included in the Updated 2026 CAT Budget. The Budgeted CAT Costs 2026–1 are the costs used in calculating CAT Fee 2026–1.

BUDGETED CAT COSTS 2026–1

| Budget category | Budgeted CAT costs 2026–1 [b] (i.e., costs for May–December 2026) |
|---|---|
| Capitalized Developed Technology Costs [a] | [c] $3,450,000 |
| Technology Costs: | 83,737,680 |
| Cloud Hosting Services | [d] 49,866,667 |
| Operating Fees | [e] 19,691,953 |
| CAIS Operating Fees | [f] 14,179,060 |
| Change Request Fees | [g] 0 |
| Legal | [h] 5,670,452 |
| Consulting | [i] 1,025,957 |
| Insurance | [j] 852,768 |
| Professional and administration | [k] 749,151 |
| Public relations | [l] 0 |
| Interest Income | [m] (1,453,382) |
| Total Costs | 94,032,626 |
| Reserve (25% of Total Costs) | 23,508,157 |
| Total Costs and Reserve | 117,540,783 |
| Use of Existing Reserve | [n] (102,391,135) |
| Total Budgeted CAT Costs 2026–1 | 15,149,648 |

[a] The non-cash amortization of these capitalized developed technology costs to be incurred during the CAT Fee 2026–1 Period have been appropriately excluded from the above table.[34]

[28] Section 11.3(a)(i)(C) of the CAT NMS Plan.

[29] The Original 2026 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-12/12.08.25-CAT-LLC-2026-Financial_and_Operating_Budget.pdf*).

[30] The version of the Updated 2026 CAT Budget set forth on the CAT website is presented on a quarterly basis, but is prepared based on more granular detail. The costs for May and June are estimated based on two-thirds of costs for Q2 where the budgeted monthly amounts are consistent. For those cases in which the costs for a category vary from month to month in Q2, the specific budgeted amounts for May and June are noted.

[31] CAT budgets for periods prior to 2025 were prepared on the cash basis of accounting, as such budgets were primarily used to determine the dollar amount of promissory notes from the Participants that were required to fund the ongoing operations of the CAT. Commencing in 2025, with the contemplated recovery of costs from Industry Members and the Participants via CAT Fees, the Original 2025 CAT Budget was prepared on the accrual basis of accounting to properly match projected revenues with estimated expenses incurred. A cash basis budget reflects expenditures when paid, while an accrual basis budget reflects expenditures when incurred. In moving from a cash basis budget to an accrual basis budget, there is no double counting of expenses.

[32] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[33] Note that costs and related cost calculations provided in this filing may reflect minor variations from the budgeted costs due to rounding.

[b] Budgeted CAT Costs 2026–1 described in this table of costs were determined based on an analysis of a variety of factors, including historical costs/invoices, estimated costs from respective vendors/service providers, contractual terms with vendors/service providers, anticipated service levels and needs, and discussions with vendors and Participants.

[c] This cost number for capitalized developed technology costs reflects (1) capitalized developed technology costs of $3,450,000 for May, $0 for June and $0 for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget; and (2) $0 for the Software License Fee 2026 for the second, third, and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: ($3,450,000 + $0 + $0 + $0) + ($0 + $0 + $0) = $3,450,000.

[d] This cost number for cloud hosting services reflects two-thirds of the cloud hosting services costs for the second quarter and the cloud hosting services for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $18,700,000) + $18,700,000 + $18,700,000 = $49,866,667.

[e] This cost number for operating fees reflects (1) two-thirds of the Non-CAIS fixed operating fees for the second quarter and the Non-CAIS fixed operating fees for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget and (2) two-thirds of the market data vendor fees for the second quarter and the market data vendor fees for the third and fourth quarter of 2026 as included in the Updated 2026 CAT Budget: ((⅔ × $7,191,853) + $7,191,853 + $7,191,853) + ((⅔ × $192,630) + $192,630 + $192,630) = $19,691,953.

[f] This cost number for CAIS operating fees reflects two-thirds of the CAIS fixed operating fees for the second quarter and the CAIS fixed operating fees for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $5,317,147) + $5,317,147 + $5,317,147 = $14,179,060.

[g] This $0 cost number for change requests reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

[h] This cost number for legal services reflects two-thirds of the legal costs for the second quarter and the legal costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[i] This cost number for consulting services reflects two-thirds of the consulting costs for the second quarter and the consulting costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $384,734) + $384,734 + $384,734 = $1,025,957.

[j] This cost number for insurance reflects two-thirds of the insurance costs for the second quarter and the insurance costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $300,977) + $321,042 + $331,074 = $852,768.

[k] This cost number for professional and administration services reflects two-thirds of the professional and administration costs for the second quarter and the professional and administration costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $280,932) + $280,932 + $280,932 = $749,151.

[l] This $0 cost number of change requests reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

[m] This interest income reflects interest income (net of bank fees) of $517,208 for May and June and interest income (net of bank fees) for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: $517,208 + $571,010 + $365,164 = $1,453,382. Note that interest income for May and June 2026 of $517,208 is slightly less than two-thirds of $809,598 (which is $539,732) for the second quarter as the amount of interest income varies from month to month.

[n] This amount for the use of the existing reserve is calculated by subtracting from the Accrued Liquidity Reserve Balance as of the Beginning of the Year in the Updated 2026 CAT Budget the 25% Incremental Liquidity Reserve Accrued during 2026 for the first quarter and for April of 2026 as included in the Updated 2026 CAT Budget: $155,403,378—($41,800,153 + $11,212,091) = $102,391,135. Note that the 25% Incremental Liquidity Reserved Accrued during 2026 for April 2026 of $11,212,091 is slightly more than one-third of $33,366,432 (which is $11,122,144) for the second quarter as the amount of the 25% Incremental Liquidity Reserved Accrued during 2026 varies from month to month.

To the extent that CAT LLC enters into notes with Participants or others to pay costs incurred during the period in which CAT Fee 2026–1 is in effect, CAT LLC will use the proceeds from CAT Fee 2026–1 and the related Participant CAT fees to repay such notes.

The following table compares the annual budgeted CAT costs as set forth in the updated annual CAT budget for 2025 approved by the Operating Committee in May 2025 (''May Updated 2025 CAT Budget''),[35] the updated annual CAT budget for 2025 approved by the Operating Committee in November 2025 (''November Updated 2025 CAT Budget''),[36] the Original 2026 CAT Budget and the Updated 2026 CAT Budget, and is provided for informational purposes. In each case, the costs provided reflect the costs for the entire year for each of the budgets; this differs from the above chart which focuses on budgeted costs for the period from May 1, 2026 through December 31, 2026, which, as noted, are the costs that are used in the calculation of the fee rate in this fee filing.

COMPARISON OF FULL YEAR BUDGETED COSTS

| Budget category | Full year of 2025 budgeted CAT costs from updated 2025 CAT budget (May 2025) | Full year of 2025 budgeted CAT costs from updated 2025 budget (Nov. 2025) | Full year of 2026 budgeted CAT costs from original 2026 CAT budget | Full year of 2026 budgeted CAT costs from updated 2026 CAT budget |
|---|---|---|---|---|
| Capitalized Developed Technology Costs[a] | $4,871,962 | $5,163,991 | $8,228,827 | $8,378,964 |
| Technology Costs | 211,548,472 | 173,091,660 | 137,514,003 | 128,643,476 |
| Cloud Hosting Services | 159,230,937 | 122,084,811 | 81,900,006 | 77,529,362 |
| Operating Fees[b] | 30,817,686 | 29,932,001 | 34,345,413 | 29,845,524 |
| CAIS Operating Fees | 20,749,848 | 20,749,848 | 21,268,584 | 21,268,590 |
| Change Request Fees | 750,000 | 325,000 | 0 | 0 |
| Legal | 7,370,002 | 7,312,547 | 8,485,000 | 8,939,184 |
| Consulting | 1,749,998 | 1,750,000 | 1,550,000 | 1,550,000 |
| Insurance | 1,594,452 | 1,368,750 | 1,505,625 | 1,254,070 |
| Professional and administration | 1,193,090 | 1,392,679 | 1,145,500 | 1,085,500 |
| Public relations | 6,575 | 6,575 | 0 | 0 |
| Interest Income | 0 | (2,510,223) | (1,995,958) | (2,806,325) |

[34] With respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[35] The May Updated 2025 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-05/05.19.25-CAT-LLC-2025-Financial_and_Operating-Budget.pdf*).

[36] The November Updated 2025 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-12/12.22.25_CAT-LLC-2025-Finacial_and_Operating-Budget.pdf*).

COMPARISON OF FULL YEAR BUDGETED COSTS—Continued

| Budget category | Full year of 2025 budgeted CAT costs from updated 2025 CAT budget (May 2025) | Full year of 2025 budgeted CAT costs from updated 2025 budget (Nov. 2025) | Full year of 2026 budgeted CAT costs from original 2026 CAT budget | Full year of 2026 budgeted CAT costs from updated 2026 CAT budget |
|---|---|---|---|---|
| Total Annual CAT Costs[c] | 228,334,551 | 187,575,979 | 156,432,998 | 147,044,869 |

[a] This cost number is calculated by adding together the Capitalized Developed Technology Costs and the Software License Fee for each budget.
[b] This cost number is calculated by adding together the Operating fees, the Cyber Insurance Premium Adjustment (if any) and market data vendor fees (if any separate fees) for each budget.
[c] This total cost number does not include an amount for a reserve.

In addition, the following table compares the budgeted costs for January and February 2026 that were used in drafting the Original 2026 CAT Budget with the actual costs for January and February 2026 that were used in drafting the Updated 2026 CAT Budget. The Original 2026 CAT Budget includes budgeted costs for January and February 2026, whereas the Updated 2026 CAT Budget includes actual costs for January and February 2026. The variance from the budgeted costs for January and February 2026 to the actual costs for January and February 2026 are used in this filing in supporting the reasonableness of the estimates for each category of costs.

COMPARISON OF BUDGETED AND ACTUAL COSTS FOR JANUARY & FEBRUARY 2026

| Budget Category | Budgeted costs for January & February 2026 (as used in drafting the original 2026 CAT Budget) | Actual costs for January & February 2026 (as used in drafting the updated 2026 CAT Budget) | Variance from budgeted costs for January & February 2026 to actual costs for January & February of 2026 |
|---|---|---|---|
| Capitalized Developed Technology Costs[a] | $671,472 | $4,145,430 | Increase by $3,473,958.[b] |
| Technology Costs: | 25,894,000 | 21,501,183 | |
| Cloud Hosting Services | 17,200,000 | 12,829,362 | Decrease by $4,370,638.[c] |
| Operating Fees | 5,149,236 | 5,127,057 | Decrease by $22,179. |
| CAIS Operating Fees | 3,544,764 | 3,544,764 | No change. |
| Change Request Fees | 0 | 0 | No change. |
| Legal | 1,424,166 | 1,838,617 | Increase by $414,451.[d] |
| Consulting | 258,334 | 267,554 | Increase by $9,220. |
| Insurance | 250,938 | 200,652 | Decrease by $50,286. |
| Professional and administration | 190,916 | 149,061 | Decrease by $41,855. |
| Public relations | 0 | 0 | No change. |
| Interest Income | (758,343) | (757,527) | Decrease by $816. |
| Total | 27,931,483 | 27,344,970 | Decrease by 586,513. |

[a] This cost number for capitalized developed technology costs is calculated by adding together the capitalized developed technology costs and the software license fee for each budget.
[b] The variance for capitalized developed technology costs is the result of costs related to the software license fee in accordance with the Plan Processor Agreement with FCAT.
[c] This variance is attributable to lower than forecasted market volumes and the impact of lower processing costs due to shutting down certain functionalities.
[d] The variance in legal costs is attributable to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created.

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the cloud hosting services costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $49,866,667 in technology costs for cloud hosting services for the CAT Fee 2026–1 Period. The technology costs for cloud hosting services represent costs reasonably budgeted to be incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS'') during the CAT Fee 2026–1 Period.

In the agreement between CAT LLC and the Plan Processor for the CAT (''Plan Processor Agreement''), FINRA CAT, LLC (''FCAT''), AWS was named as the subcontractor to provide cloud hosting services. Under the Plan Processor Agreement, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. Services provided by AWS include storage services, databases, compute services and other services (such as networking,

management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments. FCAT utilizes such cloud hosting services for a broad array of services for the CAT, such as data ingestion, data management, and analytic tools for the CAT. AWS performs cloud hosting services for both the CAT transaction database as well as the Reference Database (previously referred to as the Customer and Account Information System, or ''CAIS'').[37] It is anticipated that such cloud hosting services will continue during the CAT Fee 2026–1 Period.

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data, largely as a result of the processing and storage of the CAT Data.[38] The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT Fee 2026–1 Period, it is expected that AWS would provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [39] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [40] In contrast with those estimates, the Q3 2025 data volumes averaged 792 billion events per day. The highest peak data volume to date of 1.45 trillion events was recorded on April 7, 2025. The top five peak days were recorded in April 2025.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2026–1 Period will be approximately $49,866,667.[41] The budget for cloud hosting services costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the cloud hosting services costs for the second quarter and the cloud hosting services for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget.[42]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2026–1 Period based on an assumption of 35% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for the Reference Database. CAT LLC determined these growth assumptions in coordination with FCAT.[43]

This process for estimating the budget for cloud hosting services costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2026 CAT Budget.

The Original 2026 CAT Budget estimated a budget for cloud hosting services of $17,200,000 for January and February 2026. The actual costs for cloud hosting services for January and February 2026, which are set forth in the Updated 2026 CAT Budget, were $12,829,362. Therefore, the variance between budgeted and actual cloud hosting services costs for January and February 2026 was an approximate decrease of $4,370,638 as a result of lower volumes and a change in functionality.[44] Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the cloud hosting services costs from the Original 2026 Budget.[45] Specifically, the following describes the differences in the costs for cloud hosting services included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for cloud hosting services included in the Original 2026 CAT Budget were $81,900,006, and the annual 2026 budgeted costs for cloud hosting services included in the Updated 2026 CAT Budget are $77,529,362. Accordingly, budgeted annual costs for cloud hosting services decreased by $4,370,644 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 5% reduction in cloud hosting services costs for the full year of 2026.[46] The budgeted decrease in costs for cloud hosting services reflects lower costs for January and February 2026 due to lower than forecasted market volumes in January and the impact of lower processing costs due to shutting down certain functionalities.

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $19,691,953 in technology costs for operating fees for the CAT Fee 2026–1 Period. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan. Operating fees also include market data provider costs, as discussed below.

*Plan Processor: FCAT.* Under the Plan Processor Agreement with FCAT, CAT

[37] On January 13, 2026, the SEC approved an amendment to the CAT NMS Plan relating to the Customer and Account Information System (referred to as ''CAIS''). Effective with this amendment, CAIS has been renamed as the ''Reference Database.'' Securities Exchange Act Rel. No. 104586 (Jan. 13, 2026), 91 FR 2164 (Jan. 16, 2026) (''CAIS Amendment''). The SEC subsequently approved another amendment to the CAT NMS Plan to implement various cost savings measures that made further changes to the Reference Database. Securities Exchange Act Rel. No. 105107 (Mar. 27, 2026), 91 FR 16284 (Mar. 27, 2026) (''Cost Savings Amendment'').

[38] In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. For further discussion of the effect of processing timelines on cloud hosting costs, *see* Section 3(b)(2)(A)(i) below.

[39] Section 1.3 of Appendix D of the CAT NMS Plan, n.262.

[40] Section 1.3 of Appendix D of the CAT NMS Plan.

[41] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[42] This calculation is (⅔ × $18,700,000) + $18,700,000 + $18,700,000 = $49,866,667.

[43] Note that these growth rates are based on events processed and stored in the CAT. Executed transactions are a small subset of such events. As a result, the number of transactions in the CAT, and, hence, the number of executed equivalent shares, is not directly correlated with the number of events processed in the CAT or the costs of cloud hosting services for the CAT. Accordingly, the number of executed equivalent shares may stay relatively constant from year to year while the number of events processed and stored in the CAT may grow significantly.

[44] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[45] The last Prospective CAT Fee, CAT Fee 2025–2, was implemented pursuant to the prior CAT funding model. Moreover, the final invoice for CAT Fee 2025–2 was sent in December 2025, and, therefore, there is a six-month gap between the final invoice for CAT Fee 2025–2 and the first invoice for CAT Fee 2026–1, which would be in June 2026. Accordingly, this filing describes the changes in the cloud hosting services costs from the Original 2026 Budget.

[46] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Provide the CAT-related functions and services as the Plan Processor as required by SEC Rule 613 and the CAT NMS Plan in connection with the operation and maintenance of the CAT;
- Address compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provide support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assist with interpretive efforts, exemptive requests and amendments regarding the CAT NMS Plan;
- Oversee the security of the CAT;
- Monitor the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provide support to subcontractors under the Plan Processor Agreement;
- Provide support in discussions with the Participants and the SEC and its staff;
- Operate the FINRA CAT Helpdesk;
- Facilitate communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administer the CAT website and all of its content;
- Maintain cyber security insurance related to the CAT;
- Assist with billing, collection and other CAT fee-related activity; and
- Provide technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

CAT LLC calculated the budget for the FCAT technology costs for operating fees for the CAT Fee 2026–1 Period based on the recurring monthly operating fees under the Plan Processor Agreement.

*Market Data Provider: Algoseek.* It is anticipated that the operating fees costs for the CAT Fee 2026–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Algoseek, LLC (''Algoseek''). CAT LLC determined that Algoseek would provide market data that included data elements set forth in Section 6.5(a)(ii) of the CAT NMS Plan, and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Algoseek for the CAT Fee 2026–1 Period based on the monthly rate set forth in the agreement between Algoseek and FCAT.

*Operating Fee Estimates.* CAT LLC estimates that the budget for operating fees during the CAT Fee 2026–1 Period will be approximately $19,691,953.[47] The budget for operating fees during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding (1) two-thirds of the Non-CAIS fixed operating fees for the second quarter and the Non-CAIS fixed operating fees for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget and (2) two-thirds of the market data vendor fees for the second quarter and the market data vendor fees for the third and fourth quarter of 2026 included in the Updated 2026 CAT Budget.[48]

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2026–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Algoseek. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for operating fees of $5,149,236 for January and February 2026, and the actual costs for operating fees for January and February 2026 were $5,127,057. Therefore, the variance between budgeted and actual operating fees for this period was small—$22,179.[49] Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the operating fees from the Original 2026 Budget. Specifically, the following describes the differences in the costs for operating fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for operating fees included in the Original 2026 CAT Budget were $34,345,413, and the annual 2026 budgeted costs for operating fees included in the Updated 2026 CAT Budget are $29,845,524. Accordingly, budgeted annual costs for operating fees decreased by $4,499,889 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 13% reduction in operating fees for the full year of 2026.[50] The budgeted decrease in costs for operating fees reflects the proposed amendments to the Plan Processor Agreement related to the recent cost savings amendments to the CAT NMS Plan.[51]

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $14,179,060 in technology costs for CAIS operating fees for the CAT Fee 2026–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of the Reference Database (previously referred to as CAIS), and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Reference Data in the Reference

[47] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[48] This calculation is ((⅔ × $7,191,853) + $7,191,853 + $7,191,853) + ((⅔ × $192,630) + $192,630 + $192,630) = $19,691,953.

[49] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[50] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[51] *See* CAIS Amendment and Cost Savings Amendment.

Database and to create a CAT-Customer-ID for each Customer.[52]

During the CAT Fee 2026–1 Period, it is anticipated that FCAT will provide services related to the Reference Database. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT for services related to the Reference Database provided by FCAT on a monthly basis. CAT LLC negotiated the fees for FCAT's services related to the Reference Database on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. During the CAT Fee 2026–1 Period, it is anticipated that FCAT will continue to provide services relating to the ongoing operation, maintenance and support of the Reference Database.

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2026–1 Period will be approximately $14,179,060.[53] The budget for CAIS operating fees during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the CAIS fixed operating fees for the second quarter and the CAIS fixed operating fees for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[54]

CAT LLC calculated the budget for FCAT's services related to the Reference Database for the CAT Fee 2026–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget of $3,544,764 for CAIS operating fees for January and February of 2026. The actual costs for CAIS operating fees for January and February of 2026, which are included in the Updated 2026 CAT Budget, were $3,544,764. There was no variance between budgeted and actual CAIS operating fees for the first two months of 2026.[55] Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the CAIS operating fees from the Original 2026 Budget. Specifically, the following describes the differences in the costs for CAIS operating fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

CAIS operating fees are based on a recurring monthly rate payable to FCAT and are unchanged from the Original 2026 CAT Budget to the Updated 2026 CAT Budget. The annual 2026 budgeted costs for CAIS operating fees included in the Original 2026 CAT Budget were $21,268,584, and the annual 2026 budgeted costs for CAIS operating fees included in the Updated 2026 CAT Budget are $21,268,590.[56] Accordingly, the budgeted annual costs for CAIS operating fees are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the change request fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $0 in technology costs for change request fees for the CAT Fee 2026–1 Period. The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT.

Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other changes to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change.

The change request budget line is established to include expected costs to be incurred in which the nature of the costs (*i.e.,* capitalization versus expensing) have not yet been determined. Upon the incurrence of such costs, the final determination of capitalization versus expensing is determined and then such costs are reclassified from the change request line to the appropriate technology cost line item.

CAT LLC estimates that the budget for change requests during the CAT Fee 2026–1 Period will be approximately $0.[57] The budget for change requests during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. This $0 cost number for change request fees reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2026–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a change request budget of $0 for January and February of 2026. The actual costs for change requests for January and February of 2026, which are set forth in the Updated 2026 CAT Budget, were $0. There was no variance between budgeted and actual change request costs for January and February of 2026.[58] Accordingly, CAT LLC believes that the process for estimating the budgeted change request costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the change request fees from the Original 2026 Budget. Specifically, the following describes the differences (if any) in the costs for change request fees

[52] *See* Section 9 of Appendix D of the CAT NMS Plan.

[53] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[54] This calculation is (⅔ × $5,317,147) + $5,317,147 + $5,317,147 = $14,179,060.

[55] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[56] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[57] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[58] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for change requests included in the Original 2026 CAT Budget were $0, and the annual 2026 budgeted costs for change requests included in the Updated 2026 CAT Budget are $0.[59] Accordingly, budgeted annual costs for change requests are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the capitalized developed technology costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $3,450,000 in technology costs for capitalized developed technology costs for the CAT Fee 2026–1 Period. This category of costs includes the budget for capitalizable application development costs incurred in the development of the CAT. It is anticipated that such costs will include certain costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT related to the cost savings amendments [60] and the move to 23x5 trading.

CAT LLC estimates that the budget for capitalized developed technology costs during the CAT Fee 2026–1 Period will be approximately $3,450,000.[61] The budget for capitalized developed technology costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding (1) capitalized developed technology costs of $3,450,000 for May, $0 for June and $0 for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget; and (2) $0 for the Software License Fee 2026 for the second, third, and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[62]

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2026–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. This process for estimating the budget for capitalized developed technology costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the capitalized developed technology costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for capitalized developed technology costs of $671,472 for January and February 2026, and the actual costs for capitalized developed technology costs for January and February 2026 were $4,145,430.[63] The variance of $3,473,958 for January and February 2026 is the result of costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the capitalized developed technology costs from the Original 2026 Budget. Specifically, the following describes the differences in the costs for capitalized developed technology costs as included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budget for capitalized developed technology costs included in the Original 2026 CAT Budget was $8,228,827, and the annual 2026 budget for capitalized developed technology costs included in the Updated 2026 CAT Budget are $8,378,964.[64] Accordingly, the annual budget for capitalized developed technology costs increased by $150,137 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 2% increase in the capitalized developed technology costs for the full year of 2026. This budgeted increase in the annual budget for capitalized developed technology costs was the result of costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the legal costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $5,670,452 in legal costs for the CAT Fee 2026–1 Period. This category of costs represents budgeted costs for legal services for this period. CAT LLC anticipates that it will receive legal services from two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Jenner & Block LLP (''Jenner''), during the CAT Fee 2026–1 Period.

*Law Firm: WilmerHale.* It is anticipated that legal costs during the CAT Fee 2026–1 Period will include costs related to the legal services performed by WilmerHale. CAT LLC anticipates that it will continue to employ WilmerHale during the CAT Fee 2026–1 Period based on, among other things, their expertise, long history with the project and recognition that the hourly fee rates for this law firm are anticipated to be in line with market rates for specialized legal expertise. WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. The legal fees will be paid by CAT LLC to WilmerHale.

During the CAT Fee 2026–1 Period, it is anticipated that WilmerHale will provide legal services related to the following:

- Assist with CAT fee filings and related funding issues;
- Draft exemptive requests from CAT NMS Plan requirements and/or proposed amendments to the CAT NMS Plan;
- Provide legal guidance with respect to interpretations of CAT NMS Plan requirements;
- Provide legal support for the Operating Committee, Compliance

[59] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[60] *See* CAIS Amendment and Cost Savings Amendment.

[61] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[62] This calculation is ($3,450,000 + $0 + $0 + $0) + ($0 + $0 + $0) = $3,450,000. Note that the $4,178,964 cost for the software license fee was not included in the CAT Fee 2026–1 Period.

[63] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[64] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

Subcommittee, working groups and Leadership Team;

- Draft SRO rule filings related to the CAT Compliance Rule;
- Manage corporate governance matters, including supporting Operating Committee meetings and preparing resolutions and consents;
- Assist with communications with the industry, including CAT Alerts and presentations;
- Provide guidance regarding the confidentiality of CAT Data;
- Assist with cost management analyses and proposals;
- Assist with commercial contract-related matters, including change orders and amendments, Plan Processor Agreement items, and subcontract matters;
- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Provide legal guidance with respect to the CAT budgets;
- Provide background assistance to other counsel for CAT matters;
- Assist with legal responses related to third-party data requests; and
- Provide legal support regarding CAT policies and procedures.

CAT LLC estimated the budget for the legal costs for WilmerHale for the CAT Fee 2026–1 Period through an analysis of a variety of factors, including WilmerHale fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues.

*Law Firm: Jenner.* It is anticipated that legal costs during the CAT Fee 2026–1 Period will include costs related to the legal services performed by Jenner. CAT LLC anticipates that it will continue to employ Jenner during the CAT Fee 2026–1 Period based on, among other things, their expertise, history with the project and recognition that their hourly fee rates are in line with market rates for specialized legal expertise. The legal fees will be paid by CAT LLC to Jenner.

During the CAT Fee 2026–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against the SEC Chair, the SEC and CAT LLC challenging the validity of Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims; [65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model; [66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order [67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model. Jenner also will continue to provide legal counseling to CAT LLC related to the above-listed litigation and other litigation risk.

CAT LLC estimated the budget for the legal costs for Jenner for the CAT Fee 2026–1 Period through an analysis of a variety of factors, including Jenner's fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues.

*Legal Cost Estimates.* CAT LLC estimates that the budget for legal services during the CAT Fee 2026–1 Period will be approximately $5,670,452.[69] The budget for legal services during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding budgeted costs for two-thirds of the legal costs for the second quarter and the legal costs for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[70]

CAT LLC estimated the budget for the legal services for the CAT Fee 2026–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues. This process for estimating the budget for the legal services for CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for legal costs of $1,424,166 for January and February of 2026. The actual costs for legal services for January and February 2026, which are included in the Updated 2026 Budget, were $1,838,617.[71] The increase of $414,451 was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs were primarily due to additional legal work related to litigation matters as well as regulatory and corporate legal matters. Accordingly, CAT LLC believes that the process for estimating the budgeted legal costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the legal costs from the Original 2026 Budget. Specifically, the following describes the differences in the legal costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted legal costs included in the Original 2026 CAT Budget were $8,485,000, and the annual 2026 budgeted legal costs included in the Updated 2026 CAT Budget are $8,939,184.[72] Accordingly, the annual budget for legal costs increased by $454,184 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 5% increase in the legal costs for the full year of 2026. This budgeted increase in the legal costs in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to an anticipated increase in legal costs related to litigation matters as well as regulatory and corporate legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,025,957 in consulting costs for the CAT Fee 2026–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'')

[65] *Davidson et al.* v. *Atkins et al.,* Case No. 6:24–cv–197 (W.D. Tex.).

[66] *Am. Sec. Ass'n* v. *SEC,* Case No. 26–10936 (11th Cir.).

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

[68] *Citadel Securities* v. *SEC,* Case No. 24–12300 (11th Cir.).

[69] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[70] This calculation is (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[71] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[72] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

as project manager during the CAT Fee 2026–1 Period. The services provided by Deloitte to the CAT include advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses. In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee.

It is anticipated that the costs for CAT during the CAT Fee 2026–1 Period will include costs related to consulting services performed by Deloitte. CAT LLC anticipates that it will continue to employ Deloitte during the CAT Fee 2026–1 Period based on, among other things, their expertise, long history with the project, and the recognition that it is anticipated that the consulting fees will remain in line with market rates for this type of specialized consulting work. Deloitte's fee rates are negotiated on an annual basis. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. The consulting fees will be paid by CAT LLC to Deloitte.

It is anticipated that Deloitte will provide a variety of consulting services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Implement program operations for the CAT project;
- Provide support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assist with cost and funding matters for the CAT, including assistance with loans and the CAT bank account for CAT funding;
- Provide support for updating the SEC on the progress of the development of the CAT; and
- Provide support for third party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee, which is paid by CAT LLC.

CAT LLC estimates that the budget for consulting costs during the CAT Fee 2026–1 Period will be approximately $1,025,957.[73] The budget for consulting costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the consulting costs for the second quarter and the consulting costs for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[74]

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2026–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, and discussions with Deloitte, as well as the compensation arrangement for the Chair. This process for estimating the budget for consulting costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the consulting costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for consulting services of $258,334 for January and February 2026, and the actual costs for consulting services for January and February 2026, which are included in the Updated 2026 CAT Budget, were $267,554.[75] Therefore, the variance between budgeted and actual consulting costs for January and February was approximately 4%. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the consulting costs from the Original 2026 Budget. Specifically, the following describes the differences (if any) in the consulting costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budget for consulting costs included in the Original 2026 CAT Budget was $1,550,000, and the annual 2026 budget for consulting costs included in the Updated 2026 CAT Budget is $1,550,000.[76] Accordingly, the annual budget for consulting costs has not changed from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026.

(viii) Insurance Costs

(a) Description of Insurance Costs

Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the insurance costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $852,768 in insurance costs for the CAT Fee 2026–1 Period.[77] The insurance costs represent the costs to be incurred for insurance for the CAT during the CAT Fee 2026–1 Period.

It is anticipated that the insurance costs for CAT during the CAT Fee 2026–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during the CAT Fee 2026–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2026–1 Period based on the insurance estimate from USI for 2026. The annual premiums would be paid by CAT LLC to USI.

The budgeted insurance costs for the CAT Fee 2026–1 Period are based on an insurance cost estimate from USI for 2026. Accordingly, CAT LLC believes that the process for estimating the budgeted insurance costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for insurance costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the insurance costs from the Original 2026 Budget. Specifically, the following describes the differences in the insurance costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted insurance costs included in the Original 2026 CAT Budget were $1,505,625, and the annual 2026 budgeted insurance costs included

[73] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[74] This calculation is (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[75] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[76] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[77] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

in the Updated 2026 CAT Budget are $1,254,070.[78] Accordingly, the annual budget for insurance costs decreased by $251,555 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 16% decrease in the insurance costs for the full year of 2026. This budgeted decrease in the insurance costs in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to an anticipated decrease in insurance premiums.

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $749,151 in professional and administration costs for the CAT Fee 2026–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[79] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin, Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during the CAT Fee 2026–1 Period.

*Financial Advisory Firm: Anchin.* It is anticipated that the professional and administration costs for the CAT Fee 2026–1 Period will include costs related to financial advisory services performed by Anchin. CAT LLC anticipates that it will continue to employ Anchin during the CAT Fee 2026–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. The fees for these services will be paid by CAT LLC to Anchin.

It is anticipated that Anchin will provide a variety of services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Facilitate bill payments to vendors;
- Facilitate repayments of promissory notes to Participants;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Review documentation to ensure that repayments of promissory notes to Participants are in accordance with established policies and procedures;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual and interim operating and financial budgets, including budget to actual and budget to budget fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee, Leadership Team and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Review and reconcile the monthly FINRA CAT reports/analyses related to billings, collections, outstanding accounts receivable and cash account;
- Perform certain verification, completeness, and validation testing related to the monthly FINRA CAT reports/analyses related to billings;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

CAT LLC estimated the annual budget for the costs for Anchin based on historical costs adjusted for cost of living rate increases, and projected incremental advisory and support services.

*Accounting Firm: Grant Thornton.* It is anticipated that the professional and administration costs for the CAT Fee 2026–1 Period will include costs related to accounting services performed by Grant Thornton. CAT LLC anticipates that it will continue to employ Grant Thornton during the CAT Fee 2026–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. It is anticipated that Grant Thornton will continue to be engaged as an independent accounting firm to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. The fees for these services will be paid by CAT LLC to Grant Thornton. CAT LLC estimated the budget for the accounting costs for Grant Thornton for the CAT Fee 2026–1 Period based on the anticipated hourly rates and the anticipated services plus an administrative fee.

*Professional and Administration Cost Estimates.* CAT LLC estimates that the budget for professional and administration services during the CAT Fee 2026–1 Period will be approximately $749,151.[80] The budget for professional and administration services during the CAT Fee 2026–1 Period is based on the Updated 2026 CAT Budget. CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2026–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for professional and administration costs of $190,916 for January and February 2026, and the actual costs for professional and administration services for January and February 2026, which are set forth in the Updated 2026 Budget, were $149,061.[81] The decrease of $41,855 was due to a lower than expected profressional and administration services costs and to the movement of bank fees from the professional and administration category to the interest income category. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and

[78] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[79] Section 9.2 of the CAT NMS Plan.

[80] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[81] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

administration costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for professional and administration costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the professional and administration costs from the Original 2026 Budget. Specifically, the following describes the differences in the professional and administration costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted professional and administration costs as included in the Original 2026 CAT Budget were $1,145,500, and the annual 2026 budgeted professional and administration costs included in the Updated 2026 CAT Budget are $1,085,500.[82] Accordingly, the budgeted annual costs for professional and administration services decreased by $60,000 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026. This budgeted decrease in the professional and administration costs in the Updated 2026 CAT Budget from the Original 2026 Budget was due to the movement of bank fees from the professional and administration category to the interest income category, and not a change in costs related to Anchin and Grant Thornton services.

(x) Public Relations Costs

(a) Description of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $0 in public relations costs for the CAT Fee 2026–1 Period. The public relations costs would represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. Because CAT LLC anticipates that it will not engage a public relations firm for the CAT Fee Period 2026–1, the budget for public relations costs for this period is $0.[83]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the public relations costs from the Original 2026 Budget. Specifically, the following describes the differences (if any) in public relations costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual budgeted public relations costs for 2026 included in the Original 2026 CAT Budget were $0, and the annual budgeted public relations costs for 2026 included in the Updated 2026 CAT Budget are $0.[84] Accordingly, the annual budgeted public relations costs for 2026 are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(xi) Interest Income

(a) Description of Interest Income

Section 11.1(a) of the CAT NMS Plan requires the CAT budget to include ''the sources of all revenues to cover costs.'' Accordingly, the Updated 2026 CAT Budget includes a line item for interest income. Specifically, the Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,453,382 in interest income for the CAT Fee 2026–1 Period.[85] Interest income represents the interest earned on the surplus reserve and other funds held by CAT LLC. Such income would be used to reduce the amount to be collected to fund the CAT.

CAT LLC estimates the budget for the interest income for the CAT Fee 2026–1 Period based on the estimate of the funds held by CAT LLC and the expected interest rates on such funds. The Original 2026 CAT Budget estimated interest income of $758,343 for January and February 2026, and the actual interest income for January and February 2026, which are included in the Updated 2026 CAT Budget, were $757,527.[86] As mentioned above, bank fees were moved from the professional and administration category in the Original 2026 CAT Budget to the interest income category in the Updated 2026 CAT Budget. Accordingly, the interest income amount for the Updated 2026 CAT Budget was net of $10,000 in bank fees. Therefore, the variance between budgeted and actual interest income (aside from bank fees) for January and February 2026 was approximately $10,000. Accordingly, CAT LLC believes that the process for estimating the budgeted interest income for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in each line item from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in interest income from the Original 2026 CAT Budget. Specifically, the following describes the differences in the interest income included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted interest income as included in the Original 2026 CAT Budget was $1,995,958, and the annual 2026 budgeted interest income included in the Updated 2026 CAT Budget is $2,806,325.[87] Accordingly, the budgeted interest income (not including bank fees) increased by $810,367 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 40% increase in the interest income for the full year of 2026. This budgeted increase in the interest income in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to higher than expected cash balances being maintained after the approval of the Original 2026 Budget.

(xii) Reserve

(a) Description of Reserve

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the reserve costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the

[82] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[83] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[84] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[85] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[86] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[87] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

CAT NMS Plan that includes a reserve amount for 2026. Section 11.1(a)(i) of the CAT NMS Plan states that the budget shall include a reserve. Section 11.1(a)(ii) of the CAT NMS Plan further describes the reserve as follows:

For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.

CAT LLC determined to maintain a reserve in the amount of 25% of the total expenses set forth in the Updated 2026 CAT Budget (which does not include the reserve amount). Accordingly, the total 25% reserve of $23,508,157 was calculated by multiplying the total expenses set forth in the Updated 2026 CAT Budget (other than the reserve) by 25%.[88]

The Updated 2026 CAT Budget estimates that CAT LLC will have $102,391,135 in reserve as of the beginning of the CAT Fee Period 2026–1. Such reserve is related, in part, to (i) the collection of CAT fees in excess of the budgeted CAT costs in light of the greater actual executed equivalent share volume than the projected executed equivalent share volume for prior CAT Fees, and (ii) a reduction in anticipated budgeted costs associated with the implementation of certain cost savings measures. This reserve balance of $102,391,135 would be used to offset a portion of CAT costs for CAT Fee Period 2026–1, thereby reducing the fee rate to be paid for CAT Fee 2026–1. Specifically, the total costs (including the 25% reserve) for CAT Fee 2026–1 of $117,540,783 would be reduced by the $102,391,135 in reserve. Therefore, the Total Budgeted CAT Costs 2026–1 would be $15,149,648.

Accordingly, the fee rate for CAT Fee 2026–1 is calculated based on this reduced amount of $15,149,648, resulting in a fee rate of $0.000001 per executed equivalent share. If the fee rate for CAT Fee 2026–1 were calculated solely based on the reasonably budgeted costs for CAT for May–December 2026, excluding the reduction in that amount due to the surplus reserve offset, the fee rate would be the higher rate of $0.000010.[89]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in reserve from the Original 2026 CAT Budget. Specifically, the following describes the differences in the reserve included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The accrued liquidity reserve balance at the beginning of the year included in the Original 2026 CAT Budget was $119,128,336. The Original 2026 CAT Budget contemplated using the reserve to pay CAT bills throughout the year as no CAT fee was in effect. The accrued liquidity reserve balance at the beginning of the year included in the Updated 2026 CAT Budget was $155,403,378. The increase in the accrued liquidity reserve balance at the beginning of the year from the Original 2026 CAT Budget to the Updated 2026 CAT Budget reflected the additional CAT Fees that had been received after the approval of the Original 2026 CAT Budget. In addition, the Updated 2026 CAT Budget not only reflected the use of the surplus reserve to pay CAT bills but also the accrual of additional reserve to establish a 25% reserve through CAT Fee 2026–1. Accordingly, the estimated liquidity reserve balance increased from a deficit of $37,304,661 included in the Original 2026 CAT Budget to a reserve balance of $23,508,157 included in the Updated 2026 CAT Budget for the full year of 2026.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2026–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2026–1 Period. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [90] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[91]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the eight-month recovery period for CAT Fee 2026–1 by multiplying by 8/12ths the executed equivalent share volume for the 12-month period from March 2025 through February 2026. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.41), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for the eight-month period for CAT Fee 2026–1 is projected to be 3,987,291,699,573.66 executed equivalent shares.[92]

The projected total executed equivalent share volume of all transactions in Eligible Securities for the eight-month recovery period for CAT Fee 2026–1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.[93]

(E) Fee Rate 2026–1

Fee Rate 2026–1 would be calculated by dividing the Budgeted CAT Costs 2026–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the eight-month recovery period for CAT Fee 2026–1, as described in detail

[88] The reserve was calculated by multiplying $94,032,626 by 25%, which equals approximately $23,508,157.

[89] *See* CAT Fee Alert 2026–1 (Apr. 1, 2026).

[90] Section 11.3(a)(i)(D) of the CAT NMS Plan.

[91] CAT Funding Model Approval Order at 13452.

[92] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by 8/12ths.

[93] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

above.[94] Specifically, Fee Rate 2026–1 would be calculated by dividing $15,149,648 by 3,987,291,699,573.66 executed equivalent shares. As a result, Fee Rate 2026–1 would be $0.000003799483243631228 per executed equivalent share. Fee Rate 2026–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[95]

Fee Rate 2026–1 would be used to calculate the fee rate to be paid by CEBSs and CEBBs for CAT Fee 2026–1. Such fee rate is calculated by multiplying Fee Rate 2026–1 of $0.000003799483243631228 by one-third, and rounding the result to six decimal places.[96] Accordingly, the fee rate to be paid by CEBSs and CEBBs for CAT Fee 2026–1 would be $0.000001 per executed equivalent share.

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2026–1 on a monthly basis for eight months, from July 2026 until January 2027. A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[97] Proposed paragraph (a)(6)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2026–1 in June 2026, and would receive an invoice for CAT Fee 2026–1 each month thereafter until January 2027. Proposed paragraph (a)(6)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis.'' In addition, paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2026–1, the Exchange proposes to add a new paragraph to the ''Consolidated Audit Trail Funding Fees'' section of the Exchange's fee schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2026–1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[98]

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(6) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(6) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for CAT Fee 2026–1 in June 2026, which shall set forth the CAT Fee 2026–1 fees calculated based on transactions in May 2026, and shall receive an invoice for CAT Fee 2026–1 for each month thereafter until January 2027.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000001 per executed equivalent share.

(C) Notwithstanding the last invoice date of January 2027 for CAT Fee 2026–1 in paragraph 6(A), CAT Fee 2026–1 shall continue in effect after January 2027, with each CAT Executing Broker receiving an invoice for CAT Fee 2026–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2026–1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for CAT Fee 2026–1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.'' [99] Accordingly, proposed paragraph (a)(6)(B) of the fee schedule would set forth a fee rate of $0.000001 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2026–1 of $0.000003799483243631228 by one-third, and rounding the result to six decimal places.[100] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(6)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2026–1. Specifically, CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2026–1 in June 2026 and the fees set forth in that invoice would be calculated based on transactions executed in May 2026. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(6)(A) of the fee schedule also would describe the monthly cadence of the invoices for CAT Fee 2026–1. Specifically, after the first invoices are provided to CAT Executing Brokers in June 2026, invoices will be sent to CAT Executing Brokers each month thereafter until January 2027.

Proposed paragraph (a)(6)(B) of the fee schedule would describe the invoices for CAT Fee 2026–1. Proposed paragraph (a)(6)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT

[94] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is appropriate.'' CAT Funding Model Approval Order at 13435.

[95] *See* Section 11.3(a)(iii)(B)(A) of the CAT NMS Plan.

[96] This fee rate of $0.000001 is calculated by multiplying the Fee Rate of $0.000003799483243631228 by one-third and rounding this result (which equals $0.000001266494414543743) to 6 decimal places.

[97] *See* proposed paragraph (a)(6)(B) of the fee schedule.

[98] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[99] CAT Funding Model Approval Order at 13445, n.677.

[100] This fee rate of $0.000001 is calculated by multiplying the Fee Rate of $0.000003799483243631228 by one-third, and rounding this result (which equals $0.000001266494414543743) to 6 decimal places.

Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis.'' Proposed paragraph (a)(6)(B) of the fee schedule also would describe the fees to be set forth in the invoices for CAT Fee 2026–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000001 per executed equivalent share.''

Since CAT Fee 2026–1 is a monthly fee based on actual transaction volume from the prior month, CAT Fee 2026–1 may collect more or less than two-thirds of the Budgeted CAT Costs 2026–1. To the extent that CAT Fee 2026–1 collects more than two-thirds of the Budgeted CAT Costs 2026–1, any excess money collected will be used to offset future fees and/or to fund the reserve for the CAT. To the extent that CAT Fee 2026–1 collects less than two-thirds of the Budgeted CAT Costs 2026–1, the budget for the CAT in the ensuing months will reflect such shortfall.

Furthermore, proposed paragraph (a)(6)(C) of the fee schedule would describe how long CAT Fee 2026–1 would remain in effect. It would state that ''[n]otwithstanding the last invoice date of January 2027 for CAT Fee 2026–1 in paragraph 6(A), CAT Fee 2026–1 shall continue in effect after January 2027, with each CAT Executing Broker receiving an invoice for CAT Fee 2026–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2026–1 will no longer be in effect.''

Finally, proposed paragraph (a)(6)(D) of the fee schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2026–1. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2026–1 in accordance with paragraph (b).''

(B) Manner of Payment

Paragraph (b)(1) of the ''Consolidated Audit Trail Funding Fees'' section of the fee schedule describes the manner of payment of Industry Member CAT fees. It states that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.'' The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[101] The Plan Processor has established a billing system for CAT fees.[102] Accordingly, CAT Executing Brokers would be required to pay CAT Fee 2026–1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[103]

Paragraph (b)(2) of the fee schedule states that:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to CAT Fee 2026–1.

(5) CAT Fee Details

The CAT NMS Plan states that:

Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[104]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their CAT Fee.[105] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [106] Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that CAT Fee 2026–1 is in effect as well as the total amount invoiced for CAT Fee 2026–1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for CAT Fee 2026–1.

(6) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone

[101] Section 11.4 of the CAT NMS Plan.

[102] The billing process and system are described in CAT Alert 2023–02 as well as in the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023 and Nov. 7, 2023), each available on the CAT website.

[103] Section 11.4 of the CAT NMS Plan.

[104] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

[105] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.'' CAT Funding Model Approval Order at 13454.

[106] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 13454.

related to Period 4 described in Section 11.6 has been satisfied.'' [107] Under Section 1.1 of the CAT NMS Plan, a Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,[108] the Financial Accountability Milestone related to Period 4 was satisfied on July 15, 2024. In addition, the satisfaction of the Financial Accountability Milestone related to Period 4 was described in detail in the fee filing for the first Prospective CAT Fee, CAT Fee 2024–1.[109]

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[110] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[111] On March 31, 2026, the Operating Committee approved the Participant fee related to CAT Fee 2026–1. Specifically, pursuant to the requirements of CAT NMS Plan,[112] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000001 per executed equivalent share, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be invoiced such CAT fees on a monthly basis for eight months, from June 2026 until January 2027, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on an exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in June 2026, and would receive an invoice each month thereafter until January 2027. Like with the CAT Fee 2026–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(6)(C) of the fee schedule, notwithstanding the last invoice date of January 2027, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

[e]ach Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the ''Payment Date''). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[113] which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[114] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[115] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[116] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [117] To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees to be paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the CAT Fee 2026–1 fees to be collected are directly associated with the budgeted costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, and professional and administration costs.

The proposed CAT Fee 2026–1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT

[107] Section 11.3(a)(iii)(C) of the CAT NMS Plan.

[108] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[109] *See* Securities Exchange Act Rel. No. 100878, (Aug. 29, 2024), 89 FR 72547, (Sep. 5, 2024).

[110] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[111] CAT Funding Model Approval Order at 13448.

[112] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[113] 15 U.S.C. 78f(b)(6).

[114] 15 U.S.C. 78f(b)(4).

[115] 15 U.S.C. 78f(b)(8).

[116] *See* 15 U.S.C. 78f(b)(1).

[117] CAT NMS Plan Approval Order at 84697.

Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [118] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[119] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for CAT Fee 2026–1 Is Reasonable

The SEC has determined that the CAT Funding Model satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, satisfies the Exchange Act.[120] In each respect, as discussed above, CAT Fee 2026–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2026–1 is reasonable and consistent with the Exchange Act. The calculation of Fee Rate 2026–1 for CAT Fee 2026–1 requires the figures for Budgeted CAT Costs 2026–1, the executed equivalent share volume for the prior twelve months, the determination of the CAT Fee 2026–1 Period, and the projection of the executed equivalent share volume for the CAT Fee 2026–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2026–1

The formula for calculating a Fee Rate requires the amount of Budgeted CAT Costs to be recovered. Specifically, Section 11.3(a)(iii)(B) of the CAT NMS Plan requires a fee filing to provide: the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.

In accordance with this requirement, the Exchange has set forth the amount and type of Budgeted CAT Costs 2026–1 for each of these categories above.

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2026–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2026–1 is reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or is consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.[121] CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[122] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [123] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[124] In contrast to the 2016 projections, the

[118] *Id.*

[119] CAT Funding Model Approval Order at 13481.

[120] *Id.*

[121] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[122] For a discussion of the amount and type of cloud hosting services fees, *see* Section 3(a)(2)(C)(i) above.

[123] Section 1.3 of Appendix D of the CAT NMS Plan at n.262.

[124] CAT NMS Plan Approval Order at 84801.

actual daily Q3 2025 data volumes averaged 792 billion events per day.

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and amendments to the CAT NMS Plan to reduce costs, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[125]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.[126] CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[127] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[128] The services to be performed by FCAT for CAT Fee 2026–1 Period and the budgeted costs related to such services are described above.[129]

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates receiving certain market data from Algoseek during the CAT Fee 2026–1 Period. CAT LLC anticipates that Algoseek will provide data as set forth in the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.[130]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[131] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain the Reference Database and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's services related to the Reference Database, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[132] The services to be performed by FCAT for the CAT Fee 2026–1 Period and the budgeted costs for such services are described above.[133]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.[134] CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,[135] CAT LLC determined that it was reasonable not to include any change request fees in the Budgeted CAT Costs 2026–1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.[136] In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT

[125] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[126] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[127] *See* Section 3(a)(2)(C)(ii) above.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[132] *See* Section 3(a)(2)(C)(iii) above.

[133] *Id.*

[134] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[135] *See* Section 3(a)(2)(C)(iv) above.

[136] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2026–1 Period, which relate to the software license fee and technology changes to be implemented by FCAT, are described in more detail above.[137]

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[138] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2026–1 Period and the budgeted costs related to such services are described above.[139]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[140] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. Because there are no CAT employees [141] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[142] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[143]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as a part of CAT Fees.[144] CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [145] As discussed above,[146] CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[147]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[148] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs related to such services are described above.[149]

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.[150]

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.[151]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[152] However, as described above,[153] CAT LLC determined not to include any public relations costs in Budgeted CAT Costs 2026–1. CAT LLC determined that it was reasonable not to include any

[137] *See* Section 3(a)(2)(C)(v) above.

[138] Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

[139] *See* Section 3(a)(2)(C)(vi) above.

[140] Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan.

[141] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

[142] CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. *See, e.g.,* CTA Plan and CQ Plan.

[143] Section 3(a)(2)(C)(vii) above.

[144] Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan.

[145] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[146] *See* Section 3(a)(2)(C)(viii) above.

[147] *Id.*

[148] Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

[149] *See* Section 3(a)(2)(C)(ix) above.

[150] *Id.*

[151] *Id.*

[152] Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

[153] *See* Section 3(a)(2)(C)(x) above.

public relations costs in the Budgeted CAT Costs 2026–1.

(xi) Interest Income

Section 11.1(a) of the CAT NMS Plan requires the CAT budget to include ''the sources of all revenues to cover costs.'' Accordingly, the Updated 2026 CAT Budget includes a line item for interest income. Specifically, the Updated 2026 CAT Budget includes $1,453,382 in interest income for the CAT Fee 2026–1 Period.[154] CAT LLC determined that using interest income to reduce the amount to be collected via CAT Fees is reasonable and should be included as a part of the Budgeted CAT Costs 2026–1.

(xii) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.[155] CAT LLC determined that the reserve in the amount of 25% of the Updated 2026 CAT Budget (other than the reserve) complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount, and, therefore, should be included as a part of the Updated 2026 CAT Budget.

In its approval order for the CAT Funding Model, the Commission stated that it would be appropriate for the annual operating budget for the CAT to ''include a reserve of not more than 25% of the annual budget.'' [156] In making this statement, the Commission noted the following:

Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is appropriate to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[157]

The SEC also recognized that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.[158] The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.[159] The inclusion of the proposed reserve in the Updated 2026 CAT Budget would provide each of these benefits to the CAT. The reserve is discussed further above.[160]

As discussed further below,[161] however, a surplus reserve balance in excess of the budgeted 25% reserve has been collected as of the beginning of the year of 2026. Accordingly, the Updated 2026 CAT Budget indicates that this surplus would be used to offset a portion of CAT costs for the CAT Fee 2026–1 Period, thereby reducing the fee rate for CAT Fee 2026–1 ($0.000001 per executed equivalent share). If the fee rate for CAT Fee 2026–1 were calculated solely based on the reasonably budgeted costs for CAT for May–December 2026, excluding the reduction in that amount due to the surplus reserve offset, the fee rate would be $0.000010 per executed equivalent share.

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include ''a discussion of how the budget is reconciled to the collected fees.'' [162] As discussed above,[163] this reserve balance of $102,391,135 collected via prior CAT Fees would be used to offset a portion of CAT costs for CAT Fee Period 2026–1, thereby reducing the fee rate to be paid for CAT Fee 2026–1. Specifically, the total costs (including the 25% reserve) for CAT Fee 2026–1 of $117,540,783 would be reduced by the $102,391,135 in reserve. Therefore, the Total Budgeted CAT Costs 2026–1 would be $15,149,648. Such surplus reserve balance would be used to reduce the fee rate for CAT Fee 2026–1 ($0.000001 per executed equivalent share).

(C) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[164]

(D) Projected Executed Equivalent Share Volume for the CAT Fee 2026–1 Period

CAT LLC has determined that the projected total executed equivalent share volume for the eight months of the CAT Fee 2026–1 Period by multiplying by 8/12ths the executed equivalent share volume for the prior twelve months: 8/12 times 5,980,937,549,360.49 executed equivalent shares.[165] The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.41), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level.

(E) Actual Fee Rate for CAT Fee 2026–1

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[166] Accordingly, proposed paragraph (a)(6)(B) of the fee schedule would set forth a fee rate of $0.000001 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2026–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.[167]

(ii) Reasonable Fee Level

The Exchange believes that charging CAT Fee 2026–1 with a fee rate of $0.000001 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with the Budgeted CAT Costs 2026–1. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is less than CAT Fee

[154] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[155] Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

[156] CAT Funding Model Approval Order at 13444.

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] *See* Section 3(a)(2)(C)(xii) above.

[161] *See* Section 3(b)(2)(B) below.

[162] Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

[163] *See* Section 3(a)(2)(C)(xii) above.

[164] *See* Section 3(a)(2)(D) above.

[165] *Id.*

[166] CAT Funding Model Approval Order at 13445, n. 677.

[167] *See* Section 3(a)(5)(A) above.

2025–2 and is comparable to other transaction-based fees, including fees assessed pursuant to Section 31.[168] As a result, the magnitude of CAT Fee 2026–1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.[169]

(3) CAT Fee 2026–1 Provides for an Equitable Allocation of Fees

CAT Fee 2026–1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[170] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is appropriate and meets the Rule 608(b) approval standard.'' [171] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

CAT Fee 2026–1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. For example, as described above, the calculation of CAT Fee 2026–1 complies with the formula set forth in Section 11.3(a) of the CAT NMS Plan. In addition, CAT Fee 2026–1 would be charged to CEBBs and CEBSs in accordance with Section 11.3(a) of the CAT NMS Plan. Furthermore, the Participants would be charged for their designated share of the Budgeted CAT Costs 2026–1 through a fee implemented via the CAT NMS Plan, which would have the same fee rate as CAT Fee 2026–1.

In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2026–1—the Budgeted CAT Costs 2026–1, the count for the executed equivalent share volume for the prior 12 months, and the projected executed equivalent share volume for the CAT Fee 2026–1 Period—is reasonable. Moreover, these inputs lead to a reasonable fee rate for CAT Fee 2026–1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) CAT Fee 2026–1 Is Not Unfairly Discriminatory

CAT Fee 2026–1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfies the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of CAT Fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. CAT Fee 2026–1 complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2026–1 and the resulting fee rate for CAT Fee 2026–1 is reasonable. Therefore, CAT Fee 2026–1 does not impose an unfairly discriminatory fee on Industry Members.

The Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and with specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Act [172] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2026–1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce CAT Fee 2026–1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[173] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2026–1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of CAT Fee 2026–1 is reasonable and the resulting fee rate for CAT Fee 2026–1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, CAT Fee 2026–1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

*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.

[168] For example, as the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. CAT Funding Model Approval Order at 13469.

[169] *Id.*

[170] *See* Section 11.3(a) of the CAT NMS Plan.

[171] CAT Funding Model Approval Order at 13412.

[172] 15 U.S.C. 78f(b)(8).

[173] CAT Funding Model Approval Order at 13457–81.

### 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.[174]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NasdaqTX–2026–023 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–NasdaqTX–2026–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NasdaqTX–2026–023 and should be submitted on or before June 8, 2026.

[174] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[175]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09858 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105478; File No. SR–MRX–2026–21]**

## Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted CAT Costs of the National Market System Plan Governing the Consolidated Audit Trail for May 1, 2026 Through December 31, 2026

May 13, 2026.

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 May 7, 2026, Nasdaq MRX, LLC (''MRX'' 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 establish fees for Industry Members[3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from May 1, 2026 through December 31, 2026. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or the ''Company'') and referred to as CAT Fee 2026–1, and would be described in a section of the Exchange's fee schedule entitled ''Consolidated Audit Trail Funding Fees.'' The fee rate for CAT Fee 2026–1 would be $0.000001 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2026–1 in June 2026 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in May 2026. As described further below, CAT Fee 2026–1 is anticipated to be in place for eight months, and is anticipated to recover approximately two-thirds of the costs set forth in the reasonably budgeted CAT costs for 2026.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rulefilings,* and at the principal office of the Exchange.

### 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

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[4] On November 15, 2016, the Commission approved the CAT NMS Plan.[5] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented

[175] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* Rule General 7, Section 1. *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* Rule General 7 (Consolidated Audit Trail Compliance).

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On March 16, 2026, the Commission approved the CAT Funding Model after concluding that the model satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (''Historical CAT Assessment'' fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (''CAT Fees'').[8]

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. ''The Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs').'' [9] In establishing a CAT Fee, the Operating Committee will calculate a ''Fee Rate'' for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

The CAT Fees to be paid by CEBBs and CEBSs are designed to contribute toward the recovery of two-thirds of the budgeted CAT costs for the relevant period.[10] The CAT Funding Model is designed to require that the Participants contribute to the recovery of the remaining one-third of the budgeted CAT costs.[11] Participants would be subject to the same Fee Rate as CEBBs and CEBSs.[12] While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[13] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[14] Accordingly, this filing does not address Participant CAT fees as they are described in the CAT NMS Plan.[15]

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2026–1 to recover the reasonably budgeted CAT costs for the period from May 1, 2026 through December 31, 2026 in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [16] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [17] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2026–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

CAT Fee 2026–1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.[18] The CAT NMS Plan defines a ''CAT Executing Broker'' to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.[19]

The following fields of the Participant Technical Specifications indicate the

[6] Section 11.1(b) of the CAT NMS Plan.

[7] Securities Exchange Act Rel. No. 105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 19, 2026) (''CAT Funding Model Approval Order''). This CAT Funding Model replaced the prior funding model that was approved by the Commission on September 6, 2023. Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023).

[8] Under the CAT Funding Model, the Operating Committee may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing only establishes CAT Fee 2026–1 related to reasonably budgeted CAT costs for the period from May 1, 2026 through December 31, 2026 as described herein; it does not address any other potential CAT Fees related to CAT costs. Any such other CAT Fee will be subject to a separate fee filing. In addition, under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing does not address any Historical CAT Assessments.

[9] Section 11.3(a) of the CAT NMS Plan.

[10] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[11] Section 11.3(a)(ii)(A) of the CAT NMS Plan.

[12] Section 11.3(a)(ii) of the CAT NMS Plan.

[13] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[14] CAT Funding Model Approval Order at 13448.

[15] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[16] Section 11.1(b) of the CAT NMS Plan.

[17] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[18] In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was appropriate. In reaching this conclusion, the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 13413.

[19] Section 1.1 of the CAT NMS Plan. In its approval order for the CAT Funding Model, the Commission ''recognize[d] that Industry Members may pass-through CAT fees for customer executed volume.'' *See* CAT Funding Model Approval Order at 13424.

[20] *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.2.0-r2 (Feb. 24, 2026), *https://www.catnmsplan.com/sites/default/files/2026-02/02.24.2026-CAT_Reporting_Technical_Specifications_for_Participants_4.2.0-r2.pdf* (''CAT Reporting Technical Specifications for Plan Participants'').

CAT Executing Brokers for the transactions executed on an exchange:

EQUITY ORDER TRADE (EOT) [20]

| No. | Field Name | Data type | Description | Include key |
|---|---|---|---|---|
| 12.*n*.8/ 13.*n*.8 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order on this side of the trade.<br>Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction.<br>This must be provided if orderID is provided. | C |

OPTION TRADE (OT) [21]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 16.*n*.13/17.*n*.13 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order. | R |

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange:

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) [22]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 26 ..... | reportingExecutingMpid ..... | Member Alias ..... | MPID of the executing party ..... | R |
| 28 ..... | contraExecutingMpid ..... | Member Alias ..... | MPID of the contra-side executing party ..... | C |

(2) Calculation of Fee Rate 2026–1

The Operating Committee determined the Fee Rate to be used in calculating CAT Fee 2026–1 (''Fee Rate 2026–1'') by dividing the reasonably budgeted CAT costs (''Budgeted CAT Costs 2026–1'') for the period from May 1, 2026 through December 31, 2026 (''CAT Fee 2026–1 Period'') by the reasonably projected total executed share volume of all transactions in Eligible Securities for the eight-month recovery period, as discussed in detail below.[23] Based on this calculation, the Operating Committee has determined that Fee Rate 2026–1 would be $0.000003799483243631228 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of $0.000001 per executed equivalent share that will be assessed to CEBBs and CEBSs, as also discussed in detail below.

(A) CAT Fee 2026–1 Period

CAT LLC proposes to implement CAT Fee 2026–1. CAT LLC proposes to commence CAT Fee 2026–1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2026–1 ''would be calculated as described in paragraph (II)'' of Section 11.3(a)(i)(A) of the CAT NMS Plan,[24] which states that ''[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.'' [25] For CAT Fee 2026–1, the reasonably budgeted CAT costs for ''the remainder of the year'' are the reasonably budgeted CAT costs from May 1, 2026 through December 31, 2026 as set forth in the updated annual budget for 2026 for CAT LLC approved by the Operating Committee on March 31, 2026 (''Updated 2026 CAT Budget'').[26]

(B) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities will be counted as 0.01 executed equivalent share.[27]

[21] *See* Table 52, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

[22] *See* Table 62, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

[23] Section 11.3(a)(i) of the CAT NMS Plan.

[24] Section 11.3(a)(i)(A)(IV) of the CAT NMS Plan.

[25] Section 11.3(a)(i)(A)(II) of the CAT NMS Plan.

[26] The Updated 2026 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2026-04/03.31.26-CAT-2026-Budget.pdf*).

[27] Section 11.3(a)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that ''the use of executed equivalent share volume provides an appropriate basis for the calculation of CAT fees.'' CAT Funding Model Approval Order at 13413.

(C) Budgeted CAT Costs 2026–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.'' [28] Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that:

[w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

In accordance with the requirements under the CAT NMS Plan, the Operating Committee approved an annual budget for 2026 for CAT LLC (''Original 2026 CAT Budget'') on December 11, 2025.[29] On March 31, 2026, the Operating Committee approved an updated budget for 2026, referred to as the Updated 2026 CAT Budget. The Updated 2026 CAT Budget includes actual costs for each category for January and February 2026, with updated estimated costs for the remainder of the year. The updated costs for May through December as included in the Updated 2026 CAT Budget (*i.e.,* Budgeted CAT Costs 2026–1) are the costs used in calculating CAT Fee 2026–1.[30] The 2026 CAT budgets, both the Original 2026 CAT Budget and the Updated 2026 CAT Budget, were prepared on the accrual basis of accounting.[31]

As described in detail below, the Budgeted CAT Costs 2026–1 would be $15,149,648. CEBBs collectively will be responsible for one-third of the Budgeted CAT Costs 2026–1 (which is $5,049,882.67), and CEBSs collectively will be responsible for one-third of the Budgeted CAT Costs 2026–1 (which is $5,049,882.67).

The following describes in detail the Budgeted CAT Costs 2026–1 for CAT Fee 2026–1. The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing the following:

the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.[32]

Each of the costs described below is reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

The following table breaks down the Budgeted CAT Costs 2026–1 into the categories set forth in Section 11.3(a)(iii)(B) of the CAT NMS Plan.[33] The Budgeted CAT Costs 2026–1 reflect the costs for May through December as included in the Updated 2026 CAT Budget. The Budgeted CAT Costs 2026–1 are the costs used in calculating CAT Fee 2026–1.

[28] Section 11.3(a)(i)(C) of the CAT NMS Plan.

[29] The Original 2026 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-12/12.08.25-CAT-LLC-2026-Financial_and_Operating_Budget.pdf*).

[30] The version of the Updated 2026 CAT Budget set forth on the CAT website is presented on a quarterly basis, but is prepared based on more granular detail. The costs for May and June are estimated based on two-thirds of costs for Q2 where the budgeted monthly amounts are consistent. For those cases in which the costs for a category vary from month to month in Q2, the specific budgeted amounts for May and June are noted.

[31] CAT budgets for periods prior to 2025 were prepared on the cash basis of accounting, as such budgets were primarily used to determine the dollar amount of promissory notes from the Participants that were required to fund the ongoing operations of the CAT. Commencing in 2025, with the contemplated recovery of costs from Industry Members and the Participants via CAT Fees, the Original 2025 CAT Budget was prepared on the accrual basis of accounting to properly match projected revenues with estimated expenses incurred. A cash basis budget reflects expenditures when paid, while an accrual basis budget reflects expenditures when incurred. In moving from a cash basis budget to an accrual basis budget, there is no double counting of expenses.

[32] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[33] Note that costs and related cost calculations provided in this filing may reflect minor variations from the budgeted costs due to rounding.

BUDGETED CAT COSTS 2026–1

| Budget category | Budgeted CAT costs 2026–1 [b] (i.e., costs for May–December 2026) |
|---|---|
| Capitalized Developed Technology Costs [a] | [c] $3,450,000 |
| Technology Costs: | 83,737,680 |
| Cloud Hosting Services | [d] 49,866,667 |
| Operating Fees | [e] 19,691,953 |
| CAIS Operating Fees | [f] 14,179,060 |
| Change Request Fees | [g] 0 |
| Legal | [h] 5,670,452 |
| Consulting | [i] 1,025,957 |
| Insurance | [j] 852,768 |
| Professional and administration | [k] 749,151 |
| Public relations | [l] 0 |
| Interest Income | [m] (1,453,382) |
| Total Costs | 94,032,626 |
| Reserve (25% of Total Costs) | 23,508,157 |
| Total Costs and Reserve | 117,540,783 |
| Use of Existing Reserve | [n] (102,391,135) |
| Total Budgeted CAT Costs 2026–1 | 15,149,648 |

[a] The non-cash amortization of these capitalized developed technology costs to be incurred during the CAT Fee 2026–1 Period have been appropriately excluded from the above table.[34]

[b] Budgeted CAT Costs 2026–1 described in this table of costs were determined based on an analysis of a variety of factors, including historical costs/invoices, estimated costs from respective vendors/service providers, contractual terms with vendors/service providers, anticipated service levels and needs, and discussions with vendors and Participants.

[c] This cost number for capitalized developed technology costs reflects (1) capitalized developed technology costs of $3,450,000 for May, $0 for June and $0 for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget; and (2) $0 for the Software License Fee 2026 for the second, third, and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: ($3,450,000 + $0 + $0 + $0) + ($0 + $0 + $0) = $3,450,000.

[d] This cost number for cloud hosting services reflects two-thirds of the cloud hosting services costs for the second quarter and the cloud hosting services for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $18,700,000) + $18,700,000 + $18,700,000 = $49,866,667.

[e] This cost number for operating fees reflects (1) two-thirds of the Non-CAIS fixed operating fees for the second quarter and the Non-CAIS fixed operating fees for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget and (2) two-thirds of the market data vendor fees for the second quarter and the market data vendor fees for the third and fourth quarter of 2026 as included in the Updated 2026 CAT Budget: ((⅔ × $7,191,853) + $7,191,853 + $7,191,853) + ((⅔ x $192,630) + $192,630 + $192,630) = $19,691,953.

[f] This cost number for CAIS operating fees reflects two-thirds of the CAIS fixed operating fees for the second quarter and the CAIS fixed operating fees for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $5,317,147) + $5,317,147 + $5,317,147 = $14,179,060.

[g] This $0 cost number for change requests reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

[h] This cost number for legal services reflects two-thirds of the legal costs for the second quarter and the legal costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[i] This cost number for consulting services reflects two-thirds of the consulting costs for the second quarter and the consulting costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $384,734) + $384,734 + $384,734 = $1,025,957.

[j] This cost number for insurance reflects two-thirds of the insurance costs for the second quarter and the insurance costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $300,977) + $321,042 + $331,074 = $852,768.

[k] This cost number for professional and administration services reflects two-thirds of the professional and administration costs for the second quarter and the professional and administration costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $280,932) + $280,932 + $280,932 = $749,151.

[l] This $0 cost number of change requests reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

[m] This interest income reflects interest income (net of bank fees) of $517,208 for May and June and interest income (net of bank fees) for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: $517,208 + $571,010 + $365,164 = $1,453,382. Note that interest income for May and June 2026 of $517,208 is slightly less than two-thirds of $809,598 (which is $539,732) for the second quarter as the amount of interest income varies from month to month.

[n] This amount for the use of the existing reserve is calculated by subtracting from the Accrued Liquidity Reserve Balance as of the Beginning of the Year in the Updated 2026 CAT Budget the 25% Incremental Liquidity Reserve Accrued during 2026 for the first quarter and for April of 2026 as included in the Updated 2026 CAT Budget: $155,403,378—($41,800,153 + $11,212,091) = $102,391,135. Note that the 25% Incremental Liquidity Reserved Accrued during 2026 for April 2026 of $11,212,091 is slightly more than one-third of $33,366,432 (which is $11,122,144) for the second quarter as the amount of the 25% Incremental Liquidity Reserved Accrued during 2026 varies from month to month.

To the extent that CAT LLC enters into notes with Participants or others to pay costs incurred during the period in which CAT Fee 2026–1 is in effect, CAT LLC will use the proceeds from CAT Fee 2026–1 and the related Participant CAT fees to repay such notes.

The following table compares the annual budgeted CAT costs as set forth in the updated annual CAT budget for 2025 approved by the Operating Committee in May 2025 (''May Updated 2025 CAT Budget''),[35] the updated annual, CAT budget for 2025 approved by the Operating Committee in November 2025 (''November Updated 2025 CAT Budget'') [36] the Original 2026

[34] With respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[35] The May Updated 2025 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-05/05.19.25-CAT-LLC-2025-Financial_and_Operating-Budget.pdf*).

[36] The November Updated 2025 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-12/12.22.25_CAT-LLC-2025-Finacial_and_Operating-Budget.pdf*).

CAT Budget and the Updated 2026 CAT Budget, and is provided for informational purposes. In each case, the costs provided reflect the costs for the entire year for each of the budgets; this differs from the above chart which focuses on budgeted costs for the period from May 1, 2026 through December 31, 2026, which, as noted, are the costs that are used in the calculation of the fee rate in this fee filing.

COMPARISON OF FULL YEAR BUDGETED COSTS

| Budget Category | Full year of 2025 budgeted CAT costs from updated 2025 CAT budget (May 2025) | Full year of 2025 budgeted CAT costs from updated 2025 budget (Nov. 2025) | Full year of 2026 budgeted CAT costs from original 2026 CAT budget | Full year of 2026 budgeted CAT costs from updated 2026 CAT budget |
|---|---|---|---|---|
| Capitalized Developed Technology Costs [a] | $4,871,962 | $5,163,991 | $8,228,827 | $8,378,964 |
| Technology Costs: | 211,548,472 | 173,091,660 | 137,514,003 | 128,643,476 |
| Cloud Hosting Services | 159,230,937 | 122,084,811 | 81,900,006 | 77,529,362 |
| Operating Fees [b] | 30,817,686 | 29,932,001 | 34,345,413 | 29,845,524 |
| CAIS Operating Fees | 20,749,848 | 20,749,848 | 21,268,584 | 21,268,590 |
| Change Request Fees | 750,000 | 325,000 | 0 | 0 |
| Legal | 7,370,002 | 7,312,547 | 8,485,000 | 8,939,184 |
| Consulting | 1,749,998 | 1,750,000 | 1,550,000 | 1,550,000 |
| Insurance | 1,594,452 | 1,368,750 | 1,505,625 | 1,254,070 |
| Professional and administration | 1,193,090 | 1,392,679 | 1,145,500 | 1,085,500 |
| Public relations | 6,575 | 6,575 | 0 | 0 |
| Interest Income | 0 | (2,510,223) | (1,995,958) | (2,806,325) |
| Total Annual CAT Costs [c] | 228,334,551 | 187,575,979 | 156,432,998 | 147,044,869 |

[a] This cost number is calculated by adding together the Capitalized Developed Technology Costs and the Software License Fee for each budget.
[b] This cost number is calculated by adding together the Operating fees, the Cyber Insurance Premium Adjustment (if any) and market data vendor fees (if any separate fees) for each budget.
[c] This total cost number does not include an amount for a reserve.

In addition, the following table compares the budgeted costs for January and February 2026 that were used in drafting the Original 2026 CAT Budget with the actual costs for January and February 2026 that were used in drafting the Updated 2026 CAT Budget. The Original 2026 CAT Budget includes budgeted costs for January and February 2026, whereas the Updated 2026 CAT Budget includes actual costs for January and February 2026. The variance from the budgeted costs for January and February 2026 to the actual costs for January and February 2026 are used in this filing in supporting the reasonableness of the estimates for each category of costs.

COMPARISON OF BUDGETED AND ACTUAL COSTS FOR JANUARY & FEBRUARY 2026

| Budget category | Budgeted costs for January & February 2026 (as used in drafting the original 2026 CAT budget) | Actual costs for January & February 2026 (as used in drafting the updated 2026 CAT budget) | Variance from budgeted costs for January & February 2026 to actual costs for January & February of 2026 |
|---|---|---|---|
| Capitalized Developed Technology Costs [a] | $671,472 | $4,145,430 | Increase by $3,473,958. [b] |
| Technology Costs: | 25,894,000 | 21,501,183 | |
| Cloud Hosting Services | 17,200,000 | 12,829,362 | Decrease by $4,370,638. [c] |
| Operating Fees | 5,149,236 | 5,127,057 | Decrease by $22,179. |
| CAIS Operating Fees | 3,544,764 | 3,544,764 | No change. |
| Change Request Fees | 0 | 0 | No change. |
| Legal | 1,424,166 | 1,838,617 | Increase by $414,451. [d] |
| Consulting | 258,334 | 267,554 | Increase by $9,220. |
| Insurance | 250,938 | 200,652 | Decrease by $50,286. |
| Professional and administration | 190,916 | 149,061 | Decrease by $41,855. |
| Public relations | 0 | 0 | No change. |
| Interest Income | (758,343) | (757,527) | Decrease by $816. |
| Total | 27,931,483 | 27,344,970 | Decrease by $586,513. |

[a] This cost number for capitalized developed technology costs is calculated by adding together the capitalized developed technology costs and the software license fee for each budget.
[b] The variance for capitalized developed technology costs is the result of costs related to the software license fee in accordance with the Plan Processor Agreement with FCAT.
[c] This variance is attributable to lower than forecasted market volumes and the impact of lower processing costs due to shutting down certain functionalities.
[d] The variance in legal costs is attributable to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created.

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the cloud hosting services costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $49,866,667 in technology costs for cloud hosting services for the CAT Fee 2026–1 Period. The technology costs for cloud hosting services represent costs reasonably budgeted to be incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS'') during the CAT Fee 2026–1 Period.

In the agreement between CAT LLC and the Plan Processor for the CAT (''Plan Processor Agreement''), FINRA CAT, LLC (''FCAT''), AWS was named as the subcontractor to provide cloud hosting services. Under the Plan Processor Agreement, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments. FCAT utilizes such cloud hosting services for a broad array of services for the CAT, such as data ingestion, data management, and analytic tools for the CAT. AWS performs cloud hosting services for both the CAT transaction database as well as the Reference Database (previously referred to as the Customer and Account Information System, or ''CAIS'').[37] It is anticipated that such cloud hosting services will continue during the CAT Fee 2026–1 Period.

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data, largely as a result of the processing and storage of the CAT Data.[38] The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT Fee 2026–1 Period, it is expected that AWS would provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [39] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [40] In contrast with those estimates, the Q3 2025 data volumes averaged 792 billion events per day. The highest peak data volume to date of 1.45 trillion events was recorded on April 7, 2025. The top five peak days were recorded in April 2025.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2026–1 Period will be approximately $49,866,667.[41] The budget for cloud hosting services costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the cloud hosting services costs for the second quarter and the cloud hosting services for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget.[42]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2026–1 Period based on an assumption of 35% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for the Reference Database. CAT LLC determined these growth assumptions in coordination with FCAT.[43]

This process for estimating the budget for cloud hosting services costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2026 CAT Budget.

The Original 2026 CAT Budget estimated a budget for cloud hosting services of $17,200,000 for January and February 2026. The actual costs for cloud hosting services for January and February 2026, which are set forth in the Updated 2026 CAT Budget, were $12,829,362. Therefore, the variance between budgeted and actual cloud hosting services costs for January and February 2026 was an approximate decrease of $4,370,638 as a result of lower volumes and a change in functionality.[44] Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the cloud hosting services costs from the Original 2026 Budget.[45] Specifically, the following describes the differences in the costs for cloud hosting services included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for cloud hosting services included in the Original 2026 CAT Budget were

[37] On January 13, 2026, the SEC approved an amendment to the CAT NMS Plan relating to the Customer and Account Information System (referred to as ''CAIS''). Effective with this amendment, CAIS has been renamed as the ''Reference Database.'' Securities Exchange Act Rel. No. 104586 (Jan. 13, 2026), 91 FR 2164 (Jan. 16, 2026) (''CAIS Amendment''). The SEC subsequently approved another amendment to the CAT NMS Plan to implement various cost savings measures that made further changes to the Reference Database. Securities Exchange Act Rel. No. 105107 (Mar. 27, 2026), 91 FR 16284 (Mar. 27, 2026) (''Cost Savings Amendment'').

[38] In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. For further discussion of the effect of processing timelines on cloud hosting costs, *see* Section 3(b)(2)(A)(i) below.

[39] Section 1.3 of Appendix D of the CAT NMS Plan, n.262.

[40] Section 1.3 of Appendix D of the CAT NMS Plan.

[41] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[42] This calculation is (⅔ × $18,700,000) + $18,700,000 + $18,700,000 = $49,866,667.

[43] Note that these growth rates are based on events processed and stored in the CAT. Executed transactions are a small subset of such events. As a result, the number of transactions in the CAT, and, hence, the number of executed equivalent shares, is not directly correlated with the number of events processed in the CAT or the costs of cloud hosting services for the CAT. Accordingly, the number of executed equivalent shares may stay relatively constant from year to year while the number of events processed and stored in the CAT may grow significantly.

[44] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[45] The last Prospective CAT Fee, CAT Fee 2025–2, was implemented pursuant to the prior CAT funding model. Moreover, the final invoice for CAT Fee 2025–2 was sent in December 2025, and, therefore, there is a six-month gap between the final invoice for CAT Fee 2025–2 and the first invoice for CAT Fee 2026–1, which would be in June 2026. Accordingly, this filing describes the changes in the cloud hosting services costs from the Original 2026 Budget.

$81,900,006, and the annual 2026 budgeted costs for cloud hosting services included in the Updated 2026 CAT Budget are $77,529,362. Accordingly, budgeted annual costs for cloud hosting services decreased by $4,370,644 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 5% reduction in cloud hosting services costs for the full year of 2026.[46] The budgeted decrease in costs for cloud hosting services reflects lower costs for January and February 2026 due to lower than forecasted market volumes in January and the impact of lower processing costs due to shutting down certain functionalities.

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $19,691,953 in technology costs for operating fees for the CAT Fee 2026–1 Period. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan. Operating fees also include market data provider costs, as discussed below.

*Plan Processor: FCAT.* Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Provide the CAT-related functions and services as the Plan Processor as required by SEC Rule 613 and the CAT NMS Plan in connection with the operation and maintenance of the CAT;
- Address compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provide support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assist with interpretive efforts, exemptive requests and amendments regarding the CAT NMS Plan;
- Oversee the security of the CAT;
- Monitor the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provide support to subcontractors under the Plan Processor Agreement;
- Provide support in discussions with the Participants and the SEC and its staff;
- Operate the FINRA CAT Helpdesk;
- Facilitate communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administer the CAT website and all of its content;
- Maintain cyber security insurance related to the CAT;
- Assist with billing, collection and other CAT fee-related activity; and
- Provide technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

CAT LLC calculated the budget for the FCAT technology costs for operating fees for the CAT Fee 2026–1 Period based on the recurring monthly operating fees under the Plan Processor Agreement.

*Market Data Provider: Algoseek.* It is anticipated that the operating fees costs for the CAT Fee 2026–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Algoseek, LLC (''Algoseek''). CAT LLC determined that Algoseek would provide market data that included data elements set forth in Section 6.5(a)(ii) of the CAT NMS Plan, and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Algoseek for the CAT Fee 2026–1 Period based on the monthly rate set forth in the agreement between Algoseek and FCAT.

*Operating Fee Estimates.* CAT LLC estimates that the budget for operating fees during the CAT Fee 2026–1 Period will be approximately $19,691,953.[47] The budget for operating fees during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding (1) two-thirds of the Non-CAIS fixed operating fees for the second quarter and the Non-CAIS fixed operating fees for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget and (2) two-thirds of the market data vendor fees for the second quarter and the market data vendor fees for the third and fourth quarter of 2026 included in the Updated 2026 CAT Budget.[48]

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2026–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Algoseek. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for operating fees of $5,149,236 for January and February 2026, and the actual costs for operating fees for January and February 2026 were $5,127,057. Therefore, the variance between budgeted and actual operating fees for this period was small—$22,179.[49] Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the operating fees from the Original 2026 Budget. Specifically, the following describes the differences in the costs for operating fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for operating fees included in the Original

[46] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[47] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[48] This calculation is ((⅔ × $7,191,853) + $7,191,853 + $7,191,853) + ((⅔ × $192,630) + $192,630 + $192,630) = $19,691,953.

[49] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

2026 CAT Budget were $34,345,413, and the annual 2026 budgeted costs for operating fees included in the Updated 2026 CAT Budget are $29,845,524. Accordingly, budgeted annual costs for operating fees decreased by $4,499,889 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 13% reduction in operating fees for the full year of 2026.[50] The budgeted decrease in costs for operating fees reflects the proposed amendments to the Plan Processor Agreement related to the recent cost savings amendments to the CAT NMS Plan.[51]

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $14,179,060 in technology costs for CAIS operating fees for the CAT Fee 2026–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of the Reference Database (previously referred to as CAIS), and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Reference Data in the Reference Database and to create a CAT-Customer-ID for each Customer.[52]

During the CAT Fee 2026–1 Period, it is anticipated that FCAT will provide services related to the Reference Database. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT for services related to the Reference Database provided by FCAT on a monthly basis. CAT LLC negotiated the fees for FCAT's services related to the Reference Database on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. During the CAT Fee 2026–1 Period, it is anticipated that FCAT will continue to provide services relating to the ongoing operation, maintenance and support of the Reference Database.

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2026–1 Period will be approximately $14,179,060.[53] The budget for CAIS operating fees during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the CAIS fixed operating fees for the second quarter and the CAIS fixed operating fees for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[54]

CAT LLC calculated the budget for FCAT's services related to the Reference Database for the CAT Fee 2026–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget of $3,544,764 for CAIS operating fees for January and February of 2026. The actual costs for CAIS operating fees for January and February of 2026, which are included in the Updated 2026 CAT Budget, were $3,544,764. There was no variance between budgeted and actual CAIS operating fees for the first two months of 2026.[55] Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2026–1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the CAIS operating fees from the Original 2026 Budget. Specifically, the following describes the differences in the costs for CAIS operating fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

CAIS operating fees are based on a recurring monthly rate payable to FCAT and are unchanged from the Original 2026 CAT Budget to the Updated 2026 CAT Budget. The annual 2026 budgeted costs for CAIS operating fees included in the Original 2026 CAT Budget were $21,268,584, and the annual 2026 budgeted costs for CAIS operating fees included in the Updated 2026 CAT Budget are $21,268,590.[56] Accordingly, the budgeted annual costs for CAIS operating fees are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the change request fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $0 in technology costs for change request fees for the CAT Fee 2026–1 Period. The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT.

Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other changes to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change.

The change request budget line is established to include expected costs to be incurred in which the nature of the costs (*i.e.,* capitalization versus expensing) have not yet been determined. Upon the incurrence of such costs, the final determination of capitalization versus expensing is determined and then such costs are reclassified from the change request line to the appropriate technology cost line item.

CAT LLC estimates that the budget for change requests during the CAT Fee 2026–1 Period will be approximately

[50] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[51] *See* CAIS Amendment and Cost Savings Amendment.

[52] *See* Section 9 of Appendix D of the CAT NMS Plan.

[53] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[54] This calculation is (⅔ × $5,317,147) + $5,317,147 + $5,317,147 = $14,179,060.

[55] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[56] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

$0.[57] The budget for change requests during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. This $0 cost number for change request fees reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2026–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a change request budget of $0 for January and February of 2026. The actual costs for change requests for January and February of 2026, which are set forth in the Updated 2026 CAT Budget, were $0. There was no variance between budgeted and actual change request costs for January and February of 2026.[58] Accordingly, CAT LLC believes that the process for estimating the budgeted change request costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the change request fees from the Original 2026 Budget. Specifically, the following describes the differences (if any) in the costs for change request fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for change requests included in the Original 2026 CAT Budget were $0, and the annual 2026 budgeted costs for change requests included in the Updated 2026 CAT Budget are $0.[59] Accordingly, budgeted annual costs for change requests are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the capitalized developed technology costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $3,450,000 in technology costs for capitalized developed technology costs for the CAT Fee 2026–1 Period. This category of costs includes the budget for capitalizable application development costs incurred in the development of the CAT. It is anticipated that such costs will include certain costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT related to the cost savings amendments[60] and the move to 23x5 trading.

CAT LLC estimates that the budget for capitalized developed technology costs during the CAT Fee 2026–1 Period will be approximately $3,450,000.[61] The budget for capitalized developed technology costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding (1) capitalized developed technology costs of $3,450,000 for May, $0 for June and $0 for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget; and (2) $0 for the Software License Fee 2026 for the second, third, and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[62]

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2026–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. This process for estimating the budget for capitalized developed technology costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the capitalized developed technology costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for capitalized developed technology costs of $671,472 for January and February 2026, and the actual costs for capitalized developed technology costs for January and February 2026 were $4,145,430.[63] The variance of $3,473,958 for January and February 2026 is the result of costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the capitalized developed technology costs from the Original 2026 Budget. Specifically, the following describes the differences in the costs for capitalized developed technology costs as included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budget for capitalized developed technology costs included in the Original 2026 CAT Budget was $8,228,827, and the annual 2026 budget for capitalized developed technology costs included in the Updated 2026 CAT Budget are $8,378,964.[64] Accordingly, the annual budget for capitalized developed technology costs increased by $150,137 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 2% increase in the capitalized developed technology costs for the full year of 2026. This budgeted increase in the annual budget for capitalized developed technology costs was the result of costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan requires the fee filing for a

[57] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[58] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[59] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[60] *See* CAIS Amendment and Cost Savings Amendment.

[61] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[62] This calculation is ($3,450,000 + $0 + $0 + $0) + ($0 + $0 + $0) = $3,450,000. Note that the $4,178,964 cost for the software license fee was not included in the CAT Fee 2026–1 Period.

[63] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[64] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

Prospective CAT Fee to provide a brief description of the legal costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $5,670,452 in legal costs for the CAT Fee 2026–1 Period. This category of costs represents budgeted costs for legal services for this period. CAT LLC anticipates that it will receive legal services from two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Jenner & Block LLP (''Jenner''), during the CAT Fee 2026–1 Period.

*Law Firm: WilmerHale.* It is anticipated that legal costs during the CAT Fee 2026–1 Period will include costs related to the legal services performed by WilmerHale. CAT LLC anticipates that it will continue to employ WilmerHale during the CAT Fee 2026–1 Period based on, among other things, their expertise, long history with the project and recognition that the hourly fee rates for this law firm are anticipated to be in line with market rates for specialized legal expertise. WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. The legal fees will be paid by CAT LLC to WilmerHale.

During the CAT Fee 2026–1 Period, it is anticipated that WilmerHale will provide legal services related to the following:

- Assist with CAT fee filings and related funding issues;
- Draft exemptive requests from CAT NMS Plan requirements and/or proposed amendments to the CAT NMS Plan;
- Provide legal guidance with respect to interpretations of CAT NMS Plan requirements;
- Provide legal support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team;
- Draft SRO rule filings related to the CAT Compliance Rule;
- Manage corporate governance matters, including supporting Operating Committee meetings and preparing resolutions and consents;
- Assist with communications with the industry, including CAT Alerts and presentations;
- Provide guidance regarding the confidentiality of CAT Data;
- Assist with cost management analyses and proposals;
- Assist with commercial contract-related matters, including change orders and amendments, Plan Processor Agreement items, and subcontract matters;
- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Provide legal guidance with respect to the CAT budgets;
- Provide background assistance to other counsel for CAT matters;
- Assist with legal responses related to third-party data requests; and
- Provide legal support regarding CAT policies and procedures.

CAT LLC estimated the budget for the legal costs for WilmerHale for the CAT Fee 2026–1 Period through an analysis of a variety of factors, including WilmerHale fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues.

*Law Firm: Jenner.* It is anticipated that legal costs during the CAT Fee 2026–1 Period will include costs related to the legal services performed by Jenner. CAT LLC anticipates that it will continue to employ Jenner during the CAT Fee 2026–1 Period based on, among other things, their expertise, history with the project and recognition that their hourly fee rates are in line with market rates for specialized legal expertise. The legal fees will be paid by CAT LLC to Jenner.

During the CAT Fee 2026–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against the SEC Chair, the SEC and CAT LLC challenging the validity of Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims;[65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;[66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order[67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model. Jenner also will continue to provide legal counseling to CAT LLC related to the above-listed litigation and other litigation risk.

CAT LLC estimated the budget for the legal costs for Jenner for the CAT Fee 2026–1 Period through an analysis of a variety of factors, including Jenner's fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues.

*Legal Cost Estimates.* CAT LLC estimates that the budget for legal services during the CAT Fee 2026–1 Period will be approximately $5,670,452.[69] The budget for legal services during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding budgeted costs for two-thirds of the legal costs for the second quarter and the legal costs for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[70]

CAT LLC estimated the budget for the legal services for the CAT Fee 2026–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues. This process for estimating the budget for the legal services for CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for legal costs of $1,424,166 for January and February of 2026. The actual costs for legal services for January and February 2026, which are included in the Updated 2026 Budget, were $1,838,617.[71] The increase of $414,451 was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs were primarily due to additional legal work related to litigation matters as well as regulatory and corporate legal matters. Accordingly, CAT LLC believes that the process for estimating the

[65] *Davidson et al.* v. *Atkins et al.,* Case No. 6:24–cv–197 (W.D. Tex.).

[66] *Am. Sec. Ass'n* v. *SEC,* Case No. 26–10936 (11th Cir.).

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

[68] *Citadel Securities* v. *SEC,* Case No. 24–12300 (11th Cir.).

[69] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[70] This calculation is (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[71] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

budgeted legal costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the legal costs from the Original 2026 Budget. Specifically, the following describes the differences in the legal costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted legal costs included in the Original 2026 CAT Budget were $8,485,000, and the annual 2026 budgeted legal costs included in the Updated 2026 CAT Budget are $8,939,184.[72] Accordingly, the annual budget for legal costs increased by $454,184 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 5% increase in the legal costs for the full year of 2026. This budgeted increase in the legal costs in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to an anticipated increase in legal costs related to litigation matters as well as regulatory and corporate legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,025,957 in consulting costs for the CAT Fee 2026–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the CAT Fee 2026–1 Period. The services provided by Deloitte to the CAT include advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses. In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee.

It is anticipated that the costs for CAT during the CAT Fee 2026–1 Period will include costs related to consulting services performed by Deloitte. CAT LLC anticipates that it will continue to employ Deloitte during the CAT Fee 2026–1 Period based on, among other things, their expertise, long history with the project, and the recognition that it is anticipated that the consulting fees will remain in line with market rates for this type of specialized consulting work. Deloitte's fee rates are negotiated on an annual basis. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. The consulting fees will be paid by CAT LLC to Deloitte.

It is anticipated that Deloitte will provide a variety of consulting services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Implement program operations for the CAT project;
- Provide support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assist with cost and funding matters for the CAT, including assistance with loans and the CAT bank account for CAT funding;
- Provide support for updating the SEC on the progress of the development of the CAT; and
- Provide support for third party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee, which is paid by CAT LLC.

CAT LLC estimates that the budget for consulting costs during the CAT Fee 2026–1 Period will be approximately $1,025,957.[73] The budget for consulting costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the consulting costs for the second quarter and the consulting costs for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[74]

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2026–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, and discussions with Deloitte, as well as the compensation arrangement for the Chair. This process for estimating the budget for consulting costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the consulting costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for consulting services of $258,334 for January and February 2026, and the actual costs for consulting services for January and February 2026, which are included in the Updated 2026 CAT Budget, were $267,554.[75] Therefore, the variance between budgeted and actual consulting costs for January and February was approximately 4%. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the consulting costs from the Original 2026 Budget. Specifically, the following describes the differences (if any) in the consulting costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budget for consulting costs included in the Original 2026 CAT Budget was $1,550,000, and the annual 2026 budget for consulting costs included in the Updated 2026 CAT Budget is $1,550,000.[76] Accordingly, the annual budget for consulting costs has not changed from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026.

(viii) Insurance Costs

(a) Description of Insurance Costs

Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the insurance costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $852,768 in insurance costs for

[72] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[73] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[74] This calculation is (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[75] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[76] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

the CAT Fee 2026–1 Period.[77] The insurance costs represent the costs to be incurred for insurance for the CAT during the CAT Fee 2026–1 Period.

It is anticipated that the insurance costs for CAT during the CAT Fee 2026–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during the CAT Fee 2026–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2026–1 Period based on the insurance estimate from USI for 2026. The annual premiums would be paid by CAT LLC to USI.

The budgeted insurance costs for the CAT Fee 2026–1 Period are based on an insurance cost estimate from USI for 2026. Accordingly, CAT LLC believes that the process for estimating the budgeted insurance costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for insurance costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the insurance costs from the Original 2026 Budget. Specifically, the following describes the differences in the insurance costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted insurance costs included in the Original 2026 CAT Budget were $1,505,625, and the annual 2026 budgeted insurance costs included in the Updated 2026 CAT Budget are $1,254,070.[78] Accordingly, the annual budget for insurance costs decreased by $251,555 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 16% decrease in the insurance costs for the full year of 2026. This budgeted decrease in the insurance costs in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to an anticipated decrease in insurance premiums.

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $749,151 in professional and administration costs for the CAT Fee 2026–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[79] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin, Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during the CAT Fee 2026–1 Period.

*Financial Advisory Firm: Anchin.* It is anticipated that the professional and administration costs for the CAT Fee 2026–1 Period will include costs related to financial advisory services performed by Anchin. CAT LLC anticipates that it will continue to employ Anchin during the CAT Fee 2026–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. The fees for these services will be paid by CAT LLC to Anchin.

It is anticipated that Anchin will provide a variety of services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Facilitate bill payments to vendors;
- Facilitate repayments of promissory notes to Participants;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Review documentation to ensure that repayments of promissory notes to Participants are in accordance with established policies and procedures;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual and interim operating and financial budgets, including budget to actual and budget to budget fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee, Leadership Team and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Review and reconcile the monthly FINRA CAT reports/analyses related to billings, collections, outstanding accounts receivable and cash account;
- Perform certain verification, completeness, and validation testing related to the monthly FINRA CAT reports/analyses related to billings;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

CAT LLC estimated the annual budget for the costs for Anchin based on historical costs adjusted for cost of living rate increases, and projected incremental advisory and support services.

*Accounting Firm: Grant Thornton.* It is anticipated that the professional and administration costs for the CAT Fee 2026–1 Period will include costs related to accounting services performed by Grant Thornton. CAT LLC anticipates that it will continue to employ Grant Thornton during the CAT Fee 2026–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. It is anticipated that Grant Thornton will continue to be engaged as an independent accounting firm to complete the audit of CAT LLC's

[77] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[78] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[79] Section 9.2 of the CAT NMS Plan.

financial statements, in accordance with the requirements of the CAT NMS Plan. The fees for these services will be paid by CAT LLC to Grant Thornton. CAT LLC estimated the budget for the accounting costs for Grant Thornton for the CAT Fee 2026–1 Period based on the anticipated hourly rates and the anticipated services plus an administrative fee.

*Professional and Administration Cost Estimates.* CAT LLC estimates that the budget for professional and administration services during the CAT Fee 2026–1 Period will be approximately $749,151.[80] The budget for professional and administration services during the CAT Fee 2026–1 Period is based on the Updated 2026 CAT Budget. CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2026–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for professional and administration costs of $190,916 for January and February 2026, and the actual costs for professional and administration services for January and February 2026, which are set forth in the Updated 2026 Budget, were $149,061.[81] The decrease of $41,855 was due to a lower than expected profressional and administration services costs and to the movement of bank fees from the professional and administration category to the interest income category. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for professional and administration costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the professional and administration costs from the Original 2026 Budget. Specifically, the following describes the differences in the professional and administration costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted professional and administration costs as included in the Original 2026 CAT Budget were $1,145,500, and the annual 2026 budgeted professional and administration costs included in the Updated 2026 CAT Budget are $1,085,500.[82] Accordingly, the budgeted annual costs for professional and administration services decreased by $60,000 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026. This budgeted decrease in the professional and administration costs in the Updated 2026 CAT Budget from the Original 2026 Budget was due to the movement of bank fees from the professional and administration category to the interest income category, and not a change in costs related to Anchin and Grant Thornton services.

(x) Public Relations Costs

(a) Description of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $0 in public relations costs for the CAT Fee 2026–1 Period. The public relations costs would represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. Because CAT LLC anticipates that it will not engage a public relations firm for the CAT Fee Period 2026–1, the budget for public relations costs for this period is $0.[83]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the public relations costs from the Original 2026 Budget. Specifically, the following describes the differences (if any) in public relations costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual budgeted public relations costs for 2026 included in the Original 2026 CAT Budget were $0, and the annual budgeted public relations costs for 2026 included in the Updated 2026 CAT Budget are $0.[84] Accordingly, the annual budgeted public relations costs for 2026 are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(xi) Interest Income

(a) Description of Interest Income

Section 11.1(a) of the CAT NMS Plan requires the CAT budget to include ''the sources of all revenues to cover costs.'' Accordingly, the Updated 2026 CAT Budget includes a line item for interest income. Specifically, the Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,453,382 in interest income for the CAT Fee 2026–1 Period.[85] Interest income represents the interest earned on the surplus reserve and other funds held by CAT LLC. Such income would be used to reduce the amount to be collected to fund the CAT.

CAT LLC estimates the budget for the interest income for the CAT Fee 2026–1 Period based on the estimate of the funds held by CAT LLC and the expected interest rates on such funds. The Original 2026 CAT Budget estimated interest income of $758,343 for January and February 2026, and the actual interest income for January and February 2026, which are included in the Updated 2026 CAT Budget, were $757,527.[86] As mentioned above, bank fees were moved from the professional and administration category in the Original 2026 CAT Budget to the interest income category in the Updated 2026 CAT Budget. Accordingly, the interest income amount for the Updated 2026 CAT Budget was net of $10,000 in bank fees. Therefore, the variance between budgeted and actual interest income (aside from bank fees) for January and February 2026 was approximately $10,000. Accordingly,

[80] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[81] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[82] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[83] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[84] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[85] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[86] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

CAT LLC believes that the process for estimating the budgeted interest income for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in each line item from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in interest income from the Original 2026 CAT Budget. Specifically, the following describes the differences in the interest income included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted interest income as included in the Original 2026 CAT Budget was $1,995,958, and the annual 2026 budgeted interest income included in the Updated 2026 CAT Budget is $2,806,325.[87] Accordingly, the budgeted interest income (not including bank fees) increased by $810,367 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 40% increase in the interest income for the full year of 2026. This budgeted increase in the interest income in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to higher than expected cash balances being maintained after the approval of the Original 2026 Budget.

(xii) Reserve

(a) Description of Reserve

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the reserve costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes a reserve amount for 2026. Section 11.1(a)(i) of the CAT NMS Plan states that the budget shall include a reserve. Section 11.1(a)(ii) of the CAT NMS Plan further describes the reserve as follows:

For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.

CAT LLC determined to maintain a reserve in the amount of 25% of the total expenses set forth in the Updated 2026 CAT Budget (which does not include the reserve amount). Accordingly, the total 25% reserve of $23,508,157 was calculated by multiplying the total expenses set forth in the Updated 2026 CAT Budget (other than the reserve) by 25%.[88]

The Updated 2026 CAT Budget estimates that CAT LLC will have $102,391,135 in reserve as of the beginning of the CAT Fee Period 2026–1. Such reserve is related, in part, to (i) the collection of CAT fees in excess of the budgeted CAT costs in light of the greater actual executed equivalent share volume than the projected executed equivalent share volume for prior CAT Fees, and (ii) a reduction in anticipated budgeted costs associated with the implementation of certain cost savings measures. This reserve balance of $102,391,135 would be used to offset a portion of CAT costs for CAT Fee Period 2026–1, thereby reducing the fee rate to be paid for CAT Fee 2026–1. Specifically, the total costs (including the 25% reserve) for CAT Fee 2026–1 of $117,540,783 would be reduced by the $102,391,135 in reserve. Therefore, the Total Budgeted CAT Costs 2026–1 would be $15,149,648.

Accordingly, the fee rate for CAT Fee 2026–1 is calculated based on this reduced amount of $15,149,648, resulting in a fee rate of $0.000001 per executed equivalent share. If the fee rate for CAT Fee 2026–1 were calculated solely based on the reasonably budgeted costs for CAT for May—December 2026, excluding the reduction in that amount due to the surplus reserve offset, the fee rate would be the higher rate of $0.000010.[89]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in reserve from the Original 2026 CAT Budget. Specifically, the following describes the differences in the reserve included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The accrued liquidity reserve balance at the beginning of the year included in the Original 2026 CAT Budget was $119,128,336. The Original 2026 CAT Budget contemplated using the reserve to pay CAT bills throughout the year as no CAT fee was in effect. The accrued liquidity reserve balance at the beginning of the year included in the Updated 2026 CAT Budget was $155,403,378. The increase in the accrued liquidity reserve balance at the beginning of the year from the Original 2026 CAT Budget to the Updated 2026 CAT Budget reflected the additional CAT Fees that had been received after the approval of the Original 2026 CAT Budget. In addition, the Updated 2026 CAT Budget not only reflected the use of the surplus reserve to pay CAT bills but also the accrual of additional reserve to establish a 25% reserve through CAT Fee 2026–1. Accordingly, the estimated liquidity reserve balance increased from a deficit of $37,304,661 included in the Original 2026 CAT Budget to a reserve balance of $23,508,157 included in the Updated 2026 CAT Budget for the full year of 2026.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2026–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2026–1 Period. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [90] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[91]

[87] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[88] The reserve was calculated by multiplying $94,032,626 by 25%, which equals approximately $23,508,157.

[89] *See* CAT Fee Alert 2026–1 (Apr. 1, 2026).

[90] Section 11.3(a)(i)(D) of the CAT NMS Plan.

[91] CAT Funding Model Approval Order at 13452.

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the eight-month recovery period for CAT Fee 2026–1 by multiplying by 8/12ths the executed equivalent share volume for the 12-month period from March 2025 through February 2026. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.41), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for the eight-month period for CAT Fee 2026–1 is projected to be 3,987,291,699,573.66 executed equivalent shares.[92]

The projected total executed equivalent share volume of all transactions in Eligible Securities for the eight-month recovery period for CAT Fee 2026–1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.[93]

(E) Fee Rate 2026–1

Fee Rate 2026–1 would be calculated by dividing the Budgeted CAT Costs 2026–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the eight-month recovery period for CAT Fee 2026–1, as described in detail above.[94] Specifically, Fee Rate 2026–1 would be calculated by dividing $15,149,648 by 3,987,291,699,573.66 executed equivalent shares. As a result, Fee Rate 2026–1 would be $0.000003799483243631228 per executed equivalent share. Fee Rate 2026–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[95]

Fee Rate 2026–1 would be used to calculate the fee rate to be paid by CEBSs and CEBBs for CAT Fee 2026–1. Such fee rate is calculated by multiplying Fee Rate 2026–1 of $0.000003799483243631228 by one-third, and rounding the result to six decimal places.[96] Accordingly, the fee rate to be paid by CEBSs and CEBBs for CAT Fee 2026–1 would be $0.000001 per executed equivalent share.

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2026–1 on a monthly basis for eight months, from July 2026 until January 2027. A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[97] Proposed paragraph (a)(6)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2026–1 in June 2026, and would receive an invoice for CAT Fee 2026–1 each month thereafter until January 2027. Proposed paragraph (a)(6)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis.'' In addition, paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2026–1, the Exchange proposes to add a new paragraph to the ''Consolidated Audit Trail Funding Fees'' section of the Exchange's fee schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2026–1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[98]

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(6) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(6) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for CAT Fee 2026–1 in June 2026, which shall set forth the CAT Fee 2026–1 fees calculated based on transactions in May 2026, and shall receive an invoice for CAT Fee 2026–1 for each month thereafter until January 2027.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000001 per executed equivalent share.

(C) Notwithstanding the last invoice date of January 2027 for CAT Fee 2026–1 in paragraph 6(A), CAT Fee 2026–1 shall continue in effect after January 2027, with each CAT Executing Broker receiving an invoice for CAT Fee 2026–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2026–1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for CAT Fee 2026–1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by

[92] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by 8/12ths.

[93] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[94] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is appropriate.'' CAT Funding Model Approval Order at 13435.

[95] *See* Section 11.3(a)(iii)(B)(A) of the CAT NMS Plan.

[96] This fee rate of $0.000001 is calculated by multiplying the Fee Rate of $0.000003799483243631228 by one-third and rounding this result (which equals $0.000001266494414543743) to 6 decimal places.

[97] *See* proposed paragraph (a)(6)(B) of the fee schedule.

[98] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

one-third and describing the relevant number of decimal places for the fee.'' [99] Accordingly, proposed paragraph (a)(6)(B) of the fee schedule would set forth a fee rate of $0.000001 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2026–1 of $0.000003799483243631228 by one-third, and rounding the result to six decimal places.[100] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(6)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2026–1. Specifically, CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2026–1 in June 2026 and the fees set forth in that invoice would be calculated based on transactions executed in May 2026. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(6)(A) of the fee schedule also would describe the monthly cadence of the invoices for CAT Fee 2026–1. Specifically, after the first invoices are provided to CAT Executing Brokers in June 2026, invoices will be sent to CAT Executing Brokers each month thereafter until January 2027.

Proposed paragraph (a)(6)(B) of the fee schedule would describe the invoices for CAT Fee 2026–1. Proposed paragraph (a)(6)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis.'' Proposed paragraph (a)(6)(B) of the fee schedule also would describe the fees to be set forth in the invoices for CAT Fee 2026–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000001 per executed equivalent share.''

Since CAT Fee 2026–1 is a monthly fee based on actual transaction volume from the prior month, CAT Fee 2026–1 may collect more or less than two-thirds of the Budgeted CAT Costs 2026–1. To the extent that CAT Fee 2026–1 collects more than two-thirds of the Budgeted CAT Costs 2026–1, any excess money collected will be used to offset future fees and/or to fund the reserve for the CAT. To the extent that CAT Fee 2026–1 collects less than two-thirds of the Budgeted CAT Costs 2026–1, the budget for the CAT in the ensuing months will reflect such shortfall.

Furthermore, proposed paragraph (a)(6)(C) of the fee schedule would describe how long CAT Fee 2026–1 would remain in effect. It would state that ''[n]otwithstanding the last invoice date of January 2027 for CAT Fee 2026–1 in paragraph 6(A), CAT Fee 2026–1 shall continue in effect after January 2027, with each CAT Executing Broker receiving an invoice for CAT Fee 2026–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2026–1 will no longer be in effect.''

Finally, proposed paragraph (a)(6)(D) of the fee schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2026–1. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2026–1 in accordance with paragraph (b).''

(B) Manner of Payment

Paragraph (b)(1) of the ''Consolidated Audit Trail Funding Fees'' section of the fee schedule describes the manner of payment of Industry Member CAT fees. It states that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.'' The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[101] The Plan Processor has established a billing system for CAT fees.[102] Accordingly, CAT Executing Brokers would be required to pay CAT Fee 2026–1 in accordance with such system.

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[103]

Paragraph (b)(2) of the fee schedule states that:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to CAT Fee 2026–1.

(5) CAT Fee Details

The CAT NMS Plan states that:

Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[104]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the

[99] CAT Funding Model Approval Order at 13445, n.677.

[100] This fee rate of $0.000001 is calculated by multiplying the Fee Rate of $0.000003799483243631228 by one-third, and rounding this result (which equals $0.000001266494414543743) to 6 decimal places.

[101] Section 11.4 of the CAT NMS Plan.

[102] The billing process and system are described in CAT Alert 2023–02 as well as in the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023 and Nov. 7, 2023), each available on the CAT website.

[103] Section 11.4 of the CAT NMS Plan.

[104] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

calculation of their CAT Fee.[105] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [106] Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that CAT Fee 2026–1 is in effect as well as the total amount invoiced for CAT Fee 2026–1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for CAT Fee 2026–1.

(6) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.'' [107] Under Section 1.1 of the CAT NMS Plan, a Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,[108] the Financial Accountability Milestone related to Period 4 was satisfied on July 15, 2024. In addition, the satisfaction of the Financial Accountability Milestone related to Period 4 was described in detail in the fee filing for the first Prospective CAT Fee, CAT Fee 2024–1.[109]

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[110] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[111] On March 31, 2026, the Operating Committee approved the Participant fee related to CAT Fee 2026–1. Specifically, pursuant to the requirements of CAT NMS Plan,[112] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000001 per executed equivalent share, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be invoiced such CAT fees on a monthly basis for eight months, from June 2026 until January 2027, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on an exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in June 2026, and would receive an invoice each month thereafter until January 2027. Like with the CAT Fee 2026–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(6)(C) of the fee schedule, notwithstanding the last invoice date of January 2027, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

[e]ach Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the ''Payment Date''). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [113], which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[114] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[115] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[116] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the

[105] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.'' CAT Funding Model Approval Order at 13454.

[106] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 13454.

[107] Section 11.3(a)(iii)(C) of the CAT NMS Plan.

[108] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[109] *See* Securities Exchange Act Rel. No. 100870, (Aug. 29, 2024), 89 FR 72455, (Sep. 5, 2024).

[110] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[111] CAT Funding Model Approval Order at 13448.

[112] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[113] 15 U.S.C. 78f(b)(6).

[114] 15 U.S.C. 78f(b)(4).

[115] 15 U.S.C. 78f(b)(8).

[116] *See* 15 U.S.C. 78f(b)(1).

Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [117] To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees to be paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the CAT Fee 2026–1 fees to be collected are directly associated with the budgeted costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, and professional and administration costs.

The proposed CAT Fee 2026–1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [118] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[119] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for CAT Fee 2026–1 Is Reasonable

The SEC has determined that the CAT Funding Model satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, satisfies the Exchange Act.[120] In each respect, as discussed above, CAT Fee 2026–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2026–1 is reasonable and consistent with the Exchange Act. The calculation of Fee Rate 2026–1 for CAT Fee 2026–1 requires the figures for Budgeted CAT Costs 2026–1, the executed equivalent share volume for the prior twelve months, the determination of the CAT Fee 2026–1 Period, and the projection of the executed equivalent share volume for the CAT Fee 2026–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2026–1

The formula for calculating a Fee Rate requires the amount of Budgeted CAT Costs to be recovered. Specifically, Section 11.3(a)(iii)(B) of the CAT NMS Plan requires a fee filing to provide: the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.

In accordance with this requirement, the Exchange has set forth the amount and type of Budgeted CAT Costs 2026–1 for each of these categories above.

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2026–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2026–1 is reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or is consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.[121] CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. As described above, the cloud hosting services costs reflect, among other

[117] CAT NMS Plan Approval Order at 84697.

[118] *Id.*

[119] CAT Funding Model Approval Order at 13481.

[120] *Id.*

[121] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[122] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [123] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[124] In contrast to the 2016 projections, the actual daily Q3 2025 data volumes averaged 792 billion events per day.

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and amendments to the CAT NMS Plan to reduce costs, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[125]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.[126] CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[127] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[128] The services to be performed by FCAT for CAT Fee 2026–1 Period and the budgeted costs related to such services are described above.[129]

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates receiving certain market data from Algoseek during the CAT Fee 2026–1 Period. CAT LLC anticipates that Algoseek will provide data as set forth in the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.[130]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[131] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain the Reference Database and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's services related to the Reference Database, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS

[122] For a discussion of the amount and type of cloud hosting services fees, *see* Section 3(a)(2)(C)(i) above.

[123] Section 1.3 of Appendix D of the CAT NMS Plan at n.262.

[124] CAT NMS Plan Approval Order at 84801.

[125] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[126] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[127] *See* Section 3(a)(2)(C)(ii) above.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[132] The services to be performed by FCAT for the CAT Fee 2026–1 Period and the budgeted costs for such services are described above.[133]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.[134] CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,[135] CAT LLC determined that it was reasonable not to include any change request fees in the Budgeted CAT Costs 2026–1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.[136] In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2026–1 Period, which relate to the software license fee and technology changes to be implemented by FCAT, are described in more detail above.[137]

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[138] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2026–1 Period and the budgeted costs related to such services are described above.[139]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[140] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. Because there are no CAT employees [141] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[142] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[143]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as a part of CAT Fees.[144] CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [145] As discussed above,[146] CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[147]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[148] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs

[132] *See* Section 3(a)(2)(C)(iii) above.

[133] *Id.*

[134] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[135] *See* Section 3(a)(2)(C)(iv) above.

[136] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[137] *See* Section 3(a)(2)(C)(v) above.

[138] Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

[139] *See* Section 3(a)(2)(C)(vi) above.

[140] Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan.

[141] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

[142] CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. *See, e.g.,* CTA Plan and CQ Plan.

[143] Section 3(a)(2)(C)(vii) above.

[144] Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan.

[145] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[146] *See* Section 3(a)(2)(C)(viii) above.

[147] *Id.*

[148] Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

related to such services are described above.[149]

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.[150]

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.[151]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[152] However, as described above,[153] CAT LLC determined not to include any public relations costs in Budgeted CAT Costs 2026–1. CAT LLC determined that it was reasonable not to include any public relations costs in the Budgeted CAT Costs 2026–1.

(xi) Interest Income

Section 11.1(a) of the CAT NMS Plan requires the CAT budget to include ''the sources of all revenues to cover costs.'' Accordingly, the Updated 2026 CAT Budget includes a line item for interest income. Specifically, the Updated 2026 CAT Budget includes $1,453,382 in interest income for the CAT Fee 2026–1 Period.[154] CAT LLC determined that using interest income to reduce the amount to be collected via CAT Fees is reasonable and should be included as a part of the Budgeted CAT Costs 2026–1.

(xii) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.[155] CAT LLC determined that the reserve in the amount of 25% of the Updated 2026 CAT Budget (other than the reserve) complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount, and, therefore, should be included as a part of the Updated 2026 CAT Budget.

In its approval order for the CAT Funding Model, the Commission stated that it would be appropriate for the annual operating budget for the CAT to ''include a reserve of not more than 25% of the annual budget.'' [156] In making this statement, the Commission noted the following:

Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is appropriate to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[157]

The SEC also recognized that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.[158] The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.[159] The inclusion of the proposed reserve in the Updated 2026 CAT Budget would provide each of these benefits to the CAT. The reserve is discussed further above.[160]

As discussed further below,[161] however, a surplus reserve balance in excess of the budgeted 25% reserve has been collected as of the beginning of the year of 2026. Accordingly, the Updated 2026 CAT Budget indicates that this surplus would be used to offset a portion of CAT costs for the CAT Fee 2026–1 Period, thereby reducing the fee rate for CAT Fee 2026–1 ($0.000001 per executed equivalent share). If the fee rate for CAT Fee 2026–1 were calculated solely based on the reasonably budgeted costs for CAT for May—December 2026, excluding the reduction in that amount due to the surplus reserve offset, the fee rate would be $0.000010 per executed equivalent share.

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include ''a discussion of how the budget is reconciled to the collected fees.'' [162] As discussed above,[163] this reserve balance of $102,391,135 collected via prior CAT Fees would be used to offset a portion of CAT costs for CAT Fee Period 2026–1, thereby reducing the fee rate to be paid for CAT Fee 2026–1. Specifically, the total costs (including the 25% reserve) for CAT Fee 2026–1 of $117,540,783 would be reduced by the $102,391,135 in reserve. Therefore, the Total Budgeted CAT Costs 2026–1 would be $15,149,648. Such surplus reserve balance would be used to reduce the fee rate for CAT Fee 2026–1 ($0.000001 per executed equivalent share).

(C) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[164]

(D) Projected Executed Equivalent Share Volume for the CAT Fee 2026–1 Period

CAT LLC has determined that the projected total executed equivalent

[149] *See* Section 3(a)(2)(C)(ix) above.

[150] *Id.*

[151] *Id.*

[152] Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

[153] *See* Section 3(a)(2)(C)(x) above.

[154] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[155] Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

[156] CAT Funding Model Approval Order at 13444.

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] *See* Section 3(a)(2)(C)(xii) above.

[161] *See* Section 3(b)(2)(B) below.

[162] Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

[163] *See* Section 3(a)(2)(C)(xii) above.

[164] *See* Section 3(a)(2)(D) above.

share volume for the eight months of the CAT Fee 2026–1 Period by multiplying by 8/12ths the executed equivalent share volume for the prior twelve months: 8/12 times 5,980,937,549,360.49 executed equivalent shares.[165] The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.41), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level.

(E) Actual Fee Rate for CAT Fee 2026–1

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[166] Accordingly, proposed paragraph (a)(6)(B) of the fee schedule would set forth a fee rate of $0.000001 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2026–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.[167]

(ii) Reasonable Fee Level

The Exchange believes that charging CAT Fee 2026–1 with a fee rate of $0.000001 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with the Budgeted CAT Costs 2026–1. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is less than CAT Fee 2025–2 and is comparable to other transaction-based fees, including fees assessed pursuant to Section 31.[168] As a result, the magnitude of CAT Fee 2026–1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.[169]

(3) CAT Fee 2026–1 Provides for an Equitable Allocation of Fees

CAT Fee 2026–1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[170] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is appropriate and meets the Rule 608(b) approval standard.'' [171] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

CAT Fee 2026–1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. For example, as described above, the calculation of CAT Fee 2026–1 complies with the formula set forth in Section 11.3(a) of the CAT NMS Plan. In addition, CAT Fee 2026–1 would be charged to CEBBs and CEBSs in accordance with Section 11.3(a) of the CAT NMS Plan. Furthermore, the Participants would be charged for their designated share of the Budgeted CAT Costs 2026–1 through a fee implemented via the CAT NMS Plan, which would have the same fee rate as CAT Fee 2026–1.

In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2026–1—the Budgeted CAT Costs 2026–1, the count for the executed equivalent share volume for the prior 12 months, and the projected executed equivalent share volume for the CAT Fee 2026–1 Period—is reasonable. Moreover, these inputs lead to a reasonable fee rate for CAT Fee 2026–1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) CAT Fee 2026–1 Is Not Unfairly Discriminatory

CAT Fee 2026–1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfies the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of CAT Fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. CAT Fee 2026–1 complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2026–1 and the resulting fee rate for CAT Fee 2026–1 is reasonable. Therefore, CAT Fee 2026–1 does not impose an unfairly discriminatory fee on Industry Members.

The Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and with specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Act [172] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2026–1 implements provisions of the CAT NMS Plan that were approved by the

[165] *Id.*

[166] CAT Funding Model Approval Order at 13445, n.677.

[167] *See* Section 3(a)(5)(A) above.

[168] For example, as the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. CAT Funding Model Approval Order at 13469.

[169] *Id.*

[170] *See* Section 11.3(a) of the CAT NMS Plan.

[171] CAT Funding Model Approval Order at 13412.

[172] 15 U.S.C. 78f(b)(8).

Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce CAT Fee 2026–1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[173] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2026–1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of CAT Fee 2026–1 is reasonable and the resulting fee rate for CAT Fee 2026–1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, CAT Fee 2026–1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[174]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments:*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2026–21 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–MRX–2026–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MRX–2026–21 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[175]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09860 Filed 5–15–26; 8:45 am]

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[173] CAT Funding Model Approval Order at 13457–81.

[174] 15 U.S.C. 78s(b)(3)(A)(ii).

[175] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105480; File No. SR–NasdaqTX–2026–021]**

## Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing of a Proposed Rule Change To Adopt Rules To Permit the Listing and Trading of Exchange-Traded Products on the Exchange

May 13, 2026.

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 May 4, 2026, Nasdaq Texas, LLC (''Nasdaq Texas'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the listing and trading of certain Exchange-Traded Products (''ETPs''). The proposed ETP rules are based on and substantially similar to the rules of the Exchange's affiliate, The Nasdaq Stock Market LLC (''Nasdaq''), and are designed to establish comprehensive listing standards for ETPs on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaqtx/rulefilings,* and at the principal office of the Exchange.

### 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

Nasdaq Texas proposes to amend its rules to permit the listing and trading of certain ETPs on the Exchange. The proposed rule changes would adopt the initial and continued listing standards for these products in the proposed Rule 5700 Series and will be based on Nasdaq's Rule 5700 Series without substantive change. In connection with these changes, the Exchange also proposes to delete redundant listing rules in Equity 3A, and amend Equity 4, Rule 4120 to update the definition of ''Derivatives Securities Product'' therein and add ETP halt rules that are substantially similar to Nasdaq's ETP halt rules.

Background

The Exchange was recently established by converting Nasdaq BX, Inc. to a limited liability corporation operated and governed by Texas state laws and renaming it Nasdaq Texas LLC.[3] In connection with this transition, the Exchange has implemented new listing standards for equity securities that are corporate listings and that are substantially similar to the Nasdaq Global Market listing rules.[4] The Exchange now proposes to expand its listing program by adopting rules to permit the listing and trading of certain ETPs, thereby providing issuers with an additional venue for listing these products and enhancing competition among national securities exchanges. As noted in SR–BX–2026–004, the Exchange intends to only dually list securities (including ETPs) that are also listed on another national securities exchange, but the Exchange expects to subsequently modify its rules to allow it to also serve as a primary listing venue.[5]

Proposed Rule Change

The Exchange proposes certain non-substantive, technical, and conforming changes throughout the proposed rules, as follows. In addition to minor spelling, grammatical, and other similar non-substantive changes and edits, the Exchange proposes to use:

- ''Exchange'' rather than ''Nasdaq'' or ''The Nasdaq Stock Market'' throughout the proposed rules;
- ''Market Hours'' rather than ''Regular Market Hours'' to conform to the Exchange's existing rule definitions in Equity 1, Section 1(a)(13);[6]
- ''Equity 1, Section 1(a)(13)'' instead of ''Rule 4120'' when referring to the trading hours of the Exchange.[7]

The proposed Rule 5700 Series will be substantially identical to Nasdaq's Rule 5700 Series, and each proposed rule will correspond to the same rule number as the Nasdaq rule on which it is based.

Further, as discussed below, the Exchange proposes to delete redundant listing rules in Equity 3A, and to amend Equity 4, Rule 4120 to update the definition of ''Derivatives Securities Product'' therein. Lastly, the Exchange proposes to add ETP halt rules that are substantially similar to Nasdaq's ETP halt rules.

Rule 5700 Series (Other Securities)

The Exchange proposes to adopt new Rule 5700 Series, titled ''Other Securities,'' which will allow the Exchange to list and trade the following ETPs:

- Debt Securities (Other than Convertible Debt) (proposed Rule 5702)
- Class ETF Shares (proposed Rule 5703)
- Exchange Traded Fund Shares (proposed Rule 5704)
- Portfolio Depository Receipts (proposed Rule 5705(a))
- Index Fund Shares (proposed Rule 5705(b))
- Securities Linked to the Performance of Indexes and Commodities (Including Currencies) (proposed Rule 5710)
- Index-Linked Exchangeable Notes (proposed Rule 5711(a))
- Equity Gold Shares (proposed Rule 5711(b))
- Trust Certificates (proposed Rule 5711(c))
- Commodity-Based Trust Shares (proposed Rule 5711(d))
- Currency Trust Shares (proposed Rule 5711(e))
- Commodity Index Trust Shares (proposed Rule 5711(f))
- Commodity Futures Trust Shares (proposed Rule 5711(g))
- Partnership Units (proposed Rule 5711(h))
- Trust Units (proposed Rule 5711(i))
- Managed Trust Securities (proposed Rule 5711(j))
- Currency Warrants (proposed Rule 5711(k))
- Paired Class Shares (proposed Rule 5713)
- Selected Equity-linked Debt Securities (''SEEDS'') (proposed Rule 5715)
- Trust Issued Receipts (proposed Rule 5720)
- Index Warrants (proposed Rule 5725)
- Other Securities (proposed Rule 5730)
- Contingent Value Rights (proposed Rule 5732)
- Managed Fund Shares (proposed Rule 5735)
- Derivative Securities Traded Under Unlisted Trading Privileges (proposed Rule 5740)
- Exchange-Traded Managed Fund Shares (''NextShares'') (proposed Rule 5745)
- Proxy Portfolio Shares (proposed Rule 5750)
- Managed Portfolio Shares (proposed Rule 5760)

The Exchange proposes to reserve Rule 5712 to maintain the same numbering as the Nasdaq Rule 5700 Series. Except for the non-substantive changes, conforming, and technical differences outlined above and described below, the rules are being adopted in substantially the same form as the Nasdaq rules.

Rule 5701 (Preamble to the Listing Requirements for Other Securities)

Proposed Rule 5701 is substantially similar to Nasdaq Rule 5701 and establishes the general framework for listing the above specified ETPs on the Exchange. In addition to certain non-substantive, technical, and conforming changes as described above (*e.g.,* replacing ''Nasdaq'' with ''Exchange''), proposed Rule 5701(a) will only provide that this section contains the requirements for listing other securities on the Exchange. In contrast, Nasdaq Rule 5701(a) provides that this section contains requirements for listing other securities on the Nasdaq Global Market and that in the event that a company's primary security is listed on the Nasdaq Global Select Market, the other securities may be listed on the Nasdaq Global Select Market. As noted above, the Exchange only has a single tier of listing requirements instead of three

[3] *See* Securities Exchange Act Release No. 104736 (January 29, 2026), 91 FR 4980 (February 3, 2026) (SR–BX–2026–005).

[4] *See* Securities Exchange Act Release No. 104907 (February 27, 2026), 91 FR 10657 (March 4, 2026) (SR–BX–2026–004) (noting that unlike Nasdaq, which has three listing tiers, the Exchange will only have a single set of listing requirements based on the Nasdaq Global Market listing standards).

[5] *See supra* note 4.

[6] The term ''Market Hours'' means the period of time beginning at 9:30 a.m. Eastern Time (''ET'') and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). *See* Equity 1, Section 1(a)(13).

[7] Equity 1, Section 1(a)(13) sets forth the trading hours of the Exchange, which run from 7:00 a.m. ET to 7:00 p.m. ET and consist of Pre-Market Hours, Market Hours, and Post-Market Hours. The term ''Pre-Market Hours'' means the period of time beginning at 7:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term ''Post-Market Hours'' means the period of time beginning immediately after the end of Market Hours and ending at 7:00 p.m. ET.

listing tiers like Nasdaq.[8] Accordingly, the Exchange will not carry over references to the different Nasdaq listing tiers in proposed Rule 5701(a).

Rule 5702 (Debt Securities)

Proposed Rule 5702 is substantially similar to Nasdaq Rule 5702 and establishes requirements for listing non-convertible bonds on the Exchange. In addition to certain non-substantive, technical, and conforming changes described above, the Exchange proposes to add the Exchange to the list of national securities exchanges in proposed Rule 5702(a)(2)(A)—(C). The Exchange further proposes to replace the reference to the ''Nasdaq Bond Exchange'' in Nasdaq Rule 5702(c) with the ''Exchange'' in proposed Rule 5702(c). Otherwise there are no substantive differences between the proposed rule and Nasdaq Rule 5702.

Rule 5703 (Class ETF Shares)

Proposed Rule 5703 is materially identical to Nasdaq Rule 5703 and permits the listing and trading of class ETF shares, which are exchange-traded shares of a multi-class fund that operates as an exchange-traded fund pursuant to exemptive relief granted by order under the Investment Company Act of 1940 (the ''1940 Act''), and is in compliance the conditions and requirements of Rule 6c–11 under the 1940 Act. There are no substantive differences between the proposed rule and Nasdaq Rule 5703.

Rule 5704 (Exchange Traded Fund Shares)

Proposed Rule 5704 is substantially similar to Nasdaq Rule 5704 and establishes listing standards for exchange traded fund shares, which are shares of an ''Exchange Traded Fund'' or ''ETF'' as defined in Rule 6c–11 under the 1940 Act. In addition to certain non-substantive, technical, and conforming changes described above, the Exchange will not port over the reference to the ''Night Session'' in Nasdaq Rule 5704(b)(1)(C) to proposed Rule 5704(b)(1)(C) as there is no such trading session on the Exchange. Otherwise, there are no substantive differences between the proposed rule and Nasdaq Rule 5704.

Rule 5705(a) (Portfolio Depository Receipts)

Proposed Rule 5705(a) is substantially similar to Nasdaq Rule 5705(a) and establishes listing standards for portfolio depository receipts, a security based on a unit investment trust that holds securities comprising an index or portfolio underlying a series of portfolio depository receipts. In addition to certain non-substantive, technical, and conforming changes described above, the Exchange will not port over the reference to the Nasdaq Capital Market in Nasdaq Rule 5705(a)(3)(A)(i)e. to proposed Rule 5705(a)(3)(A)(i)e. because the Exchange will only have one listing market instead of three like Nasdaq.[9] The Exchange will also not port over the reference to the ''Night Session'' in Nasdaq Rule 5705(a)(7) to proposed Rule 5705(a)(7) as there is no such trading session on the Exchange. Otherwise there are no substantive differences between the proposed rule and Nasdaq Rule 5705(a).

Rule 5705(b) (Index Fund Shares)

Proposed Rule 5705(b) is substantially similar to Nasdaq Rule 5705(b) and establishes listing standards for Index Fund Shares, which are securities that are issued by an open-end management investment company based on a portfolio of stocks or fixed income securities (or a combination thereof) that seek to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index or combination thereof. In addition to certain non-substantive, technical, and conforming changes described above, the Exchange will not port over the reference to the Nasdaq Capital Market in Nasdaq Rule 5705(b)(3)(A)(i)e. to proposed Rule 5705(b)(3)(A)(i)e. because the Exchange will only have one listing market instead of three like Nasdaq.[10] The Exchange will also not port over the reference to the ''Night Session'' in Nasdaq Rule 5705(b)(7) to proposed Rule 5705(b)(7) as there is no such trading session on the Exchange. Otherwise, there are no substantive differences between the proposed rule and Nasdaq Rule 5705(b).

Rule 5710 (Linked Securities)

Proposed Rule 5710 is materially identical to Nasdaq Rule 5710 and establishes listing standards for exchange-traded notes. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5710.

Rule 5711(a) (Index-Linked Exchangeable Notes)

Proposed Rule 5711(a) is substantially similar to Nasdaq Rule 5711(a) and establishes listing standards for index-linked exchangeable notes, which are debt securities exchangeable at the option of the holder (subject to certain requirements). In addition to certain non-substantive, technical, and conforming changes described above, the Exchange also proposes the following non-substantive differences between the proposed rule and Nasdaq Rule 5711(a). To qualify for listing and trading under Nasdaq Rule 5711(a), an index to which an exchangeable note is linked and its underlying securities must meet (1) the procedures in NOM Rules Chapter XIV, Section 6(b) and (c), or (2) the criteria set forth in Nasdaq Rules 5715(b)(3) and (4), the index concentration limits set forth in NOM Rule Chapter XIV, Section 6, and NOM Rule Chapter XIV, Section 6(b)(12) insofar as it relates to NOM Rule Chapter XIV, Section 6(b)(6).[11] The Exchange instead proposes to point to comparable rules on its options market rather than to NOM rules. Accordingly, the Exchange proposes to apply the criteria set forth in Options 4A, Sections 4(b), 4(b)(6), 4(b)(12), and 4(c) in determining whether an index underlying an index-linked exchangeable note satisfies the requirements of proposed Rule 5711(a)(iv)(A) and (B).[12] Otherwise, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(a).

Rule 5711(b) (Equity Gold Shares)

Proposed Rule 5711(b) is materially identical to Nasdaq Rule 5711(b) and establishes listing standards for equity gold shares, which represent units of fractional undivided beneficial interest in and ownership of the Equity Gold Trust. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(b).

[8] *See supra* note 4.

[9] *See supra* note 4.

[10] *See supra* note 4.

[11] These NOM (*i.e.,* Nasdaq Options Market) rule references are obsolete as Nasdaq has since relocated its rules (including these NOM rules) to another place in the Nasdaq rulebook. *See https://www.nasdaqtrader.com/MicroNews.aspx?id=ORA2019-28.* The correct rule references should be to Nasdaq Options 4A, Sections 4(b), 4(b)(6), 4(b)(12), and 4(c). The foregoing rules set forth criteria for narrow-based and micro narrow-based indexes on which an options contract may be listed on NOM.

[12] The Exchange has substantially the same numbering system as Nasdaq for both its previous and current rulebook. *See https://www.nasdaqtrader.com/MicroNews.aspx?id=ORA2019-25.*

Rule 5711(c) (Trust Certificates)

Proposed Rule 5711(c) is materially identical to Nasdaq Rule 5711(c) and establishes listing standards for trust certificates, which represent an interest in a special purpose trust created pursuant to a trust agreement. Other than certain non-substantive, technical, and conforming changes described above and to replace the reference to ''Nasdaq Options Market'' in Nasdaq Commentary .08 to Rule 5711(c) with ''NTX Options'' in proposed Commentary .08 to Rule 5711(c), there are no substantive differences between the proposed rule and Nasdaq Rule 5711(c).

Rule 5711(d) (Commodity-Based Trust Shares)

Proposed Rule 5711(d) is materially identical to Nasdaq Rule 5711(d) and establishes listing standards for commodity-based trust shares, which are securities issued by a trust or other similar entity that is not registered as an investment company pursuant to the 1940 Act and that holds commodities and/or commodity-based assets, and in addition to such commodities and/or commodity-based assets, may hold securities, cash, and cash equivalents. In addition to certain non-substantive, technical, and conforming changes described above, the Exchange proposes to refer to Equity 1, Section 1(a)(13) in proposed Commentary .02 to Rule 5711(d) to specify the trading hours of the Exchange. In contrast, Commentary .02 to Nasdaq Rule 5711(d) points to Nasdaq Rule 4120. Otherwise, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(d).

Rule 5711(e) (Currency Trust Shares)

Proposed Rule 5711(e) is materially identical to Nasdaq Rule 5711(e) and establishes listing standards for currency trust shares, which are securities issued by a trust that holds a specified non-U.S. currency or currencies deposited with the trust. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(e).

Rule 5711(f) (Commodity Index Trust Shares)

Proposed Rule 5711(f) is materially identical to Nasdaq Rule 5711(f) and establishes listing standards for commodity index trust shares, which are securities issued by a trust that is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(f).

Rule 5711(g) (Commodity Futures Trust Shares)

Proposed Rule 5711(g) is materially identical to Nasdaq Rule 5711(g) and establishes listing standards for commodity futures trust shares, which are securities issued by a trust that is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and that holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(g).

Rule 5711(h) (Partnership Units)

Proposed Rule 5711(h) is materially identical to Nasdaq Rule 5711(h) and establishes listing standards for partnership units, which are securities issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities and/or securities. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(h).

Rule 5711(i) (Trust Units)

Proposed Rule 5711(i) is materially identical to Nasdaq Rule 5711(i) and establishes listing standards for trust units, which are securities issued by a trust or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(i).

Rule 5711(j) (Managed Trust Securities)

Proposed Rule 5711(j) is materially identical to Nasdaq Rule 5711(j) and establishes listing standards for managed trust securities, a security that is issued by a trust that (a) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (b) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the trust's advisor consistent with the trust's investment objectives, which will only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(j).

Rule 5711(k) (Currency Warrants)

Proposed Rule 5711(k) is substantially similar to Nasdaq Rule 5711(k) and establishes listing standards for currency warrants. In addition to certain non-substantive, technical, and conforming changes described above, the Exchange also proposes the following non-substantive differences between the proposed rule and Nasdaq Rule 5711(k). To qualify for listing and trading under Nasdaq Rule 5711(k), currency warrants must meet the requirements under Nasdaq Rule 5711(k)(v) (Regulatory Matters). Nasdaq Rule 5711(k)(v) sets forth a number of NOM rule references that apply to currency warrants listed on Nasdaq around, for example, suitability, discretionary accounts, and supervision of accounts. Nasdaq Rule 5711(k)(v) therefore references NOM Rules Chapter XI, Sections 7–10 and 24.[13] The Exchange instead proposes to point to comparable rules on its options market rather than to NOM rules. Accordingly, the Exchange proposes to require that currency warrants satisfy the criteria set forth in Options 10, Sections 6—9 and 22 in proposed Rule 5711(k)(v).[14]

[13] These NOM rule references are obsolete as Nasdaq has since relocated its rules (including these NOM rules) to another place in the Nasdaq rulebook. *See https://www.nasdaqtrader.com/MicroNews.aspx?id=ORA2019-28.* The correct rule references should be to Nasdaq Options 10, Sections 6–9 and 22.

[14] *See https://www.nasdaqtrader.com/MicroNews.aspx?id=ORA2019-25.*

Otherwise, there are no substantive differences between the proposed rule and Nasdaq Rule 5711(k).

Rule 5713 (Paired Class Shares)

Proposed Rule 5713 is materially identical to Nasdaq Rule 5713 and permits the listing and trading of Paired Class Shares, a security that is issued by a trust on behalf of a segregated series (*i.e.,* the fund) as part of a pair of shares of opposing classes whose respective underlying values move in opposite directions as the value of the fund's underlying benchmark varies from its starting level, where one constituent of the pair is positively linked to the fund's underlying benchmark and the other constituent is inversely linked to the fund's underlying benchmark. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5713.

Rule 5715 (Selected Equity-Linked Debt Securities (''SEEDS''))

Proposed Rule 5715 is substantially similar to Nasdaq Rule 5715 and permits the listing and trading of SEEDS, which are limited-term, non-convertible debt securities of a company where the value of the debt is based, at least in part, on the value of up to thirty (30) other issuers' common stock or non-convertible preferred stock (or sponsored American Depositary Receipts overlying such equity securities). In addition to certain non-substantive, technical, and conforming changes described above, the Exchange also proposes the following non-substantive differences between the proposed rule and Nasdaq Rule 5715:

• Replace the references to the ''Nasdaq Global Market'' or ''Nasdaq Global Select Market'' [15] in the introductory paragraph of Nasdaq Rule 5715(b) with ''the Exchange'' in the introductory paragraph of proposed Rule 5715(b) because the Exchange only has one listing tier versus the three listing tiers on Nasdaq.[16]

• Add the Exchange to the list of national securities exchanges in proposed Rule 5715(b)(1)(A) and (B), and (b)(2)(B)(ii).

Otherwise, there are no substantive differences between the proposed rule and Nasdaq Rule 5715.

Rule 5720 (Trust Issued Receipts)

Proposed Rule 5720 is materially identical to Nasdaq Rule 5720 and establishes listing standards for trust issued receipts, a security that is issued by a trust holding specified securities deposited with the Trust. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5720.

Rule 5725 (Index Warrants)

Proposed Rule 5725 is materially identical to Nasdaq Rule 5725 and establishes listing standards for index warrants, which are instruments that are direct obligations of the issuing company, either exercisable throughout their life (*i.e.,* American style) or exercisable only on their expiration (*i.e.,* European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index. Other than certain non-substantive, technical, and conforming changes described above and replace one instance of ''the Global Market'' in Nasdaq Rule 5725(b)(1) with ''the Exchange'' in proposed Rule 5725(b)(1), there are no substantive differences between the proposed rule and Nasdaq Rule 5725.

Rule 5730 (Other Securities)

Proposed Rule 5730 is substantially similar to Nasdaq Rule 5730 and sets forth the listing requirements for securities not otherwise covered by the criteria in Rule 5400 or 5700 Series, provided the instrument is otherwise suited to trade through the facilities of the Exchange and meets the proposed listing requirements therein. In addition to certain non-substantive, technical, and conforming changes described above, the Exchange also proposes the following non-substantive differences between the proposed rule and Nasdaq Rule 5730:

• Replace the references to the ''Global Market'' in Nasdaq Rule 5730(a)(1) with ''the Exchange'' in proposed Rule 5730(a)(1) because the Exchange only has one listing tier versus the three listing tiers on Nasdaq.[17]

• Add the Exchange to the list of national securities exchanges in proposed Rule 5730(a)(2) and (3), and (b)(2)(B)(ii).

Otherwise, there are no substantive differences between the proposed rule and Nasdaq Rule 5730.

Rule 5732 (Contingent Value Rights)

Proposed Rule 5732 is substantially similar to Nasdaq Rule 5732 and sets forth the listing requirements for contingent value rights, which are unsecured obligations of the issuer and that provide for a possible cash payment either: (i) at maturity based upon the price performance of an affiliate's equity security; or (ii) within a specified time period, upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer. In addition to certain non-substantive, technical, and conforming changes described above, the Exchange also proposes the following non-substantive differences between the proposed rule and Nasdaq Rule 5732:

• Replace the references to the ''Global Market'' in the introductory paragraph of Nasdaq Rule 5732 with ''the Exchange'' in the introductory paragraph of proposed Rule 5732 because the Exchange only has one listing tier versus the three listing tiers on Nasdaq.[18]

• Nasdaq Rule 5732(a)(2) and (3) provides that the company must satisfy the market value of unrestricted publicly held shares requirement in Nasdaq Rule 5315(f)(3)(A) and Nasdaq Rule 5315(f)(2)(A) and (B), as applicable. Nasdaq Rule 5300 sets forth the listing standards the Nasdaq Global Select Market. The Exchange only adopted listing standards based on the Nasdaq Global Market in the 5400 Series, and did not adopt listing standards comparable to the Nasdaq 5300 Series.[19] The Exchange thus proposes to retain the same substantive listing standards of Nasdaq Rule 5315(f)(3)(A) and Nasdaq Rule 5315(f)(2)(A) and (B) in proposed Rule 5732(a)(2) and (3), and will therefore keep the references to these specific Nasdaq rules in proposed Rule 5732(a)(2) and (3).

Otherwise, there are no substantive differences between the proposed rule and Nasdaq Rule 5732.

Rule 5735 (Managed Fund Shares)

Proposed Rule 5735 is materially identical to Nasdaq Rule 5735 and establishes listing standards for managed fund shares, which are securities issued by an open-end management investment company that is actively managed and does not seek to replicate the performance of a specified index. Other than certain non-substantive, technical, and conforming changes described above, there are no

[15] Nasdaq Rule 5715(b) incorrectly references this market as Nasdaq Global Select Market Selected.

[16] *See supra* note 4.

[17] *See supra* note 4.

[18] *See supra* note 4.

[19] *See supra* note 4.

substantive differences between the proposed rule and Nasdaq Rule 5735.

Rule 5740 (UTP Derivative Securities)

Proposed Rule 5740 is materially identical to Nasdaq Rule 5740 and governs the trading of derivative securities pursuant to unlisted trading privileges. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5740.

Rule 5745 (NextShares)

Proposed Rule 5745 is materially identical to Nasdaq Rule 5745 and establishes listing standards for NextShares, a security that represents an interest in a registered investment company (''NextShares Fund'') organized as an open-end management investment company that invests in a portfolio of securities and other assets selected and managed by the NextShares Fund's investment adviser consistent with the NextShares Fund's investment objectives and policies. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5745.

Rule 5750 (Proxy Portfolio Shares)

Proposed Rule 5750 is materially identical to Nasdaq Rule 5750 and establishes listing standards for proxy portfolio shares, a security that represents an interest in an investment company registered under the 1940 Act organized as an open-end management investment company that invests in a portfolio of securities selected by the investment company's investment adviser consistent with the investment company's investment objectives and policies. There are no substantive differences between the proposed rule and Nasdaq Rule 5750.

Rule 5760 (Managed Portfolio Shares)

Proposed Rule 5760 is materially identical to Nasdaq Rule 5760 and establishes listing standards for managed portfolio shares, a security that represents an interest in an investment company registered under the 1940 Act organized as an open-end management investment company, and that invests in a portfolio of securities selected by the investment company's investment adviser consistent with the investment company's investment objectives and policies. Other than certain non-substantive, technical, and conforming changes described above, there are no substantive differences between the proposed rule and Nasdaq Rule 5760.

Other Proposed Changes

The Exchange's current ETP listing rules are in Equity 3A. As these rules will be superseded by the ETP listing rules in the proposed Rule 5700 Series, the Exchange proposes to delete the current listing rules by removing all provisions in Equity 3A and reserving this chapter.

The Exchange also proposes to amend the definition of ''Derivative Securities Product'' in Equity 4, Rule 4120(a)(1) by conforming this term with the definition of ''Derivative Securities Product'' in Nasdaq Equity 4, Rule 4120(b)(4)(A).[20] The Exchange believes that the proposed change would ensure that the amended definition of ''Derivative Securities Product'' in Equity 4, Rule 4120(a)(1) reflects a complete list of Derivative Securities Products that may trade on the Exchange, thereby improving the clarity and transparency of Exchange rules. The Exchange also proposes to amend Equity 4, Rule 4120(b) to add ETP-specific halt provisions that are substantially similar to Nasdaq's ETP-specific halt provisions. First, the Exchange may declare a Regulatory Halt [21] in index warrants when underlying stocks representing 20% or more of the index value are halted, the current index calculation is unavailable, or other unusual conditions exist that are detrimental to fair and orderly markets.[22] Second, the Exchange may declare a Regulatory Halt in certain ETPs when the intraday indicative value or applicable index value stops being disseminated, or when trading in the underlying securities has been halted or substantially ceased in the primary markets, or other unusual conditions exist that are detrimental to fair and orderly markets.[23] Third, the Exchange must declare a Regulatory Halt in Derivative Securities Products when it becomes aware that the net asset value, disclosed portfolio, composition file, or proxy basket is not being disseminated to all market participants at the same time until such time that the net asset value, disclosed portfolio, composition file, or proxy basket is available to all market participants.[24]

Surveillance

The Exchange represents that listed ETPs would be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor the Exchange's listing and trading of ETPs in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of relevant parties for relevant trading violations. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in ETPs, as well as certain other securities and financial instruments underlying such ETPs, with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''). The Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in ETPs and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in ETPs, as well as certain other securities and financial instruments underlying such ETPs, from markets and other entities with which

[20] Nasdaq Equity 4, Rule 4120(b)(4)(A) provides that Derivative Securities Product means a series of Exchange Traded Fund Shares, Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, NextShares, Trust Issued Receipts, or Proxy Portfolio Shares (as defined in Rules 5704, 5705, 5735, 5745, 5720, and 5750 respectively), a series of Commodity-Related Securities (as defined in Equity 10, Section 8), securities representing interests in unit investment trusts or investment companies, Index- Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, or Currency Warrants (as defined in Rule 5711(a)—(k)), Class ETF Shares (as defined in Rule 5703), or any other UTP Derivative Security (as defined in Rule 5740).

[21] ''Regulatory Halt'' has the same meaning as in Section X.A.10 of the Nasdaq UTP Plan. *See* Equity 4, Rule 4120(a)(9).

[22] *See* proposed Equity 4, Rule 4120(b)(1)(A)(v), which is substantially similar to Nasdaq Equity 4, Rule 4120(a)(8) other than the non-substantive, technical, and conforming changes to replace ''Nasdaq'' with the ''Exchange.''

[23] *See* proposed Equity 4, Rule 4120(b)(1)(A)(vi), which is substantially similar to Nasdaq Equity 4, Rule 4120(a)(9) other than the non-substantive, technical, and conforming changes to replace ''Nasdaq'' with the ''Exchange.''

[24] *See* proposed Equity 4, Rule 4120(b)(1)(A)(vii), which is substantially similar to Nasdaq Equity 4, Rule 4120(a)(11) other than the non-substantive, technical, and conforming changes to replace ''Nasdaq'' with the ''Exchange'' and to update the cross citation to the definition of ''Derivative Securities Product'' to Rule 4120(a)(1).

the Exchange has in place a comprehensive surveillance sharing agreement. Further, the Exchange's affiliate, Nasdaq, currently list ETPs pursuant to rules that are substantially similar to the rules proposed by the Exchange in this filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Section 6(b)(5) of the Act,[26] 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 Exchange believes that the proposed rules will remove impediments to, and perfect the mechanism of, a free and open market and a national market system by allowing the Exchange to list and trade ETPs under rules that are substantially similar to the rules of Nasdaq. The Exchange believes that adopting the proposed Rule 5700 Series to permit the listing and trading of ETPs will promote competition among national securities exchanges by providing issuers with an additional venue for listing these products. The proposed rules are substantially similar to the rules of Nasdaq, which have been approved by the Commission and permit the listing and trading of ETPs pursuant to materially identical listing standards. The Commission has previously found that Nasdaq's ETP listing standards are consistent with the Act.[27] By basing the proposed ETP listing rules on the rules of the Exchange's affiliate, Nasdaq, the proposed rule change will promote continuity across affiliated exchanges, permitting ETPs to list and trade on the Exchange by meeting materially the same listing standards as on the Exchange's affiliated market. The proposed rules will require the dissemination of intraday indicative values, net asset values, and other information for listed ETPs and will authorize the Exchange to halt trading in instances where such information stops being disseminated to all market participants at the same time, ensuring that market participants and investors have the same access to information concerning the specified products. Consequently, the Exchange believes that adopting the proposed Rule 5700 Series would 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. Further, the proposed listing rules will apply equally to all issuers that seek to list ETPs on the Exchange and that satisfy the listing criterion.

The Exchange believes that the proposed rules are designed to prevent fraudulent and manipulative acts and practices. Trading in listed ETPs will be subject to existing Exchange trading rules, together with specific initial and continued listing standards and surveillance procedures. The proposed listing rules will require that issuers of securities listed under the proposed rules notify the Exchange regarding instances of non-compliance and indicate that deficiencies will be subject to the delisting process in the Rule 5800 Series. The Exchange believes that these proposed rules will enhance the Exchange's rules, thereby serving to improve the national market system and protect investors and the public interest. In addition, members would continue to be subject to the Exchange's structure for trading listed securities, including supervision and books and records requirements in General 9, Section 20 and Section 30. These provisions will enhance investor protection and market integrity.

The Exchange believes that the deletion of the superseded ETP listing rules in Equity 3A will remove impediments to and perfect the mechanisms of a free and open market by eliminating rules that would be superseded by the proposed Rule 5700 Series, thereby improving the clarity of the Exchange's rules, and enabling market participants to more easily navigate the Exchange's rules. The Exchange also believes that the proposed deletion of obsolete rule text would protect investors and the public interest by making the Exchange's rules more accessible and transparent. Similarly, the Exchange believes that modifying the definition of ''Derivative Securities Product'' in Equity 4, Rule 4120(a)(1) will protect investors and the public interest by ensuring that this Rule reflects a complete list of Derivative Securities Products that may trade on the Exchange, thereby improving the clarity and transparency of Exchange 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 proposed rule change will adopt new rules that allow the Exchange to list and trade ETPs. The proposed rules will apply equally to all issuers that seek to list ETPs on the Exchange. Further, the proposed rule change will allow issuers to list ETPs on the Exchange under listing standards that are materially identical to those of Nasdaq (other than respect to certain non-substantive, technical, and conforming changes described above). This will enhance the Exchange's ability to compete with other exchanges that currently allow the listing of ETPs. The Exchange believes that the proposed rules will promote competition by providing another venue for listing ETPs.

*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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (A) by order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NasdaqTX–2026–021 on the subject line.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *See, e.g.,* Securities Exchange Act Release Nos. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR–NASDAQ–2012–013); 88561 (April 3, 2020), 85 FR 19984 (April 9, 2020) (SR–NASDAQ–2019–090); 103995 (September 17, 2025), 90 FR 45414 (September 22, 2025) (SR–NASDAQ–2025–056; SR–CboeBZX–2025–104; SR–NYSEARCA–2025–54); and 104252 (November 24, 2025), 90 FR 54781 (November 28, 2025) (SR–NASDAQ–2025–037).

*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–NasdaqTX–2026–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NasdaqTX–2026–021 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2026–09862 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105475; File No. SR–NYSEARCA–2026–46]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

May 13, 2026.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 1, 2026, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to adopt a new pricing tier, Retail Tier 6, under the Retail Tiers pricing table. The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a new pricing tier, Retail Tier 6, under the Retail Tiers pricing table.

The proposed change responds to the current competitive environment where ETP Holders have a choice among both exchange and off-exchange venues of where to route marketable retail order flow.

The Exchange proposes to implement the fee changes effective May 1, 2026.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.''[5] Indeed, equity trading is currently dispersed across 17 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 20% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 15% market share of executed volume of equities trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. The competition for Retail Orders is even more stark, particularly as it relates to exchange versus off-exchange venues.

The Exchange thus needs to compete in the first instance with non-exchange venues for Retail Order flow, and with the 16 other exchange venues for that Retail Order flow that is not directed off-exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on

[28] 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. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

competing venues if they deem pricing levels at those other venues to be more favorable.

To respond to this competitive environment, the Exchange has established several Retail Tiers that are designed to provide an incentive for ETP Holders to route Retail Orders to the Exchange by providing higher credits for adding liquidity correlated to an ETP Holder's higher trading volume in Retail Orders on the Exchange. Under certain of these tiers, ETP Holders also do not pay a fee when such Retail Orders have a time-in-force of Day that remove liquidity from the Exchange. The Retail Tiers are designed to encourage ETP Holders that provide displayed liquidity in Retail Orders on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. To provide an incentive for ETP Holders to direct providing displayed Retail Order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Proposed Rule Change

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive enhanced rebates by quoting and trading more on the Exchange.

As noted above, the Exchange currently provides tiered credits for Retail Orders that provide liquidity on the Exchange. Specifically, Section VII. Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above), provides a credit of $0.0038 per share for Adding under Retail Tier 1, a credit of $0.0037 per share for Adding under Retail Tier 2, a credit of $0.0036 per share for Adding under Retail Tier 3, a credit of $0.0034 per share for Adding under Retail Tier 4, and a credit of $0.0035 per share for Adding under Retail Tier 5.[10] Additionally, the Exchange currently charges a fee of $0.0025 per share for Retail Orders with a time-in-force of Day that remove liquidity under Retail Tier 1 and Retail Tier 2 if an ETP Holder executes 170 million or more shares of such orders in a billing month or executes 0.055% of Dollar Plus Consolidated Volume,[11] up to 250 million shares a month, whichever is higher, where the first 170 million shares of such orders or 0.055% of Dollar Plus Consolidated Volume, up to 250 million shares, whichever is higher, are not charged a fee.

The Exchange also currently charges a fee of $0.0025 per share for Retail Orders with a time-in-force of Day that remove liquidity under Retail Tier 3 and Retail Tier 5 if an ETP Holder executes 170 million or more shares of such orders in a billing month or executes 0.055% of Dollar Plus Consolidated Volume, up to 250 million shares a month, whichever is higher, where the first 170 million shares of such orders or 0.055% of Dollar Plus Consolidated Volume, up to 250 million shares, whichever is higher, are not charged a fee if such ETP Holder is registered as a Lead Market Maker (''LMM'')[12] or Market Maker[13] in at least 200[14] Less Active ETPs[15] in which it meets at least two Performance Metrics.[16] Since ETP Holders closely track the number of Retail Orders they send to the Exchange, the Exchange believes they can readily determine at the time of execution whether their Retail Orders will execute free of charge or be subject to the fee of $0.0025 per share.

With this proposed rule change, the Exchange proposes to adopt a new pricing tier, Retail Tier 6, which would provide a credit of $0.0035 per share for Adding to ETP Holders that execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the billing month that is equal to at least 0.075% of CADV combined with Customer and Professional Customer Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 1.00% of TCADV in all options classes. The Exchange also proposes to adopt a fee of $0.0025 per share under proposed Retail Tier 6 for Retail Orders with a time-in-force of Day that remove liquidity except that the first 65 million shares of such orders in a billing month would not be charged the fee.[17]

For example, assume in a month of 20 trading days where an ETP Holder that meets the volume criteria and thus qualifies for the proposed Retail Tier 6 executes 4 million shares of Retail Orders that remove liquidity with a Time-in-force of Day every trading day. By day 17 of the billing month, the ETP Holder will have executed 68 million shares that removed liquidity, thereby exceeding the proposed cap of 65 million shares. By the end of the billing month, or day 20, the ETP Holder will have executed 80 million shares of Retail Orders, *i.e.,* 15 million shares over the 65 million share cap. With this proposed rule change, the ETP holder would not be charged the proposed fee for the first 65 million shares of such Retail Orders with a Time-in-force of Day that remove liquidity and would be charged the proposed $0.0025 per share fee for the 15 million shares in excess of the cap.

With the proposed addition of the 65 million shares threshold applicable to proposed Retail Tier 6, the Exchange proposes to reformat the Retail Tiers pricing table. More specifically, the Exchange proposes relocating the text referencing the current volume threshold to qualify for the no fee exception from the Retail Tiers table to current footnote (e), which would now provide the no fee exceptions applicable to Retail Tier 1, Retail Tier 2, Retail Tier 3, Retail Tier 5 and proposed new Retail Tier 6. The Exchange also proposes to relocate footnote (e), which is currently appended to the fee charged under Retail Tier 3 and Retail Tier 5, to the new heading titled ''Up to Free Remove Cap,'' with footnote (e) describing the no fee exceptions applicable to Retail Tier 1, Retail Tier 2, Retail Tier 3, Retail Tier 5 and proposed new Retail Tier 6.

The purpose of the proposed rule change is to encourage greater participation from ETP Holders, including on the Exchange's options platform, and promote additional liquidity in Retail Orders. The proposed

[10] *See* Fee Schedule, Retail Tiers table under Section VII. Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above).

[11] Dollar Plus Consolidated Volume means the full month equivalent of CADV in securities with a per share price $1.00 or Above. *See* Fee Schedule, Section I. Definitions.

[12] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

[13] Pursuant to Rule 7.23–E(a)(1), all registered Market Makers, including LMMs, have an obligation to maintain continuous, two-sided trading interest in those securities in which the Market Marker is registered to trade. In addition, pursuant to Rule 7.24–E(b), LMMs are held to higher performance standards in the securities in which they are registered as LMM. LMMs can earn additional financial incentives for meeting the higher performance standards specified from time to time in the Fee Schedule. Only one LMM can be registered in a NYSE-Arca listed security, but that security can have an unlimited number of registered Market Makers. Market Makers can also be registered in securities that trade on an unlisted trading privileges basis on the Exchange.

[14] The number of Less Active ETPs for a billing month is calculated as the average number of Less Active ETPs in which an LMM is registered on the first and last business day of the previous month.

[15] Pursuant to Section I under LMM Transaction Fees and Credits, the term ''Less Active ETPs'' means ETPs that have a CADV in the prior calendar quarter that is the greater of either less than 100,000 shares or less than 0.013% of Consolidated Tape B ADV. The term ''ETP'' means Exchange Traded Product listed on NYSE Arca.

[16] The applicable Performance Metrics are specified in Section III under LMM Transaction Fees and Credits on the Fee Schedule.

[17] Pursuant to footnote (d) under Retail Tiers, ETP Holders that qualify for proposed Retail Tier 6 will not be charged a fee or provided a credit for Retail Orders where each side of the executed order (1) shares the same MPID and (2) is a Retail Order.

rule change also provides an alternate method to qualify to the credits currently available under Retail Tier 5, except with a lower equities volume threshold but a higher options volume requirement. As described above, ETP Holders with retail day orders have a choice of where to send those orders. The Exchange believes that the proposed new pricing tier may encourage more ETP Holders to route their Retail Orders with a time-in-force of Day to the Exchange rather than to a competing exchange.

The Exchange believes that the proposed new pricing tier will incentivize ETP Holders to route their liquidity-providing order flow to the Exchange to qualify for the tier, which provides a higher credit than that currently available under current Retail Tier 4. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit and fee to the level of orders sent by an ETP Holder that add or remove liquidity, the Exchange's fee structure would continue to incentivize ETP Holders to submit more orders with a time-in-force of Day that add liquidity to or remove liquidity from the Exchange, thereby increasing the potential for price improvement to incoming marketable orders and higher fill rates to resting limit orders on the Exchange.

The Exchange believes the proposed rule change would continue to encourage additional liquidity on the Exchange by providing additional determinacy to the Fee Schedule to enable market participants to determine what fee or rebate level would be applicable to any submitted order at the time of execution.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposal Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20]

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

As noted above, the competition for Retail Order flow is stark given the amount of such orders that are routed to non-exchange venues. 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 or reduce use of certain categories of products, in response to fee changes. ETP Holders can choose from any one of the 17 currently operating registered exchanges, and numerous off-exchange venues, to route such order flow. Accordingly, competitive forces constrain exchange transaction fees, particularly as they relate to competing for Retail Orders. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed change to adopt the Retail Tier 6 pricing tier is reasonable because it would provide ETP Holders with an additional incentive to route their Retail Orders to the Exchange, which would result in increased liquidity on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities. The Exchange notes that market participants are free to shift their order flow to competing venues if they believe other markets offer more favorable fees and credits.

The Exchange believes the proposed change is also reasonable because the proposed credit would continue to encourage ETP Holders to send Retail Orders to the Exchange to qualify for the proposed pricing tier. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting Retail Order flow that provides displayed liquidity on an exchange. The Exchange believes it is reasonable to continue to provide credits for adding liquidity and fees for removing liquidity, in general, and higher credits for Retail Orders that provide liquidity and lower fees for removing liquidity if an ETP Holder meets the requirement for the proposed pricing tier.

Further, given the competitive market for attracting Retail Orders, the Exchange notes that with this proposed rule change, the Exchange's pricing for Retail Orders would be comparable to credits currently in place on other exchanges that the Exchange competes with for order flow. For example, MEMX LLC (''MEMX'') provides its members with a credit of $0.0037 per share if the member on that exchange has a Retail Order ADAV equal to or greater than 0.20% of the TCV, or if the member has a Retail Order ADAV equal to or greater than 1,000,000 share in the Pre-Market Session and/or Post-Market Session.[21] Additionally, MIAX PEARL, LLC (''MIAX'') provides its member with a credit of $0.0037 per share for Retail Orders that add liquidity to that market.[22]

The Exchange believes that it is reasonable to charge ETP Holders a fee for Retail Orders with a time-in-force of Day that remove liquidity and exceed a specified monthly shares threshold. The Exchange notes that other marketplaces offer various incentives based on trading activity. For instance, pursuant to its Retail Order Process, Nasdaq Stock Market LLC (''Nasdaq'') charges a fee of $0.0025 per share for shares executed in excess of 8 million shares in the month that remove liquidity while not charging a fee for shares executed below 8 million shares in the month that remove liquidity.[23]

The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would benefit all market participants.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that the proposed rule change to adopt new Retail Tier 6 equitably allocates fees and credits among its market participants because all ETP Holders that participate on the Exchange would be subject to the

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] *See supra* note 4.

[21] *See,* MEMX Fee Schedule, Retail Tier, at *https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/.*

[22] *See,* MIAX Fee Schedule, Transaction Rebates/Fees, Standard rates, at *https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_10012025.pdf.*

[23] *See* RFTY Strategies (Retail Order Process) at *https://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

proposed rule change on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that the proposed rule change is equitable because it would apply to all similarly situated ETP Holders. As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting Retail Orders to the Exchange. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder qualifying for proposed Retail Tier 6. While the Exchange has no way of predicting with certainty how the proposed changes will impact ETP Holder activity, based on the prior month's volume, the Exchange anticipates that at least 2 and as many as 5 ETP Holders may be able to satisfy proposed Retail Tier 6. The Exchange believes that pricing is just one of the factors that ETP Holders consider when determining where to direct their order flow. Among other things, factors such as execution quality, fill rates, and volatility, are important and deterministic to ETP Holders in deciding where to send their order flow.

The Exchange believes that the proposed adoption of Retail Tier 6 is also equitable because the magnitude of the proposed credit is not unreasonably high relative to credits paid by other exchanges for orders that provide additional liquidity in Retail Orders.[24] The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more Retail Orders to the Exchange, thereby improving market-wide quality and price discovery.

The Exchange believes that the proposed rule change equitably allocates its fees and credits because maintaining the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes that the proposal is also equitable because all ETP Holders would be subject to the same fee structure. Moreover, the proposed requirement to qualify for the proposed new pricing tier would be available to all ETP Holders to satisfy, including ETP Holders that are affiliated with an NYSE Arca Options OTP Holder or OTP Firm. ETP Holders that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm would still be eligible for fees and credits by means other than the proposed Retail Tier 6. Nasdaq similarly charges certain fees based on both equity and options volume.[25]

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change to adopt proposed new Retail Tier 6 is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be similarly subject to the proposed volume requirement to qualify for the proposed new Retail Tier 6. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed change would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders.

As described above, in today's competitive marketplace, order flow providers have a choice of where to direct order flow, and the Exchange believes the proposed adoption of an increased credit under the proposed new pricing tier will incentivize greater number of ETP Holders to direct their order flow to the Exchange. Lastly, the submission of Retail Orders is optional for ETP Holders in that they could choose whether to submit Retail Orders and, if they do, the extent of its activity in this regard.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[26] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [27]

*Intramarket Competition.* The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed change to adopt a new pricing tier would apply to all ETP Holders equally in that all ETP Holders would be eligible for the proposed pricing tier, have a reasonable opportunity to meet the proposed pricing tier's criteria and would all receive the proposed rebate if such criteria are met. The Exchange believes that the new pricing tier will encourage increased participation from retail liquidity providers while maintaining a competitive and performance-based pricing structure that better reflects current market conditions and trading volumes. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional retail order flow to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency would benefit all market participants on the Exchange by enhancing market quality and would continue to encourage ETP Holders to send their orders to the Exchange, thereby contributing towards a robust and well-balanced market ecosystem.

*Intermarket Competition.* The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not

[24] *See supra,* notes 21–22.

[25] *See* Nasdaq Equity 7, Section 118. Nasdaq Market Center Order Execution and Routing, at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section_118_nasdaq_market_center_order_execution_and_routing.*

[26] 15 U.S.C. 78f(b)(8).

[27] *See supra* note 4.

necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which 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. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 15%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe this proposed fee change would impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

*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**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[28] and Rule 19b–4(f)(2) thereunder [29] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2026–46 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2026–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2026–46 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2026–09857 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[OMB Control No. 3235–0570]**

## Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Form N–CSR

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Form N–CSR (17 CFR 249.331 and 274.128) is a combined reporting form used by registered management investment companies (''funds'') to file certified shareholder reports under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). Specifically, Form N–CSR is to be used for reports under section 30(b)(2) of the Investment Company Act (15 U.S.C. 80a–29(b)(2)) and section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), filed pursuant to rule 30b2–1(a) under the Investment Company Act (17 CFR 270.30b2–1(a)). Reports on Form N–CSR are to be filed with the Securities and Exchange Commission (''Commission'') no later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1). The information filed with the Commission permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995 [1] and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with Form N–CSR is mandatory. Responses to the collection of information will not be kept confidential.

The current total annual burden hour inventory for Form N–CSR is 228,037 hours with an internal cost burden of $6,129,524. The hour burden estimates for preparing and filing reports on Form N–CSR are based on the Commission's experience with the contents of the form. The number of burden hours may vary depending on, among other things, the complexity of the filing and whether preparation of the reports is performed by internal staff or outside counsel.

The Commission's new estimate of burden hours that will be imposed by Form N–CSR is as follows:

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4.

[30] 17 CFR 200.30–3(a)(12).

[1] 44 U.S.C. 3501 *et seq.*

TABLE 1 SUMMARY OF REVISED BURDEN HOURS FOR REPORTS ON FORM N–CSR

| ICR estimated time burden and its cost equivalent | | | | | | | |
|---|---|---|---|---|---|---|---|
| Information Collections (ICs) | Requirement type | Number of respondents | Frequency of response (number of responses per respondent per time period) | Time per Response (hours) | Equivalent cost per response | Total annual time burden (hours) | Total annual cost burden equivalent ($) |
| Form N–CSR | Reporting | 13,052 | 2 Responses per Year. | 7.75 | $580 per hour | 202,306 | $15,140,320 |
| Total ICs: 1 | | | | | ICR Total | 202,306 | $15,140,320 |

In total, the Commission estimates it will take 202,306 burden hours per year for all funds to prepare and file reports on Form N–CSR. Commission staff estimates that the annual cost of outside services associated with Form N–CSR is approximately $580 per fund and the total annual external cost burden for Form N–CSR is $15,140,320.

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of Form N–CSR is mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202602-3235-001* or email comment to *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* within 30 days of the day after publication of this notice, by June 18, 2026.

Dated: May 14, 2026.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09925 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105481; File No. SR–24X–2026–16]**

## Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Sponsored Participants To Be Joint Participants in the Warrant Performance Incentive Program

May 13, 2026.

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 April 30, 2026, 24X National Exchange LLC (''24X'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its warrant performance incentive program to allow Sponsored Participants [3] to be joint Participants in the warrant performance incentive program together with a Sponsoring Member of the Exchange.[4] The proposed rule change is available on the Exchange's website at *https://equities.24exchange.com/regulation* and at the principal office of the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* 24X Rules 1.5(ee) and 11.3(b).

[4] *See* 24X Rule 1.5(ff).

### 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 adopted a warrant performance incentive program (''Program'') to allow Members of the Exchange who participate in the Program (''Member Participants'') to earn the right to purchase Non-Voting Common Units [5] of 24X US Holdings LLC (''24X US Holdco''), the Exchange's parent company.[6] As described in the Warrant Program Release, each Member of the Exchange may become a Member Participant in the Program by prepaying $500,000 in Exchange fees (''Prepayment Fee'') and satisfying the Program eligibility requirements. Upon joining the Program, each Member Participant will receive a warrant that vests based on the Member Participant's achievement of certain minimum

[5] 24X filed a proposed rule change for immediate effectiveness to amend the Limited Liability Company Agreement of 24X US Holdings LLC, as amended (''24X US Holdco LLC Agreement'') to accommodate aspects of the proposal that affect the 24X US Holdco LLC Agreement. The changes to the 24X Holdco LLC Agreement include amendments to authorize the issuance of Non-Voting Common Units as well as the implementation of the liquidity program related to the Program. Securities Exchange Act Release No. 104098 (Sept. 26, 2025), 90 FR 47029 (Sept. 30, 2025) (SR–24X–2025–11).

[6] Securities Exchange Act Release No. 104018 (Sept. 23, 2025), 90 FR 46437 (Sept 26, 2025) (SR–24X–2025–04) (''Warrant Program Release'').

trading volumes (''Target Volume'')[7] on the Exchange during each designated pre-determined period in which the Program is in effect (''Measurement Period'')[8] and the Exchange's achievement of a minimum market share during such Measurement Periods (''24X Minimum Overall Market Share'').[9] When the warrants vest, Member Participants will have the right to exercise the warrants to purchase a certain number of 24X US Holdco Non-Voting Common Units.

As described in the Warrant Program Release, to be eligible to be a Member Participant, an applicant must (i) be a Member[10] in good standing[11] of 24X; (ii) be a registered broker-dealer pursuant to Section 15 of the Exchange Act;[12] (iii) qualify as an ''accredited investor'' as such term is defined in Regulation D of the Securities Act of 1933;[13] (iv) have executed the required documentation for participation in the Program (the subscription agreement and confidentiality agreement, each between the Member and the Exchange); and (v) tendered the Prepayment Fee no later than October 10, 2025 to participate in the Program at its commencement, or by the first day of each subsequent quarter of the Program Period to participate in the Program as of such subsequent quarter until October 1, 2027.[14] Once an eligible applicant for the Program has executed all required documentation for participation in the Program and has paid the Prepayment Fee no later than October 10, 2025 (or by the first day of subsequent quarters for the rolling application process as discussed above), the applicant would be accepted into the Program as a Member Participant and granted a warrant.

The Exchange proposes to amend the Program to allow Sponsored Participants, as defined in Exchange Rules 1.5(ee) and 11.3(b), to participate in the Program together with a Sponsoring Member[15] (''Joint Participants''). All other aspects of the Program would remain the same as described in the Warrant Program Release (as updated via the Revised Program Dates Release). A Sponsoring Member of the Exchange and a Sponsored Participant may together participate in the Program as follows. A Sponsoring Member and the corresponding Sponsored Participant will together be deemed a Joint Participant in the Program for so long as the Sponsoring Member (i) is a Member[16] in good standing[17] of 24X; (ii) is a registered broker-dealer pursuant to Section 15 of the Exchange Act;[18] and (iii) qualifies as an ''accredited investor'' as such term is defined in Regulation D of the Securities Act of 1933;[19] and so long as the Sponsored Participant: (i) fulfills the provisions of Exchange Rule 11.3(b); (ii) qualifies as an ''accredited investor'' as such term is defined in Regulation D of the Securities Act of 1933; (iii) has executed the required documentation for participation in the Program (the subscription agreement, warrant agreement, and confidentiality agreement, each between the Sponsored Participant and the Exchange); (iv) has caused to be tendered (by the Sponsoring Member) the Prepayment Fee no later than the first day of each calendar quarter of the Program Period to participate in the Program as of such quarter;[20] and (v) has identifiable trading volume on the Exchange that is directly attributable to the Sponsored Participant. Even though the Sponsoring Member and the Sponsored Participant will together constitute a Joint Participant in the Program, volume thresholds must exclusively be met by the Sponsored Participant and the warrant granted in connection with the Program will only be issued to the Sponsored Participant. In the case that multiple Sponsored Participants desire to participate in the Program together with the same Sponsoring Member, the above requirements must be met by each particular Sponsored Participant. For the avoidance of doubt, a Sponsoring Member that chooses to participate in the Program together with a Sponsored Participant will not be precluded from also participating in the Program on its own as long as it meets the Member Participant requirements as described above, including tendering of the Prepayment Fee on its own behalf.[21]

The proposal to allow Sponsored Participants to participate in the Program has similarities with the operation of the equity rights program of MIAX Pearl, LLC (''MIAX Pearl'') which has allowed the participation of corporate affiliates of its members in order to attract liquidity providers.[22] In that program, corporate affiliates of MIAX Pearl members may jointly participate together with members and may combine trading volume in order to meet the program's volume thresholds.[23] The Exchange's proposal does not contemplate volume sharing or the participation of corporate affiliates of Members, but would permit Sponsored Participants to participate in the Program based on their relationship with Sponsoring Members for the purpose of increasing liquidity to the Exchange. MIAX Pearl also allows corporate affiliates of members to

[7] As discussed in more detail in the Warrant Program Release, the ''Target Volume'' is 5% of the average daily trading volume on the Exchange, where the daily trading volume is calculated based on total aggregated average daily volume traded over each Measurement Period. *See* Warrant Program Release at 46439–46440.

[8] The Warrant Program Release set forth certain Measurement Periods. However, 24X filed a proposed rule change for immediate effectiveness to revise certain dates for the Program. Securities Exchange Act Release No. 104257 (Nov. 25, 2025), 90 FR 55207 (Dec. 1, 2025), (''Revised Program Dates Release''). As discussed in more detail in the Warrant Program Release and the Revised Program Dates Release, the Measurement Period for Year 1 (2025) is October 14, 2025 through December 31, 2025; the Measurement Periods for Year 2 (2026) are (1) January 1–March 31, 2026, (2) April 1–June 30, 2026, (3) July 1–September 30, 2026, and (4) October 1–December 31, 2026; and the Measurement Periods for Year 3 (2027) are (1) January 1–March 31, 2027, (2) April 1–June 30, 2027, (3) July 1–September 30, 2027, and (4) October 1–December 31, 2027. *See* Warrant Program Release at 46437; Revised Program Dates Release at 55207.

[9] As discussed in more detail in the Warrant Program Release, 24X Minimum Overall Market Share is defined as follows: (1) for each Measurement Period of Year 2, the 24X Minimum Overall Market Share is 0.50% of the Consolidated Average Daily Volume (''CADV'') for all NMS Stocks eligible for trading on 24X; and (2) for each Measurement Period of Year 3, the 24X Minimum Overall Market Share is 1.00% of the CADV for all NMS Stocks eligible for trading on 24X. *See* Warrant Program Release at 46439.

[10] *See* 24X Rule 1.5(u).

[11] For these purposes with regard to the Program, the term ''good standing'' means that a Member is not delinquent with respect to Exchange fees or other charges and is not suspended or barred from being a Member.

[12] 15 U.S.C. 78o.

[13] The purpose of this criterion relates to the ability of 24X US Holdco to sell securities (in this case, Non-Voting Common Units) pursuant to an exemption from registration under the Securities Act of 1933. The definition of ''accredited investor'' under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. As noted above, a Member Participant will be required to be registered as a broker or dealer pursuant to Section 15 of the Exchange Act. Therefore, all Member Participants will satisfy this criterion.

[14] *See* Warrant Program Release at 46437–46438.

[15] *See* 24X Rule 1.5(ff).

[16] *See* 24X Rule 1.5(u).

[17] *See supra* note 12.

[18] 15 U.S.C. 78o.

[19] *See supra* note 14.

[20] If a Sponsoring Member has already tendered the Prepayment Fee on its own behalf in the process of becoming a Member Participant, such Prepayment Fee will only be attributed to the Sponsoring Member and not to any Sponsored Participants that wish to jointly participate in the Program. In the case that a Sponsoring Member that is already a Member Participant in the Program wishes to additionally jointly participate in the Program together with a Sponsored Participant, the Sponsoring Member must tender an additional Prepayment Fee for each such Sponsored Participant.

[21] *See id.; see supra* note 15.

[22] *See* Securities Exchange Act Release No. 83012 (Apr. 9, 2018), 83 FR 16163 (Apr. 13, 2018) (SR–PEARL–2018–08).

[23] *Id.*

independently participate in its program,[24] which the Exchange does not contemplate for Sponsored Participants at this time.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Exchange Act [25] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act [26] 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 mechanisms 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) of the Exchange Act [27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Exchange Act,[28] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that its proposal to allow Sponsored Participants to participate in the Program together with a Sponsoring Member of the Exchange is fair, reasonable and not unfairly discriminatory because it is being offered to all Sponsoring Members of the Exchange and corresponding Sponsored Participants on the same terms and conditions. Also, the Exchange believes that allowing Sponsored Participants to jointly participate in the Program expands access to the Program to Sponsored Participants that could not otherwise participate in the Program on their own, which will benefit all market participants by providing greater liquidity on the Exchange, all of which perfects the mechanism for a free and open market and national market system.

In addition, the Program as amended by this proposed rule change would promote the long-term interests of the Exchange by providing incentives designed to encourage 24X market participants to contribute to the growth and success of the Exchange via actively providing liquidity on the 24X market, and to provide additional investment and funding which could be used for the regulation and operation of the Exchange. The Exchange believes that the additional funds provided by participation of Sponsored Participants would enable the Exchange to have greater capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, and, in turn, would protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the Program as amended by this proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that the Program as amended by this proposed rule change would further increase both intermarket and intramarket competition by incentivizing both Member Participants and the new category of Joint Participants to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of securities traded on the Exchange. To the extent that this purpose is achieved, the Exchange believes that all of the Exchange's market participants would benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [29] of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder,[30] because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [31] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–24X–2026–16 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–24X–2026–16. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–24X–2026–16 and should be submitted on or before June 8, 2026.

[24] *Id.*

[25] 15 U.S.C. 78f.

[26] 15 U.S.C. 78f(b)(5).

[27] *See id.*

[28] 15 U.S.C. 78f(b)(4).

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(2).

[31] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09863 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 36154; File No. 812–15834]**

### KKR Real Estate Select Trust Inc., et al.

May 14, 2026.

**AGENCY:** Securities and Exchange Commission (''Commission'' or ''SEC'').

**ACTION:** Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain business development companies (''BDCs''), closed-end management investment companies, and open-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

**APPLICANTS:** KKR Real Estate Select Trust Inc.; FS KKR Capital Corp.; KKR FS Income Trust; KKR FS Income Trust Select; KKR Asset-Based Finance Fund; KKR Income Opportunities Fund; KKR Asset-Based Income Fund; KKR US Direct Lending Fund-U Inc.; KKR Enhanced US Direct Lending Fund-L Inc.; Capital Group KKR Core Plus+; Capital Group KKR Multi-Sector+; FS/KKR Advisor, LLC; KKR Registered Advisor LLC; KKR Credit Advisors (US) LLC; certain of their wholly-owned subsidiaries and joint ventures as described in Appendix A to the application, and certain of their affiliated entities as described in Appendix B to the application.

**FILING DATES:** The application was filed on June 16, 2025, and amended on November 4, 2025, January 27, 2026, and April 27, 2026.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern time, on June 8, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.* Applicants: Noah Greenhill, Esq., KKR Credit Advisors (US) LLC, 555 California Street, 50th Floor, San Francisco, CA 94104; with copies to Kenneth E. Young, Dechert LLP, 1095 6th Avenue, New York, NY 10036; and William J. Bielefeld and Paul S. Stevens, Dechert LLP, 1900 K Street NW, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Kieran G. Brown, Senior Counsel, or Adam Large, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and conditions, please refer to Applicants' third amended and restated application, filed April 27, 2026, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/search-filings.* You may also call the SEC's Office of Investor Education and Assistance at (202) 551– 8090.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09917 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

[32] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 36127A]**

### Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 13, 2026.

**AGENCY:** Securities and Exchange Commission (''Commission'' or ''SEC'').

**ACTION:** Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April 2026. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/companysearch.html.* You may also call the SEC's Office of Investor Education and Advocacy at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on June 1, 2026, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.*

**FOR FURTHER INFORMATION CONTACT:** Shane Duggan, Acting Assistant Director, at (202) 551–6367 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

**Humankind Benefit Corporation [File Number 811–23602]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 8, 2025, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $75,214.63 incurred in connection with the liquidation were paid by the applicant's investment advisor.

*Filing Date:* The application was filed on March 26, 2026.

*Applicant's Address:* 79 Madison Avenue, New York, New York 10016.

**Morgan Stanley Mortgage Securities Trust [File Number 811–04917]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Mortgage Opportunities ETF, and on August 4, 2025, made a final distribution to its shareholders based on net asset value. Expenses of $607,600 incurred in connection with the reorganization were paid by the applicant'sinvestment adviser and the acquiring fund's investment adviser, and/or their affiliate.

*Filing Date:* The application was filed on February 24, 2026.

*Applicant's Address:* Morgan Stanley Mortgage Securities Trust c/o Morgan Stanley Investment Management Inc., 1585 Broadway, New York, New York 10036.

**Van Kampen Money Market Fund [File Number 811–02482]**

*Summary:* Applicant, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AIM Investment Securities Funds (Invesco Investment Securities Funds), and on June 1, 2010, made a final distribution to its shareholders based on net asset value. Expenses of $288,235.66 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser, and/or their affiliates.

*Filing Date:* The application was filed on February 11, 2026.

*Applicant's Address:* 522 Fifth Avenue, New York, New York 10036.

**Master Bond LLC [File Number 811–21434]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to BlackRock Bond Fund, Inc. and on September 16, 2024, made final distribution to its shareholders based on net asset value. Expenses of $64,550 incurred in connection with the reorganization were paid by the acquiring fund.

*Filing Date:* The application was filed on December 18, 2025, and amended on April 22, 2026

*Applicant's Address:* 100 Bellevue Parkway, Wilmington, Delaware 19809

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09842 Filed 5–14–26; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105482; File No. SR–FINRA–2026–012]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 4321 (Allocations of Fail To Deliver Positions) and Amend FINRA Rule 4560 (Short-Interest Reporting)

May 13, 2026.

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 May 1, 2026, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. 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

FINRA is proposing to (1) amend FINRA Rule 4560 (Short-Interest Reporting) to increase the frequency and granularity of the short interest information collected and disseminated by FINRA, and (2) adopt FINRA Rule 4321 (Allocations of Fail to Deliver Positions) to require members to report to FINRA on a monthly basis their daily allocations of fail to deliver positions to correspondent firms.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org* and at the principal office of FINRA.

[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, FINRA 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. FINRA 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

FINRA is proposing amendments to improve the usefulness of the short interest information reported to and published by FINRA, and to improve FINRA's oversight of member compliance with SEC Regulation SHO.[3] Specifically, the proposed amendments would increase the frequency and granularity of the short interest information reported to FINRA pursuant to Rule 4560 and adopt new FINRA Rule 4321 to require members to report to FINRA on a monthly basis their daily allocations of SEC Regulation SHO Rule 204 [4] fail to deliver positions to correspondent firms, as further described below.

I. Short Interest Reporting

Rule 4560(a) requires each FINRA member to maintain a record of total short positions in all customer and proprietary firm accounts in all equity securities (other than Restricted Equity Securities as defined in Rule 6420) [5] at the member and to regularly report such information to FINRA in the manner prescribed by FINRA. The rule provides that short interest reports must be received by FINRA no later than the second business day after the reporting

[3] 17 CFR 242.200–204.

[4] 17 CFR 242.204. SEC Regulation SHO Rule 204 generally requires broker-dealers to either deliver securities to the clearing agency by settlement date (one business day after the trade date) or the broker-dealer must close out the fail to deliver position by the next settlement date (two business days after the trade date). If the short position is not closed out, the broker-dealer and any broker-dealer for which it clears transactions may not effect further short sales in that security without borrowing or entering into a bona fide agreement to borrow the security until the broker-dealer purchases shares to close out the position (''pre-borrow requirement'').

[5] ''Restricted Equity Security'' is defined in Rule 6420(k) as ''any equity security that meets the definition of 'restricted security' as contained in Securities Act Rule 144(a)(3).''

settlement date designated by FINRA. The rule further specifies the type of positions reportable to FINRA as short interest. Specifically, Rule 4560(b) provides that members are required to record and report all gross short positions existing in each individual firm or customer account at the member, including the account of a broker-dealer, that resulted from (1) a ''short sale'' as that term is defined in Rule 200(a) of Regulation SHO,[6] or (2) where the transaction that caused the short position was marked ''long,'' consistent with Regulation SHO, due to the firm's or the customer's net long position at the time of the transaction.[7] FINRA aggregates the short positions reported by members and publishes an industry-wide aggregate per security, free of charge, on finra.org.[8] FINRA is proposing the following changes to its short interest reporting rules.

A. Positions Resulting From ''Arranged Financing''

FINRA proposes to require reporting of additional position information that reflects the kind of economic short interest sought to be captured under Rule 4560—specifically, positions in each individual firm or customer account at the member that results from arranged financings, as further described below. As previously discussed, currently, members' short interest reporting is limited to short positions at the member that result from a ''short sale'' as defined in SEC Regulation SHO or where the transaction that caused the short position was marked ''long'' due to the member's or customer's net long position at the time of the transaction. FINRA is proposing also to require members to record and report to FINRA any position existing in a customer account that resulted from a securities loan obligation in connection with a customer's borrow of a security from a domestic or foreign affiliate of the member, even where such position itself neither resulted from a ''short sale,'' as described in Rule 4560(b)(1) nor where the transaction that caused the short position was marked ''long,'' as described in Rule 4560(b)(2). In such instances, the original short position, which typically resulted from a ''short sale,'' has been replaced by the securities loan established through the arranged financing program; nonetheless, the borrower remains obligated to close the position in its account by purchasing shares to satisfy the loan obligation. Therefore, the position, economically, reflects the type of short interest that FINRA believes should be captured by the rule to better represent short sentiment in the stock.

B. Timing and Frequency of Short Interest Data Reporting and Dissemination

As stated above, FINRA Rule 4560(a) requires members to regularly report short interest information to FINRA in such a manner as may be prescribed by FINRA, and further provides for a two-business day turnaround period such that the required reports must be received by FINRA no later than the second business day after the reporting settlement date designated by FINRA. Each calendar year, FINRA publishes on its website a list of the relevant dates for its short interest reporting program—specifically, all reporting settlement dates for a calendar year (*i.e.,* the dates on which short interest positions must be captured), the short interest report due dates (*i.e.,* the dates that are two business days after each short interest settlement date), and the publication dates (*i.e.,* the dates on which the aggregate reports are made publicly available by FINRA on the FINRA website).[9]

FINRA is proposing to increase the frequency of both short interest reporting under the rule and the subsequent public dissemination of short interest data by (1) requiring members to submit short interest reports on a weekly rather than a bi-monthly basis, and (2) reducing the two business-day reporting turnaround period to one business day to allow for a more streamlined and timely publication process for short interest reports. If the proposed amendments are approved by the Commission, FINRA will specify on its website a list of weekly short interest reporting settlement dates, member reporting due dates (that are one business day after the short interest reporting settlement date), and the website publication date.

FINRA believes that these modifications—which together would allow short interest data to be published weekly, five business days after the reporting settlement date—would provide FINRA, other regulators, investors, and other market participants with a more current view of short interest information, better inform investors' and other market participants' investment decisions, and provide more timely information to FINRA for regulatory use, without substantially impacting the quality of the data received and published by FINRA.

C. Short Interest Reporting for Securities With Deleted Symbols

FINRA is also proposing to amend Rule 4560 to ensure that FINRA receives a final short interest report that includes short interest position data for a security as of the last settlement date prior to the deletion of its symbol by a self-regulatory organization (''SRO'') (*i.e.,* FINRA or a national securities exchange).[10] Currently, if a security no longer is assigned a security symbol as of a designated short interest reporting settlement date, members do not include that security in their reported short interest data (due to the absence of a valid symbol on the date that short interest is assessed). To address this data gap, FINRA is proposing to adopt Supplementary Material .01 under Rule 4560 to require that, where a symbol no longer exists on the short interest reporting settlement date, members

[6] Rule 200 of SEC Regulation SHO provides that ''short sale'' means ''any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.'' *See* Rule 200(a) of SEC Regulation SHO, 17 CFR 242.200. SEC Rule 200 further provides, among other things, that a person is deemed to own a security if: (a) the person or his agent has title to it; (b) the person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; (c) the person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; (d) the person has an option to purchase or acquire it and has exercised such option; (e) the person has rights or warrants to subscribe to it and has exercised such rights or warrants; or (f) the person holds a security futures contract to purchase it and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying security. *See* Rule 200(b) of SEC Regulation SHO.

[7] Rule 4560(b) also specifies that members must report only those short positions resulting from short sales that have settled or reached settlement date by the close of the reporting settlement date designated by FINRA.

[8] *See https://www.finra.org/finra-data/browse-catalog/equity-short-interest/data.* FINRA publishes the aggregate short interest data seven business days after the reporting settlement date. Such publication includes, for each security: the reporting settlement date, security name, security symbol, identity of the listing exchange or indicates the over-the-counter market, the current aggregate short interest position for the security, and information regarding the change in the size of the short interest position since the prior reporting settlement date. FINRA also provides additional FINRA-calculated metrics for the security (the average daily volume and a ''days to cover'' metric). ''Days to cover'' is a FINRA-calculated metric representing the number of days of average share volume required to buy all of the shares that were sold short during the reporting cycle.

[9] *See https://www.finra.org/filing-reporting/regulatory-filing-systems/short-interest.*

[10] A security may cease to be identified by a symbol for a variety of reasons, including where the shares have been cancelled by the issuer, the symbol has not been used for quoting or trading for an extended period of time, or where the security no longer has a valid CUSIP.

must report their gross short positions in the security as of the last settlement date for which a symbol was in effect. FINRA believes that this proposed rule change would support the availability of more complete information to regulators and market participants.

D. Scope of Securities Subject to Short Interest Reporting Requirements

FINRA is proposing to clarify the scope of the securities that are the subject of short interest reporting requirements. Currently, Rule 4560(a) applies to ''all equity securities (other than Restricted Equity Securities as defined in FINRA Rule 6420).'' FINRA is proposing to clarify that the rule applies to ''OTC Equity Securities,'' as defined in Rule 6420,[11] and securities listed on a national securities exchange. These proposed amendments align with FINRA's short interest reporting systems and existing reporting conventions (FINRA's systems allow members to report short interest positions only in securities that meet the definition of ''OTC Equity Security'' and securities listed on a national securities exchange). Thus, the proposal would not require members to make changes to their short interest reporting.

II. Allocations of Fail To Deliver Positions—New Rule 4321

Rule 204 of SEC Regulation SHO [12] generally requires that broker-dealers either deliver securities to the clearing agency by the short sale settlement date or close out the fail to deliver position on the next settlement day. Under SEC guidance, a clearing firm is permitted to reasonably allocate a portion of its fail to deliver position to a correspondent firm based on that firm's activity (*e.g.,* a clearing firm with a 1,000 share fail to deliver position at a clearing agency in a stock is permitted to allocate the 1,000 share fail (or relevant portion thereof) to a correspondent firm whose activity is responsible for the development of the fail position).[13] If the clearing firm has reasonably allocated the fail to deliver position to a correspondent firm, the correspondent firm—rather than the clearing firm—must comply with the requirements of Rule 204, including the pre-borrow requirement, with respect to that position.

FINRA reviews member compliance with Regulation SHO's Rule 204 close out obligations. However, because broker-dealers are not required to report to FINRA when they have allocated a close out obligation to a correspondent firm, FINRA is often unaware of which member bears responsibility for a particular close out obligation under Rule 204. Instead, when there has been a fail to deliver, FINRA requests information on whether the fail to deliver has been allocated to a correspondent firm and, if so, the identity of the correspondent firm. Obtaining information from clearing firms on daily fail to deliver allocations would allow FINRA to directly identify the member that is responsible for a close out obligation without having to first request this information from the clearing firm, thereby reducing inefficiencies and potential delays in FINRA's surveillance and reviews.

Therefore, FINRA is proposing to adopt new Rule 4321 to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204 of SEC Regulation SHO.[14] Under new Rule 4321, members that have allocated fail to deliver positions would be required to report, in the form and manner prescribed by FINRA, the following information for each allocation:

- Security name and symbol;
- Identity of the correspondent firm to which the fail was allocated;
- Number of shares of the fail that are allocated to the correspondent firm;
- Settlement date on which the allocated fail developed;
- Allocation date; and
- Other information specified by FINRA.

FINRA believes that the proposed rule change would provide FINRA with important information in support of its SEC Regulation SHO compliance program.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposal to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs would improve transparency about short interest positions and better reflect short sentiment in a stock. FINRA believes that the proposal to increase the frequency of reporting under Rule 4560, and subsequent public dissemination, of short interest information would provide a more current view of short interest information, better inform investors' and other market participants' investment decisions, and provide more timely information to FINRA for regulatory use. FINRA also believes that the proposal to require members to report to FINRA the final short interest position in any security whose symbol has been deleted by an SRO would provide additional valuable information to regulators and investors. FINRA further believes that the proposal to limit the scope of Rule 4560 to OTC Equity Securities and securities listed on a national securities exchange is appropriate and consistent with the Act in that it provides for greater clarity with respect to members' existing obligations.

Finally, FINRA believes that the proposal to adopt new Rule 4321 to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms would improve regulatory efficiency and support FINRA's oversight for member compliance with SEC Regulation SHO, consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[11] ''OTC Equity Security'' is defined in Rule 6420(f) as ''any equity security that is not an 'NMS stock' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term 'OTC Equity Security' shall not include any Restricted Equity Security.''

[12] 17 CFR 242.204.

[13] SEC staff guidance states that: ''Rule 204(d) permits the participant to reasonably allocate a portion of a fail-to-deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker's or dealer's short position. If the participant has reasonably allocated the fail-to-deliver position, the provisions of Rule 204 relating to such fail-to-deliver position, including the pre-borrow requirement, apply to such registered broker or dealer that was allocated the fail-to-deliver position, and not to the participant.'' *See* Division of Market Regulation: Responses to Frequently asked Questions Concerning Regulation SHO, # 5.4 (October 15, 2015).

[14] Allocation reports would be due 10 business days after the end of each month. The information provided in the allocation report would be used only for regulatory purposes and would not be publicly disseminated.

[15] 15 U.S.C. 78*o*-3(b)(6).

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives. The economic impact assessment is organized into three separate sections covering the frequency and timing of short interest reporting, changes to the data collected, and reporting of allocations of fail to deliver positions.

The proposed short sale-related reporting enhancements would provide greater transparency regarding short sale activity.[16] Generally, providing additional data furnishes market participants a more complete view into the level of short interest in a particular security and in aggregate across reporting firms. This may allow market participants to better evaluate investment opportunities, encourage greater market participation, and accelerate the incorporation of potentially relevant information into price formation processes. These enhancements and the proposed fail to deliver allocation reporting also would allow FINRA to monitor more efficiently for compliance with Regulation SHO.

At the same time, increasing transparency could create concerns regarding potential disincentives for short selling. As short selling is an important mechanism for incorporating negative information into prices, such an outcome could reduce price efficiency. To the extent that short selling provides liquidity to the market, changes in short selling behavior could impact liquidity. The balance of these incentives determines the primary market impact of the proposal.

Content of Short Interest Data

Loan Obligations Resulting From Arranged Financing

Loan obligations resulting from arranged financing are economically equivalent to short interest positions but are currently not reported as short interest and therefore are not available in the short interest data to market participants nor to FINRA. Expanding the short interest reporting requirement to capture loan obligations resulting from borrowing shares through an arranged financing program would more fully reflect short sentiment, thus allowing FINRA, market participants and investors to more comprehensively understand market activity.

FINRA members would incur upfront costs associated with making systems changes required to identify these loan obligations (including sourcing information from affiliates as needed) for purposes of including this information in reported short interest. Following the upfront process and systems costs to facilitate reporting this information, FINRA anticipates that the ongoing cost of including loan obligations resulting from arranged financing in reported short interest is expected to be minimal as firms currently incur costs for existing short interest reporting.

FINRA understands the primary motivation for customers to use arranged financing is to obtain increased leverage rather than to avoid short interest reporting. To the extent this is true, this would limit incentives to shift lending to non-FINRA members, including banks. FINRA also understands that, although it is possible for customers to obtain short exposure to a security through other means, it would be impractical for entities other than affiliates of FINRA members to offer a service substantially similar to arranged financing as discussed in the proposed rule change.

Short Interest Reporting for Deleted Symbols

Given the current timeframe for reporting short interest to FINRA, FINRA may not receive a short interest report that includes data for a security that recently was no longer identified by an SRO-issued symbol. Receiving a final short interest report in such a security would allow FINRA to more efficiently monitor for compliance with Regulation SHO.

FINRA estimates that 2,426 equity securities ceased to be identified by an SRO-issued symbol in 2025, of which 722 were exchange-listed equity securities and 1,704 were OTC equity securities. Of these 2,426 equity securities, 1,122 (46 percent) had outstanding short interest positions as of their last short interest reporting date. For these securities, the average time between the last short interest reporting date and the last settlement date for which a symbol existed was eight days.

FINRA does not expect that firms would incur substantial costs associated with reporting this information because it would be a continuation of the same data that they are required to report for securities, although they may need to make an upfront system or process change in order to report their gross short positions in the security as of the last settlement date for which a symbol was in effect.

Frequency and Timing of Short Interest Position Reporting and Data Dissemination

Based on current reporting requirements as noted above, twice a month FINRA disseminates aggregate short interest information seven business days after the reporting settlement date. However, changes in short interest for OTC and exchange-listed equity securities between reporting settlement dates (and thus dissemination) can be fairly large relative to the average daily trading volume [17] and, currently, there are no other sources of the short interest information that FINRA produces available on a more frequent basis, free of charge to investors generally and retail investors in particular.[18]

Increasing the reporting frequency to weekly would provide FINRA and market participants with more current short interest information. More frequent information could accelerate the incorporation of potentially relevant

[16] On October 13, 2023, the SEC adopted Exchange Act Rule 10c-1a to increase the transparency and efficiency of the securities lending market by, among other things, requiring covered persons to report information about securities loans to a registered national securities association (''RNSA''). *See* Securities Act Release No. 98737 (October 13, 2023), 88 FR 75644 (November 3, 2023) (File No. S7–18–21) (Reporting of Securities Loans). On December 3, 2025, the SEC issued a temporary exemption, pursuant to Section 36(a)(1) of the Exchange Act, from compliance with SEA Rule 10c-1a to allow time for the staff to consider potential changes to the proposal. *See* Securities Exchange Act Release No. 104303 (December 3, 2025), 90 FR 56813 (December 8, 2025).

[17] For each short interest reporting date between January 2025 and December 2025, FINRA analyzed the change in each security's short interest from the previous reporting date. On an average reporting date, 11,323 exchange-listed equity securities experienced changes in short interest. The median change in short interest for these securities amounts to 25 percent of the average daily trading volume but rises to 56 percent by the 75th percentile and 183 percent by the 95th percentile. During the same time period, an average of 7,118 OTC equity securities experienced changes in short interest each reporting date. The median change in short interest for these securities amounted to 60 percent of the average daily trading volume but rises to 1,170 percent by the 75th percentile and 157,032 percent by the 95th percentile.

[18] A 2025 study finds that vendor-derived short interest estimates explain only up to 67 percent of the variation in actual short interest changes. *See* Yong Chen, Minjae Kim, John McInnis, and Wuyang Zhao, Interest in the Short Interest: The Rise of Private Sector Data, 42(4) Contemporary Accounting Research 2424–2457 (2025). In addition, the cost of this data is substantial and likely unaffordable for most retail investors.

information into price formation processes.

The costs associated with accommodating more frequent reporting with a faster turn-around time depends primarily on firms' reliance upon manual processes in collecting, validating and reporting short interest.[19] Many firms like[sic] rely on manual processes to determine whether a short position is reportable, as well as to validate and verify their short positions.

It is possible that more frequent public disclosure of short interest positions could discourage short selling, which is an important mechanism for price efficiency and for liquidity provision.[20] However, the five-business-day turnaround time between the reporting settlement date and the dissemination of short interest information, combined with aggregation across all accounts, should mitigate concerns about information leakage and the impact on liquidity and make any such outcome less likely.[21]

Information on Allocations of Fail To Deliver Positions

FINRA is proposing to require member clearing firms to submit to FINRA on a monthly basis a report of their daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204 of Regulation SHO. Currently, when there has been a fail to deliver, FINRA must contact the clearing firm to learn whether the firm has allocated the fail to deliver to a correspondent firm and if so, to which firm.[22]

Requiring clearing firms to submit on a monthly basis a report of their daily allocations would allow FINRA to conduct more efficient investigations as FINRA would be able to identify which member has the close-out obligation directly from the reported information. Member clearing firms may also benefit from freeing up resources used to respond to inquiries about allocations to correspondent firms.

FINRA members that are participants of a registered clearing agency would incur costs associated with establishing a process to report to FINRA daily allocations to correspondent firms. These member firms may seek to amend their contracts with correspondent firms to shift these costs.

Alternatives Considered

FINRA considered requiring short interest to be reported on a daily rather than weekly basis. While more frequent availability of information could be useful to market participants and to FINRA for regulatory purposes because it would provide information about short positions at members with less delay, reporting data daily also would place a larger burden on reporting firms and may raise concerns addressed above regarding potential impacts on price efficiency and liquidity.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

In June 2021, FINRA published *Regulatory Notice* 21–19 (''*Notice*'') seeking comment on potential enhancements to its short sale reporting program. These potential enhancements included (1) modifications to the short interest reporting requirements in Rule 4560, (2) adoption of a new rule to require participants of a registered clearing agency to report to FINRA information on allocations to correspondent firms of fail to deliver positions, and (3) other potential enhancements related to short sale activity.[23] FINRA received 2,227 comment letters in response to the *Notice.* A copy of the *Notice* is available on FINRA's website at *http://www.finra.org.* A list of the comment letters and copies of the comment letters received in response to the *Notice* are available on FINRA's website.[24]

In general, the commenters supported some aspects of the potential enhancements and raised concerns with others. A summary of the comments FINRA received that are related to the instant proposed rule change and FINRA's responses are discussed below.[25]

1. Positions Resulting From ''Arranged Financing''

FINRA received comments regarding expanding short interest reporting to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs through which a customer borrows shares from the firm's domestic or foreign affiliate and uses those shares to close out a short position in the customer's account.

Several commenters supported reflecting loan obligations resulting from arranged financing in reported short interest.[26] Angel, Better Markets,

[19] A total of 86 firms reported short interest for at least one security in 2025.

[20] Two studies that looked at short interest reporting in the European Union and Japan found that daily short interest reporting of large individual positions reduced short selling. The study looking at the European Union found that this reduction slowed down the incorporation of new information into prices as measured by the Hou and Moskowitz (2005) measure. It also found short reporting increased the Amihud illiquidity measure, which is calculated as the ratio of absolute value of daily stock returns to daily dollar trading volume and intended as a rough measure of price impact, although quoted spreads narrowed. The study looking at Japan did not directly examine price efficiency or liquidity but finds that after adopting the reporting regime, the remaining short selling became less informed and short-term price volatility increased. However, both studies examine reporting requirements with higher frequency and less aggregation than the instant proposal. *See* Charles M. Jones, Adam V. Reed & William Waller, Revealing Shorts: An Examination of Large Short Position Disclosures, 29(12) The Review of Financial Studies 3278–3320 (2016) and Truong X. Duong, Zsuzsa R. Huszar & Takeshi Yamada, The Costs and Benefits of Short Sale Disclosure, 53 Journal of Banking and Finance 124–130 (2015).

FINRA received comments expressing concern that increasing the frequency of short interest reporting could have negative impacts on liquidity because short sellers, a source of market liquidity, may limit their activity if they believe reporting reveals their trading strategies or allows others to trade in a way that is detrimental to their interests.

[21] Studies have suggested that, while increasing dissemination speed beyond a certain point may discourage short selling, more moderate increases in dissemination speed can offset negative impacts. Kahraman (2020) finds that, at the same level of aggregation as the instant proposal, increasing the short interest reporting frequency from monthly to bimonthly more than offset any negative impact on short selling activity by accelerating the incorporation of the information into prices. *See* Bige Kahraman, Publicizing Arbitrage: Impact of Mandatory Disclosures, Journal of Financial and Quantitative Analysis, 56, 789–820 (2020).

[22] Across settlement dates in 2025, the median number of equity securities with any outstanding fail to deliver positions was 5,261. A total of 158 firms reported at least one fail to deliver position in 2025.

[23] In the *Notice,* FINRA did not solicit comment on the proposed rule changes discussed in Item 3 of this rule filing regarding the reporting of final short interest positions for securities with deleted symbols or the clarification of the scope of the securities subject to the reporting requirements of Rule 4560.

[24] *See https://www.finra.org/rules-guidance/notices/21-19#comments.*

[25] Some comments raised concerns regarding broader issues, such as (1) more stringent regulation of naked short selling and fails to deliver, (2) allowing shares to be borrowed only once and limiting the total amount of shares held short to no more than the security's float, (3) increasing enforcement penalties and fines, (4) the potential conflict of interest when a market maker also runs a hedge fund, (5) lack of transparency and manipulation in the context of dark pools, (6) requiring settlement on trade date, (7) preventing payment for order flow, and (8) requiring disclosure of synthetic long positions. These comments are outside the scope of the instant proposed rule change and therefore are not addressed herein.

[26] *See* letter from James J. Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''Angel''); letter from Joseph R. Cisewski, Senior Derivatives Consultant and Special Counsel, Better Markets, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''Better Markets''); letter from Kurt N. Schacht, CFA, CFA Institute Head of Advocacy, and Stephen Deane, CFA, CFA Institute Senior Director—Advocacy, to Jennifer Piorko Mitchell,

Continued

and CFA Institute stated that the proposal would provide greater transparency regarding short interest. In addition, individual investors generally supported increased granularity of short interest information.

Three commenters opposed reflecting loan obligations resulting from arranged financing in reported short interest.[27] Credit Suisse stated that this change could result in ''false positives'' and potential duplication in the data reported. Fidelity stated that the change would shift borrowing activity away from FINRA member arranged financing programs to swaps dealers, custody banks, or off-shore entities that are not subject to similar reporting requirements. FIF stated that there would be a significant undertaking involved in reporting this information and that the information is available from other sources such as The Depository Trust Company. One commenter neither supported nor opposed this aspect of the proposal but asked that FINRA consider the challenges firms would face obtaining the information from their affiliates in addition to the significant implementation challenges before proceeding to require that firms provide arranged financing information in short interest.[28]

After considering the comments received, FINRA has determined to propose amendments to Rule 4560(b) to require members to report as short interest outstanding stock borrows by customers in their arranged financing programs. FINRA believes that including in FINRA's short interest data these positions, as specifically defined in the proposed rule change, would not be duplicative and would better reflect the actual short sentiment in an equity security. Because the reporting member has made available the arranged financing program to its customers and the position is reflected on the member's books, FINRA believes it is reasonable to require the member to identify these positions and include them in reported short interest, as contemplated in the proposal. FINRA also believes that the primary motivation for customers to use arranged financing is to obtain increased leverage rather than to avoid short interest reporting, which, to the extent this is true, would limit incentives to shift lending to non-FINRA members, including banks. FINRA further understands that, although it is possible for customers to obtain short exposure to a security through other means, it would be impractical for entities other than affiliates of FINRA members to offer a service substantially similar to arranged financing. FINRA continues to believe that requiring members to include these positions will improve the completeness of reported short interest information, and notes that this information is not reasonably ascertainable elsewhere; therefore, requiring members to report this information is reasonable and appropriate.

2. Frequency and Timing of Short Interest Position Reporting and Dissemination

In the *Notice,* FINRA requested comment on potentially increasing the frequency of short interest reporting and dissemination. Specifically, FINRA stated that it was considering increasing the frequency of short interest reporting and dissemination from bi-monthly to weekly or daily. In addition, FINRA noted that it was considering shortening the timeframe for members to submit short interest reports and reducing the amount of time FINRA takes to process the collected information so that FINRA could disseminate short interest data more quickly.

Eight commenters supported increasing the short interest reporting frequency to weekly, noting that it would be more feasible than daily reporting while still increasing transparency, providing investors with timely information, and preserving the confidentiality of individual firm investment and trading strategies.[29] FIF, however, raised concerns, including regarding the feasibility of shortening the timeframe for members to submit short interest position reports to FINRA after the designated settlement date.

Angel, Better Markets, NASAA, and several individual investors supported daily reporting and dissemination of short interest data. Better Markets and NASAA suggested that, if necessary, there should be a suitable delay in daily dissemination to allow firms to compile short interest data. NASAA further stated that daily short interest data currently can be purchased and therefore this data can be compiled without undue burden. CFA Institute also asked that FINRA consider daily reporting if daily short interest data already is available through other means.

Five commenters opposed increasing the frequency of short interest reporting.[30] Credit Suisse, Fidelity, and SIFMA stated that such a change would be operationally challenging and a significant cost burden on firms. Nasdaq asked that FINRA undertake a rigorous analysis on the frequency of reporting, and publish the results of that analysis, before increasing the frequency of short sale reporting. T. Rowe Price stated that more frequent short interest reporting would negatively impact liquidity.

After considering the comments received, FINRA is proposing to increase the frequency of short interest reporting and dissemination from bi-monthly to weekly and to reduce the turnaround time for the submission of the reports from two business days to

Office of the Corporate Secretary, FINRA, dated September 24, 2021 (''CFA Institute''); letter from Jennifer W. Han, Chief Counsel & Head of Regulatory Affairs, Managed Funds Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''MFA''); letter from Melanie Senter Lubin, NASAA President, Maryland Securities Commissioner, North American Securities Administrators Association, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''NASAA'').

[27] *See* letter from Michael E. Moran, Managing Director, Head of US Public Policy, Credit Suisse Holdings (USA), Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, received September 30, 2021 (''Credit Suisse''); letter from Michael Lyons, Chief Financial Officer, National Financial Services LLC (submitted by Fidelity Investments), to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''Fidelity''); letter from Howard Meyerson, Managing Director, Financial Information Forum, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 29, 2021 (''FIF'').

[28] *See* letter from Robert Toomey, Managing Director, Associate General Counsel, and Joseph Corcoran, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''SIFMA'').

[29] *See* letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''Citadel''); letter from Sarah A. Bessin, Associate General Counsel, and Nhan Nguyen, Assistant General Counsel, Investment Company Institute, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated August 31, 2021 (''ICI''); letter from Paul Wilson, Managing Director, Global Head of Securities Finance, Equities Data & Analytics, IHS Markit, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''IHS Markit''); letter from Matthew R. Cohen, Chief Executive Officer, Provable Markets LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''PML''); letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 30, 2021 (''Virtu''); letters from CFA Institute, FIF and MFA.

[30] *See* letter from Jeffrey Davis, Senior Vice President, North American Regulation, Nasdaq, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated October 13, 2021 (''Nasdaq''); letter from Mehmet Kinak, Global Head of Systematic Trading & Market Structure, Philip Nestico, Head of U.S. Equity Trading, and Jonathan Siegel, Senior Legal Counsel—Legislative & Regulatory Affairs, T. Rowe Price, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated September 20, 2021 (''T. Rowe Price''); letters from Credit Suisse, Fidelity and SIFMA.

one business day following the designated settlement date. FINRA believes that these changes best balance the goals of improving transparency and the usefulness of short interest data for regulators and market participants with the burden on firms to provide such information on a more frequent basis and concerns regarding potential impacts on liquidity. FINRA believes that firms' current reporting processes are well-established and that, following the initial process and systems adjustments, members will be able to report data on a weekly basis using current systems. In addition, FINRA believes that the aggregate nature of the published short interest data and the five-business-day turnaround time between the date of the short interest data and its dissemination would largely mitigate concerns regarding potential information leakage and impacts on liquidity.[31]

3. Allocations of Fails To Deliver Positions

FINRA also received comments with respect to the proposal to adopt a new rule to require members to submit to FINRA a report of daily allocations of fail to deliver positions to correspondent firms pursuant to Rule 204(d) of SEC Regulation SHO. Angel, Better Markets, CFA Institute, FIF, and NASAA supported the adoption of such a rule. FIF stated that, subject to the manner and timing of implementation, on balance, the benefits of the proposed rule could outweigh the costs. NASAA indicated that the proposed rule would benefit investors by adding efficiencies to FINRA's market oversight with minimal impacts on firms, as well as possibly increase the likelihood that firms would comply with their settlement requirements in a timely fashion.

Fidelity and SIFMA opposed FINRA adopting such a rule, stating that the costs would outweigh the benefits and increase the potential for reporting errors. Fidelity further stated that FINRA should eliminate the proposed data field requiring the time period for the applicable close out obligation as the introducing firm rather than the clearing firm is responsible for this information.

Having considered comments received, FINRA continues to believe it is appropriate to propose new Rule 4321 to require members to report to FINRA on a monthly basis their daily allocations of fail to deliver positions to correspondent firms. FINRA believes that allocations of these positions by clearing firms is a common occurrence and that a report of daily allocations of fail to deliver positions to correspondent firms would provide valuable information in support of FINRA's surveillance program for compliance with SEC Regulation SHO. FINRA believes that routinely obtaining this information would allow FINRA to conduct more efficient investigations and that the anticipated costs of the proposal are appropriate in light of the expected regulatory benefits. However, FINRA has, in response to comments, revised the proposal to omit the data fields pertaining to the close out date and the applicable close out obligation, since clearing firms will not necessarily know this information.

[31] Some comment letters also discussed FINRA's oversight program with regard to the accuracy and completeness of firms' short interest reporting. These commenters state that FINRA's inquiries, which require manual efforts, would further complicate weekly reporting. FINRA notes that the referenced process appears to be part of the ongoing oversight process to ensure that members are reporting their short interest data in compliance with FINRA rules and guidance. FINRA believes that these oversight efforts have been, and will remain, important elements of FINRA's regulatory program.

## 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 (i) as the Commission may designate up to 90 days of such date 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–FINRA–2026–012 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2026–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FINRA–2026–012 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09864 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

[32] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105479; File No. SR–CBOE–2026–016]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Relating to Designated Primary Market-Makers (''DPMs'') and DPM Appointments in Global Trading Hours and Curb Sessions

May 13, 2026.

## I. Introduction

On January 30, 2026, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify rules pertaining to Designated Primary Market-Makers (''DPMs'') to: (1) clarify that the Exchange may appoint

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

DPMs to Global Trading Hours (''GTH'') and Curb Trading Hours (''Curb'') sessions and that DPMs may be the same across multiple trading sessions or different (or no DPM) for an option class in Regular Trading Hours (''RTH''), GTH, and/or Curb sessions; (2) provide that DPM obligations and participation entitlements will apply to GTH and Curb sessions; and (3) make certain administrative changes. The proposed rule change was published for comment in the **Federal Register** on February 13, 2026.[3] On March 25, 2026, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received no comments regarding the proposed rule change. On April 13, 2026, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. The Commission is publishing this Notice and Order to solicit comment on Amendment No. 1 in Sections II and III below, which sections are being published verbatim as filed by the Exchange, and to institute proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change, as modified and superseded by Amendment No. 1.

## II. Description of the Proposed Rule Change

As described more fully in the Notice,[7] the Exchange proposes to modify rules pertaining to Designated Primary Market-Makers (''DPMs'') to (1) clarify the Exchange may appoint DPMs to Global Trading Hours (''GTH'') and Curb Trading Hours (''Curb'') sessions and that DPMs may be the same across multiple trading sessions or different (or no DPM) for an option class in Regular Trading Hours (''RTH''), GTH, and/or Curb sessions; (2) provide that DPM obligations and participation entitlements will apply to GTH and Curb sessions; and (3) make certain administrative changes.[8] The Exchange initially submitted this rule filing as SR–CBOE–2026–016 to the Securities and Exchange Commission (the ''Commission'') on January 30, 2026 (the ''Initial Rule Filing''). Amendment No. 1 supersedes the Initial Rule Filing and replaces it in its entirety. Amendment No. 1 provides additional support for the proposal by (1) detailing the Exchange's authority to review DPM compliance with quoting obligations and address occurrences of noncompliance, and (2) adding minor clarifications regarding quoting obligations. However, Amendment No. 1 makes no substantive changes to the proposal. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*), the Exchange's website (*https://www.cboe.com/us/options/regulation/rule_filings/bzx/*), and at the principal office of the Exchange.

## III. 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

DPMs are Trading Permit Holders (''TPHs'') that are approved by the Exchange to function in appointed securities as a Market-Maker.[9] The Exchange proposes to amend certain Cboe Rules regarding DPM appointments. Specifically, the Exchange proposes to (1) clarify the Exchange may appoint DPMs to GTH and Curb sessions and that DPM appointments for an option class may differ by trading session[10] while acknowledging that a trading session may not have a DPM[11]; (2) provide that heightened DPM quoting obligations and participation entitlements apply during GTH and Curb sessions; and (3) make certain administrative changes.

First, the Exchange proposes to amend Cboe Rules 1.1 and 3.53 to update requirements and administrative processes for DPMs to explicitly state that the Exchange may appoint DPMs for all trading sessions (*i.e.,* RTH, GTH,[12] and Curb[13]), and that DPMs may be the same or different across trading sessions. Pursuant to the definition of DPM in Cboe Rule 1.1 and the provisions of Cboe Rule 5.52(h), the Exchange may determine DPM appointments for classes (including that a DPM may not be appointed for a class). Pursuant to Cboe Rule 1.5, if Cboe Rules permit the Exchange to make a determination (including on a class-by-class basis), the Exchange may make that determination on a trading session-by-trading session basis. Therefore, Cboe Rules permit the Exchange to determine DPM appointments for all trading sessions, and the Exchange may appoint the same DPM for all trading sessions or may appoint different DPMs on a trading session-by-trading session basis. The proposed rule change merely explicitly states this in Cboe Rules. The Exchange proposes to update the definition of DPM in Cboe Rule 1.1 to state that 1) the Exchange designates DPMs per trading session, 2) On-Floor DPM is a term applicable to RTH sessions (as the floor operates only during RTH), 3) a DPM's request to function as an Off-Floor DPM is applicable to RTH sessions, and 4) DPMs that are appointed for a GTH or Curb session are considered Off-Floor DPMs within Cboe Rules (since those sessions are electronic only).

To further codify that the Exchange may appoint DPMs by trading session, the Exchange proposes to amend Cboe Rule 3.53, which establishes certain processes for DPMs, including selection and termination processes for DPMs. Specifically, the Exchange proposes to amend Cboe Rule 3.53(d) to state that the Exchange has the authority to specify the trading session(s) for a DPM appointment as a possible condition on

[3] *See* Securities Exchange Act Release No. 104807 (Feb. 10, 2026), 91 FR 6966 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 105077, 90 FR 15659 (March 30, 2026). The Commission designated May 14, 2026 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See supra* note 3.

[8] *See* Notice, 91 FR 6966.

[9] *See* Rule 1.1 (definition of DPM).

[10] The term ''trading session'' means the hours during which the Exchange is open for trading for Regular Trading Hours, Global Trading Hours or Curb Trading Hours (each of which may be referred to as a trading session), each as set forth in Rule 5.1. Unless otherwise specified in the Rules or the context otherwise indicates, all Rules apply in the same manner during each trading session. *See* Rule 1.1 (Definitions).

[11] *See* Rule 5.50(l), which states that the Exchange may designate a class for trading without a DPM.

[12] Except under unusual conditions as may be determined by the Exchange or the Holiday hours set forth in Rule 5.1(d), Global Trading Hours are from 8:15 p.m. (previous day) to 9:25 a.m. on Monday through Friday. *See* Rule 5.1(c).

[13] Except under unusual conditions as may be determined by the Exchange, or the Holiday hours set forth in Rule 5.1(e), Curb Trading Hours are from 4:15 p.m. to 5:00 p.m. on Monday through Friday. *See* Rule 5.1(d).

an approval. Furthermore, since it may be necessary to facilitate trading in a specified extended hours trading session without a DPM when a DPM appointment is terminated, the Exchange proposes to amend Cboe Rule 3.53(f) to confirm that a DPM may not be designated for a GTH or Curb session when the existing DPM for such session is terminated. This proposed change acknowledges and aligns with Cboe Rule 5.50(l), which provides that a class may be designated for trading without a DPM (during any or all trading sessions, as determined by the Exchange).

By amending these Cboe Rules to explicitly state the Exchange may designate a DPM by trading session, the Exchange recognizes that a DPM appointed for a class in RTH may not intend to participate in GTH or Curb sessions. Consequently, the Exchange proposes to amend Cboe Rules to clarify the Exchange's authority to designate different DPMs for RTH, GTH, and/or Curb sessions. This addresses the possibility that a DPM for a class in one trading session may not want the DPM role in other trading sessions. The Exchange believes having the ability to appoint different DPMs for different trading sessions may help bolster market liquidity in each trading session in which the Exchange chooses to appoint a DPM as it will not impose a DPM appointment to a TPH in a trading session(s) during which it chooses not to operate. In other words, a DPM in RTH, for example, will not be obligated to assume the DPM role in another session only to maintain its DPM appointment in the session it wants. Also, a DPM will not be required to relinquish its DPM appointment in a class for one trading session because it does not operate as the DPM in another trading session for the option class.

Second, the Exchange proposes to amend its Rules to address DPM participation entitlements and quoting obligations during GTH and Curb sessions. The Exchange proposes to amend Cboe Rule 5.54(a) to provide that the obligations of DPMs that currently apply during RTH will also apply during to GTH and Curb, and compliance with the heightened continuous quoting obligations will be measured across all trading sessions for which a DPM has an appointment. As the Exchange historically has appointed LMMs to GTH (and Curb) but not DPMs, Cboe Rule 5.54(a) limits application of a DPM's obligations to RTH. If the Exchange determines to appoint a DPM to GTH and/or Curb, the Exchange believes it is appropriate for these obligations in Cboe Rule 5.54(a), including the continuous quoting obligation in subparagraph (1), to apply to DPMs during those trading sessions in the same manner as they do during RTH when the DPM has an appointment during those trading sessions. With respect to how a DPM's compliance with continuous quoting obligations is measured, the proposed rule change amends Cboe Rule 5.54(a)(1) to provide that this will occur across trading sessions for which the DPM has an appointment.

The Exchange notes this is consistent with existing Cboe EDGX Exchange, Inc. (''EDGX'') Rules regarding DPMs. Specifically, pursuant to EDGX Rule 22.3(a), if a Market Maker selects an appointment in an option class, that appointment applies during both GTH and RTH and thus, the Market-Maker would have an appointment to make markets in the option class during both GTH and RTH on EDGX.[14] Similarly, EDGX Rule 22.2(e) provides that a Market-Maker may request the Exchange appoint it as DPM to a class for all trading sessions. As EDGX Rules do not contain a heightened continuous quoting obligation for DPMs as the Exchange's Rules do,[15] the only continuous quoting obligation to which DPMs are subject is the standard obligation applicable to all Market-Makers.[16] EDGX Rule 22.6(d) explicitly provides that Market-Maker continuous quoting obligations (and thus DPM continuous quoting obligations) apply to the class for an entire trading day, including both trading sessions of RTH and GTH (there is no Curb session in the EDGX Rules). Consequently, since the Market-Maker continuous quoting obligation set forth in EDGX Rule 22.6(d) is the continuous quoting obligation for DPMs on EDGX and is measured across all trading sessions, and since EDGX Rules state that DPM appointments apply to all trading sessions for a class, the continuous quoting obligations applicable to a DPM on EDGX apply across all trading sessions. This approach is also currently used for Market-Maker obligations in extended trading hour sessions.[17]

Although measuring a DPM's continuous quoting obligation for the entire trading day will increase the quoting requirement for the DPM because of the increase of trading time for which quotes must be provided, the DPM can meet the increased obligation through activity in RTH, GTH, and Curb.[18] Since Cboe Rule 5.54(a) provides that DPM obligations require continuous quoting in a DPM's appointed classes, the Exchange calculates DPM compliance with quoting obligations across all of a DPM's option classes in totality rather than on a class-by-class basis. To illustrate how the proposed rule change will apply the quoting obligation across trading sessions, when applicable, the following example assumes that a DPM is appointed to 10 classes, nine of which are equity option classes that trade in RTH only and the remaining option class is an index option that trades in RTH, GTH, and Curb. Each option class has 100 series. For the nine equity option classes, each one trades for 405 minutes (24,300 seconds) in RTH in a trading day. To include this trading time in the calculation to determine compliance, the RTH time is multiplied by the number of series (in this case, 100), resulting in 40,500 minutes (2,430,000 seconds) per each class. The index option will trade for 790 minutes (47,400 seconds) in GTH, 45 minutes (2700 seconds) in Curb, and 405 minutes (24,300 seconds) in RTH, for a total of 1,240 minutes (74,400 seconds). To include this trading time in the calculation to determine compliance, the total time is multiplied by 100 series, resulting in 124,000 minutes (7,440,000 seconds). To determine compliance with the 90% continuous quoting obligation in Cboe Rule 5.54, the total trading times will be combined, resulting in 29,310,000 seconds ((2,430,000 seconds × 9 classes) + 7,440,000 seconds) and multiplied by 90% to equal 26,379,000 seconds that the DPM must provide continuous quoting. To meet this quoting obligation, the DPM could quote 100% of the equity classes (21,870,000 seconds) and would be required to quote the index class for 4,509,000 seconds (which is 67% of all trading sessions) to meet the overall 90% requirement obligation. Alternatively, if the DPM only quoted 100% of the index class in GTH and Curb (5,010,000 seconds combined), the DPM would still be required to quote the equity option classes for 21,369,000 (which is 97.70% of the RTH trading session for equities) to meet the 90% requirement overall.

[14] *See also* Securities Exchange Act Release No. 34–85797; (May 7, 2019), 84 FR 20920 (May 13, 2019) (SR–CboeEDGX–2019–027).

[15] *See* Cboe Rule 5.54(a) which requires that a DPM provide continuous electronic quotes 90% of the time as applicable.

[16] *See* EDGX Rule 22.6(d) requires that a Market-Maker enter continuous bids and offers 60% of the time as applicable.

[17] *See* Rule 5.52(d)(2)(E), which states that Market-Maker obligations will apply across trading sessions and that if a Market-Maker has an appointment in a class that is open for trading during multiple trading sessions, the Exchange will determine a Market-Maker's compliance with the continuous electronic quoting requirement across the trading day.

[18] *See* note 14 *supra*.

Additionally, if the DPM quoted 100% of the index class in GTH, RTH, and Curb (7,440,000 seconds total), the DPM would still be required to quote the equity option classes for 18,939,000 (which is 72.84% of the RTH trading session for equities) to meet the 90% requirement overall.

As Cboe Rule 5.54 already provides that DPM quoting obligations apply collectively to all of a DPM's appointed classes,[19] the Exchange believes that applying the continuous quoting requirements for DPMs collectively across all classes and trading sessions is a fair and efficient way for the Exchange and market participants to evaluate compliance with the continuous quoting obligation. Applying the continuous quoting requirements collectively across all classes and trading sessions rather than on a class-by-class and trading session-by-trading session basis is beneficial to DPMs by providing some flexibility to choose which series in their appointed classes they will continuously quote—increasing the continuous quoting in the series of one class while allowing for a decrease in the continuous quoting in the series of another class. This flexibility, however, does not diminish the DPM's obligation to continuously quote in a significant percentage of series for a significant part of the trading day. This flexibility is especially important for classes that have relatively few series and may prevent a DPM from reaching the continuous quoting obligation when failing to quote 90% of the trading day in more than one series in an appointed class. The Exchange believes that the proposed rule change will not diminish, and may in fact increase, market making activity on the Exchange, by applying continuous quoting obligations in a reasonable manner, which is in alignment with rules already in place on another options exchange. The Exchange does not anticipate that DPM quoting will routinely decrease and notes that, as illustrated in the examples above, that DPM obligation is expected to remain above the standard Market-Maker obligation requiring continuous quoting during 60% of the trading day. By requiring that a DPM meet its continuous quoting obligations across all trading sessions in which it is appointed as the DPM (and collectively across classes, as is the case today), a DPM might meet its obligations on a given day even if it falls below obligation requirements in one trading session if the DPM surpasses obligations requirements in another session because the total activity across trading sessions for a DPM will be used to determine compliance with continuous quoting obligation requirements. Additionally, this approach is intended to help reduce the rigidity of quoting requirements for a DPM of multiple sessions if trading activity is less in one of the sessions. The Exchange believes that applying the existing DPM obligations for RTH trading to GTH and Curb trading sessions will promote active markets in these extended trading hours sessions. Furthermore, applying such obligations across multiple trading sessions if a DPM is appointed to more than one trading session for a class will help foster liquid markets while providing flexibility to DPMs to meet their obligations. The Exchange does not believe that determining compliance with quotation obligations across trading sessions will result in less liquidity in RTH. To the contrary, the Exchange anticipates that DPMs may utilize activity in RTH to meet any shortfalls in 90% quoting obligations that a DPM may experience in GTH or Curb. The Exchange has observed that trading characteristics during RTH are typically different than those during extended hours trading sessions in that extended sessions have lower trading levels, reduced liquidity, and fewer participants. Therefore, the Exchange believes it is appropriate to extend to DPMs this flexibility across trading sessions to meet continuous quoting requirements. The Exchange notes that DPMs must still satisfy obligations set forth in Rule 5.54 in all trading sessions, including to make competitive markets. Further, to the extent the Exchange applies the DPM participation entitlement or small order entitlement during a trading session, the DPM must be quoting at the top of the Book[20] (*i.e.,* has a quote at the highest bid or lowest offer) to receive such entitlement, as set forth in Rule 5.32(a)(2)(B) and (C). Therefore, the Exchange does not believe DPMs will be less likely to quote at the top of the Book if the DPM is a DPM across multiple sessions.

The Exchange also proposes to amend Cboe Rule 5.32 to permit the Exchange to apply the DPM participation entitlement during GTH and Curb. Cboe Rule 5.32(a) provides the Exchange with authority to determine which allocation algorithm and priority overlays, including the DPM participation entitlement, will apply on a class-by-class basis. As noted above, pursuant to Cboe Rule 1.5, if Cboe Rules permit the Exchange to make a determination (including on a class-by-class basis), the Exchange may make that determination on a trading session-by-trading session basis. Therefore, Cboe Rules currently permit the Exchange to determine what allocation algorithm and priority overlays it may apply to RTH, GTH, and Curb. However, Cboe Rules do not permit the DPM participation entitlement to apply during GTH and Curb. As the Exchange may determine to appoint DPMs during GTH and Curb going forward, the Exchange proposes to allow DPM participation entitlements to apply during those trading sessions in the same manner it can during RTH. Given that a DPM will be subject to heightened continuous quoting obligations during GTH and Curb, as discussed above, the Exchange proposes to permit it to apply the DPM participation entitlement as a priority overlay during those trading sessions, as it is able to do during RTH. Specifically, the Exchange proposes to amend Cboe Rule 5.32(a)(2)(B)(iv) to state that DPM participation entitlements may apply during GTH and Curb sessions. Pursuant to Cboe Rule 5.32(a)(2)(B), the Exchange may apply one or more of the participation entitlements provided in the rule,[21] and the proposed addition to Cboe Rule 5.32(a)(2)(B)(iv) provides that the Exchange may apply participation entitlements in the same manner during GTH and Curb. The Exchange believes that having the ability to apply the existing participation entitlements for RTH to GTH and Curb sessions will appropriately incentivize DPM participation in the extended trading hours sessions for which they are appointed to help provide market liquidity during such sessions. Additionally, the Exchange does not believe that applying the participation entitlements across trading sessions will result in a reduction in DPM quoting activity during the RTH session because liquidity and demand are expected to remain highest during RTH. As noted above, DPMs will only receive an entitlement during a trading session if they are quoting at the best price.

As is the case today, the Exchange will monitor DPM activity to verify compliance with quoting obligations

[19] *See* Rule 5.54(a)(2), which states that compliance with DPM quoting obligation applies to all of a DPM's appointed classes collectively

[20] *See* Rule 1(a), which defines ''Book'' as the electronic book of simple orders and quotes maintained by the System.

[21] *See* Rule 5.32(a)(2)(B), which states that if a DPM has a quote at the highest bid or lowest offer, it will receive the greater of (i) the number of contracts it would receive pursuant to the applicable base allocation algorithm and (ii) 50% of the contracts if there is one other non-Priority Customer, 40% of the contracts if there are two non-Priority Customers, or 30% of the contracts if there are three or more non-Priority Customers with orders or quotes on the Book at that price.

and will determine a DPM's compliance with the 90% quoting obligation contained in Rule 5.54(a)(1), which applies to all of a DPM's classes collectively, on a monthly basis.[22] Additionally, the Exchange may conduct a review of a DPM's performance at any time.[23] The Exchange currently conducts regular reviews of DPM's performance, which reviews the Exchange would expand to include GTH and Curb. The Exchange may take action against a DPM that fails to comply with any of the requirements under Rules 3.53, 3.54, or 5.54, and such action may include terminating, placing conditions upon, or otherwise limiting a TPH organization's DPM approval.[24] If the Exchange determines to limit a TPH's approval to act as a DPM, the Exchange may, in addition to other actions, limit or withdraw the TPH organization's DPM participation entitlement provided for under Rule 5.32, withdraw the right of the TPH organization to act in the capacity of a DPM in a particular security or securities which have been allocated to the TPH organization, and/or require the relocation of the TPH organization's DPM operation on the Exchange's trading floor.[25] Furthermore, pursuant to Rule 13.1(g)(9), the Exchange has the authority to impose fines on a DPM for failure to meet continuous quoting obligations. The Exchange intends to apply existing monitoring practices to DPM activity in GTH and Curb sessions and, if warranted, impose penalties or issue fines to DPMs that do not fulfill their obligations.

Finally, as an administrative change, the Exchange proposes to amend Cboe Rule 5.50(b), which establishes cutoff times by trading sessions for submission of Market-Maker appointment requests to remove specific time requirements from the Rules. Although such cutoff times were previously added to Cboe Rules, relocation of these time requirements will enhance the Exchange's ability to react to future advancements in technology that may allow the Exchange to provide more time to Market-Makers to submit appointment requests. Consequently, the Exchange believes this type of technical detail should be maintained in the Exchange's technical specifications rather than Cboe Rules and therefore proposes to replace these specific cutoff times currently provided in Cboe Rules with a statement that such deadlines will be specified in the Exchange's technical specifications.[26] This change aligns with Cboe Rule 1.5(a) which states that the Exchange will announce determinations to TPHs via various means of communication, including specifications. By relocating cutoff times from the Rules to technical specifications documentations, the Exchange will have the ability to adjust times more quickly in the future. Notice of these cutoff times and any subsequent changes to them will be provided via technical specification documentation as required by Cboe Rule 1.5(a). In the event that technology advances allow the Exchange to process requests with less notice, the Exchange may modify the cutoff times in the technical specifications and provide Market-Makers more time to meet deadlines. Furthermore, removing the specific time requirements in Cboe Rule 5.50 will align the rule's structure to Cboe Rule 5.54(a)(6) which provides that the Exchange may determine time requirements but does not include the details of such time requirements within Cboe Rules. The Exchange believes this proposed change will therefore provide greater consistency within Cboe Rules.

As an additional administrative change, the Exchange also proposes to amend Cboe Rule 5.50(l) to return language to the provision that was inadvertently removed from the Rules in a rule change connected to the System migration that took place in 2019.[27] The proposed rule change merely adds back to the rule language that states that if the Exchange determines to list SPX or VIX on a group basis, it will have the authority to change the eligible categories of Market-Maker participants for each group.

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.[28] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[29] 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)[30] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to clarify in Cboe Rules that the Exchange may appoint DPMs to all trading sessions and on a trading session-by-trading session basis will remove impediments to and perfect the mechanism of a free and open market and protect investors, as such changes add transparency and clarity to Cboe Rules. In explicitly stating that DPM appointment designations may apply to one or multiple trading session(s), the Exchange recognizes that not all DPMs may intend to trade in all available trading sessions for an option class, and designation of different DPMs for a class by trading session may be appropriate to help provide market liquidity. The Exchange may designate a DPM for RTH and another for GTH or Curb based on DPM expressed interest in specific trading session(s), or, as indicated in Cboe Rule 5.50(l), the Exchange may list for trading a class without a DPM during a trading session. As noted above, this flexibility is already permitted under Cboe Rules. The flexibility to designate different DPMs provides the Exchange with the ability to appoint dedicated liquidity providers in all trading sessions to make active markets, which ultimately benefits investors.

Furthermore, the Exchange believes the proposed rule change to apply DPM participation entitlements and obligations to GTH and Curb sessions as well as measuring compliance with the heightened continuous quoting obligations across trading sessions for DPMs with appointments for more than one trading session in a class will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change will ultimately apply the same obligations to DPMs during GTH and Curb as are currently applied to DPMs during RTH. Additionally, the proposed rule change

[22] *See* Rule 5.54(a)(1)(B).

[23] *See* Rule 3.53(j).

[24] *See* Rule 3.53(i).

[25] *Id.*

[26] *See* Rule 1.5(a), which states that the Exchange will announce determinations to TPHs via various means of communication, including specifications.

[27] *See* Securities Exchange Act Release No. 34–87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR–CBOE–2019–059).

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] *Id.*

will provide the Exchange with the same flexibility to apply the DPM participation entitlement during GTH and Curb in the same manner it is applied during RTH. The Exchange believes being able to apply the DPM participation entitlement during GTH and Curb may help incentivize Market-Maker participation in GTH and Curb sessions, balanced with the heightened continuous quoting obligations that will apply during those trading sessions.

While the proposed rule change increases the total time a DPM must quote if it is appointed to GTH and/or Curb, this increase is de minimis given that a DPM's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the aggregate across trading sessions. A Market-Maker may choose to express interest in becoming a DPM during GTH and/or Curb. The Exchange believes that the slight additional burden of extending the continuous quoting obligation to the GTH and Curb trading sessions for DPMs' appointments in those trading sessions is outweighed by the benefits to investors that may result from that liquidity. The proposed rule change also continues to maintain a balance of DPM benefits and obligations, as the continuous quoting obligation and DPM participation entitlement that will apply during GTH and Curb are the same as those that apply today during RTH. Ultimately, the proposed rule change is intended to facilitate DPM involvement in GTH and Curb sessions and is intended to facilitate tighter spreads, increase trading opportunities, and overall enhanced market quality to the benefit of all market participants. As discussed above, measuring compliance with DPM continuous quoting obligations across trading sessions is consistent with current EDGX Rules.

The Exchange notes if a DPM in a class during RTH does not seek to become the DPM in that class during GTH or Curb, this proposed rule change has no impact on that DPM's obligations, as the proposed change would only require additional quoting time for DPMs appointed to a class in multiple trading sessions. If a DPM in a class during RTH wants to be DPM in that class during other trading sessions, and the Exchange makes such appointment, the Exchange believes it is appropriate for that DPM to be subject to the same obligations during those additional trading sessions it is during RTH.

Last, the Exchange believes that the largely administrative changes proposed for Cboe Rule 5.50 that would 1) remove specific time requirements from the rules and 2) return inadvertently deleted rule text are intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors consistent with the Act. By moving Market-Maker application cutoff times from the rules to the Exchange's technical specification documentation, the Exchange will have the flexibility to change times in response to technology advances or future changes in trading times. By returning language inadvertently deleted regarding the Exchange's authority to change the eligible categories of Market-Maker participants for each group, the proposed change clarifies the manner in which the Exchange may function.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change to clarify the Exchange's ability to appoint DPMs to all trading sessions and on a trading session-by-trading session basis explicitly state what is permissible today under current Rules, as discussed above. These Rules will continue to apply in the same manner to all TPHs. The proposed rule change to apply DPM quoting obligations to GTH and Curb (and measure compliance with the continuous quoting obligation across trading sessions) and permit the Exchange to apply the DPM participation entitlement in GTH and Curb, will apply equally to all DPMs (and in the same manner as they do today to DPMs during RTH). While the proposed rule change increases the total time a DPM must quote if it is appointed to GTH and/or Curb, this increase is de minimis given that a DPM's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the aggregate across trading sessions. A Market-Maker may choose to express interest in becoming a DPM during GTH and/or Curb. As noted above, if a DPM in a class during RTH does not want to be DPM (or is not appointed as DPM) in that class during GTH or Curb, this proposed rule change has no impact on the DPM. The Exchange believes that the slight additional burden of extending the continuous quoting obligation to the GTH and Curb trading sessions for DPMs' appointments in those trading sessions is outweighed by the benefits to investors that may result from that liquidity. The proposed rule change also continues to maintain a balance of DPM benefits and obligations, as the continuous quoting obligation and DPM participation entitlement that will apply during GTH and Curb are the same as those that apply today during RTH. Additionally, the proposed changes to move time requirements to technical specification documents and add back inadvertently removed content are not for competitive purposes and are generally administrative changes to support market function. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule changes apply only to DPMs at the Exchange.

*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 written comments on the proposed rule change.

## IV. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2026–016, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [31] to determine whether the proposed rule change, as modified by Amendment No. 1 (''Amended Proposal''), should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the Amended Proposal, to inform the Commission's analysis of whether to approve or disapprove the Amended Proposal.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[32] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to,

[31] 15 U.S.C. 78s(b)(2)(B).

[32] *Id.*

the consistency of the Amended Proposal with Section 6(b)(5) of the Act,[33] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the Amended Proposal, in addition to any other comments they may wish to submit about the proposal. In particular, under the Amended Proposal, the Exchange could appoint a DPM (or not appoint any DPM) in a class for all trading sessions as well as on a trading-session-by-trading-session basis.[34] The Exchange would apply during GTH and Curb sessions the DPM obligations that currently apply during RTH, and the Exchange would measure compliance with DPMs' continuous quoting requirement across all trading sessions (and classes), in the aggregate, for which the DPM is appointed.[35] In addition, the Exchange could apply priority overlays, as set forth in Rule 5.32(a)(2), to a DPM during any trading session for which the DPM is appointed.[36] The Commission seeks comment on whether the Amended Proposal includes sufficient analysis of these proposed changes to support a conclusion that it is consistent with the requirements of Section 6(b)(5) of the Act.[37]

## V. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their data, views, 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 views of interested persons concerning whether the proposed rule change is consistent with the Act, and 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 data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,[38] any request for an opportunity to make an oral presentation.[39]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by June 8, 2026. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 22, 2026.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2026–016 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2026–016. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2026–016 and should be submitted by June 8, 2026. Rebuttal comments should be submitted by June 22, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

**Vanessa A. Countryman,**

*Secretary.*

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[33] 15 U.S.C. 78f(b)(5).

[34] *See* proposed Rules 1.1 and 3.53. The proposal also would allow the Exchange to permit trading to occur in a GTH or Curb session when there is no DPM for such session(s) due to resignation, termination or otherwise. *See* proposed Rule 3.53(f).

[35] *See* proposed Rule 5.54; *see also supra* Section III.

[36] *See* proposed Rule 5.32(a)(2); *see also supra* Section III.

[37] 15 U.S.C. 78f(b)(5).

[38] 17 CFR 240.19b–4.

[39] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to 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 Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[40] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105477; File No. SR–ISE–2026–24]**

## Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted CAT Costs of the National Market System Plan Governing the Consolidated Audit Trail for May 1, 2026 Through December 31, 2026

May 13, 2026.

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 May 7, 2026, Nasdaq ISE, LLC (''ISE'' 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 establish fees for Industry Members[3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from May 1, 2026 through December 31, 2026. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or the ''Company'') and referred to as CAT Fee 2026–1, and would be described in a section of the Exchange's fee schedule entitled ''Consolidated Audit Trail Funding Fees.'' The fee rate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* Rule General 7, Section 1. *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* Rule General 7 (Consolidated Audit Trail Compliance).

for CAT Fee 2026–1 would be $0.000001 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2026–1 in June 2026 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in May 2026. As described further below, CAT Fee 2026–1 is anticipated to be in place for eight months, and is anticipated to recover approximately two-thirds of the costs set forth in the reasonably budgeted CAT costs for 2026.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rulefilings,* and at the principal office of the Exchange.

## 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

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[4] On November 15, 2016, the Commission approved the CAT NMS Plan.[5] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On March 16, 2026, the Commission approved the CAT Funding Model after concluding that the model satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (''Historical CAT Assessment'' fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (''CAT Fees'').[8]

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. ''The Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs').'' [9] In establishing a CAT Fee, the Operating Committee will calculate a ''Fee Rate'' for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

The CAT Fees to be paid by CEBBs and CEBSs are designed to contribute toward the recovery of two-thirds of the budgeted CAT costs for the relevant period.[10] The CAT Funding Model is designed to require that the Participants contribute to the recovery of the remaining one-third of the budgeted CAT costs.[11] Participants would be subject to the same Fee Rate as CEBBs and CEBSs.[12] While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[13] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[14] Accordingly, this filing does not address Participant CAT fees as they are described in the CAT NMS Plan.[15]

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2026–1 to recover the reasonably budgeted CAT costs for the period from May 1, 2026 through December 31, 2026 in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [16] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [17] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2026–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

CAT Fee 2026–1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.[18] The CAT NMS Plan defines a ''CAT Executing Broker'' to mean:

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

[6] Section 11.1(b) of the CAT NMS Plan.

[7] Securities Exchange Act Rel. No. 105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 19, 2026) (''CAT Funding Model Approval Order''). This CAT Funding Model replaced the prior funding model that was approved by the Commission on September 6, 2023. Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023).

[8] Under the CAT Funding Model, the Operating Committee may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing only establishes CAT Fee 2026–1 related to reasonably budgeted CAT costs for the period from May 1, 2026 through December 31, 2026 as described herein; it does not address any other potential CAT Fees related to CAT costs. Any such other CAT Fee will be subject to a separate fee filing. In addition, under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing does not address any Historical CAT Assessments.

[9] Section 11.3(a) of the CAT NMS Plan.

[10] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[11] Section 11.3(a)(ii)(A) of the CAT NMS Plan.

[12] Section 11.3(a)(ii) of the CAT NMS Plan.

[13] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[14] CAT Funding Model Approval Order at 13448.

[15] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[16] Section 11.1(b) of the CAT NMS Plan.

[17] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[18] In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.[19]

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange:

EQUITY ORDER TRADE (EOT)[20]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 12.*n*.8/13.*n*.8 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order on this side of the trade.<br>Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction.<br>This must be provided if orderID is provided ... | C |

OPTION TRADE (OT)[21]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 16.*n*.13/17.*n*.13 | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order. | R |

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange:

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)[22]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 26 ..... | reportingExecutingMpid ..... | Member Alias ..... | MPID of the executing party ..... | R |
| 28 ..... | contraExecutingMpid ..... | Member Alias ..... | MPID of the contra-side executing party. | C |

(2) Calculation of Fee Rate 2026–1

The Operating Committee determined the Fee Rate to be used in calculating CAT Fee 2026–1 (''Fee Rate 2026–1'') by dividing the reasonably budgeted CAT costs (''Budgeted CAT Costs 2026–1'') for the period from May 1, 2026 through December 31, 2026 (''CAT Fee 2026–1 Period'') by the reasonably projected total executed share volume of all transactions in Eligible Securities for the eight-month recovery period, as discussed in detail below.[23] Based on this calculation, the Operating Committee has determined that Fee Rate 2026–1 would be $0.000003799483243631228 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of $0.000001 per executed equivalent share that will be assessed to CEBBs and CEBSs, as also discussed in detail below.

CAT Executing Brokers was appropriate. In reaching this conclusion, the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 13413.

[19] Section 1.1 of the CAT NMS Plan. In its approval order for the CAT Funding Model, the Commission ''recognize[d] that Industry Members may pass-through CAT fees for customer executed volume.'' *See* CAT Funding Model Approval Order at 13424.

[20] *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.2.0-r2 (Feb. 24, 2026), *https://www.catnmsplan.com/sites/default/files/2026-02/02.24.2026-CAT_Reporting_Technical_Specifications_for_Participants_4.2.0-r2.pdf* (''CAT Reporting Technical Specifications for Plan Participants'').

[21] *See* Table 52, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

[22] *See* Table 62, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

[23] Section 11.3(a)(i) of the CAT NMS Plan.

(A) CAT Fee 2026–1 Period

CAT LLC proposes to implement CAT Fee 2026–1. CAT LLC proposes to commence CAT Fee 2026–1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2026–1 ''would be calculated as described in paragraph (II)'' of Section 11.3(a)(i)(A) of the CAT NMS Plan,[24] which states that ''[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.'' [25] For CAT Fee 2026–1, the reasonably budgeted CAT costs for ''the remainder of the year'' are the reasonably budgeted CAT costs from May 1, 2026 through December 31, 2026 as set forth in the updated annual budget for 2026 for CAT LLC approved by the Operating Committee on March 31, 2026 (''Updated 2026 CAT Budget'').[26]

(B) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities will be counted as 0.01 executed equivalent share.[27]

(C) Budgeted CAT Costs 2026–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.'' [28] Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that: [w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

In accordance with the requirements under the CAT NMS Plan, the Operating Committee approved an annual budget for 2026 for CAT LLC (''Original 2026 CAT Budget'') on December 11, 2025.[29] On March 31, 2026, the Operating Committee approved an updated budget for 2026, referred to as the Updated 2026 CAT Budget. The Updated 2026 CAT Budget includes actual costs for each category for January and February 2026, with updated estimated costs for the remainder of the year. The updated costs for May through December as included in the Updated 2026 CAT Budget (*i.e.,* Budgeted CAT Costs 2026–1) are the costs used in calculating CAT Fee 2026–1.[30] The 2026 CAT budgets, both the Original 2026 CAT Budget and the Updated 2026 CAT Budget, were prepared on the accrual basis of accounting.[31]

As described in detail below, the Budgeted CAT Costs 2026–1 would be $15,149,648. CEBBs collectively will be responsible for one-third of the Budgeted CAT Costs 2026–1 (which is $5,049,882.67), and CEBSs collectively will be responsible for one-third of the Budgeted CAT Costs 2026–1 (which is $5,049,882.67).

The following describes in detail the Budgeted CAT Costs 2026–1 for CAT Fee 2026–1. The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing the following:

the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.[32]

Each of the costs described below is reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

The following table breaks down the Budgeted CAT Costs 2026–1 into the categories set forth in Section 11.3(a)(iii)(B) of the CAT NMS Plan.[33] The Budgeted CAT Costs 2026–1 reflect the costs for May through December as included in the Updated 2026 CAT Budget. The Budgeted CAT Costs 2026–1 are the costs used in calculating CAT Fee 2026–1.

[24] Section 11.3(a)(i)(A)(IV) of the CAT NMS Plan.

[25] Section 11.3(a)(i)(A)(II) of the CAT NMS Plan.

[26] The Updated 2026 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2026-04/03.31.26-CAT-2026-Budget.pdf*).

[27] Section 11.3(a)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that ''the use of executed equivalent share volume provides an appropriate basis for the calculation of CAT fees.'' CAT Funding Model Approval Order at 13413.

[28] Section 11.3(a)(i)(C) of the CAT NMS Plan.

[29] The Original 2026 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-12/12.08.25-CAT-LLC-2026-Financial_and_Operating_Budget.pdf*).

[30] The version of the Updated 2026 CAT Budget set forth on the CAT website is presented on a quarterly basis, but is prepared based on more granular detail. The costs for May and June are estimated based on two-thirds of costs for Q2 where the budgeted monthly amounts are consistent. For those cases in which the costs for a category vary from month to month in Q2, the specific budgeted amounts for May and June are noted.

[31] CAT budgets for periods prior to 2025 were prepared on the cash basis of accounting, as such budgets were primarily used to determine the dollar amount of promissory notes from the Participants that were required to fund the ongoing operations of the CAT. Commencing in 2025, with the contemplated recovery of costs from Industry Members and the Participants via CAT Fees, the Original 2025 CAT Budget was prepared on the accrual basis of accounting to properly match projected revenues with estimated expenses incurred. A cash basis budget reflects expenditures when paid, while an accrual basis budget reflects expenditures when incurred. In moving from a cash basis budget to an accrual basis budget, there is no double counting of expenses.

[32] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[33] Note that costs and related cost calculations provided in this filing may reflect minor variations from the budgeted costs due to rounding.

BUDGETED CAT COSTS 2026–1

| Budget category | Budgeted CAT costs 2026–1 [b] (*i.e.*, costs for May–December 2026) |
|---|---|
| Capitalized Developed Technology Costs [a] | [c] $3,450,000 |
| Technology Costs | 83,737,680 |
| Cloud Hosting Services | [d] 49,866,667 |
| Operating Fees | [e] 19,691,953 |
| CAIS Operating Fees | [f] 14,179,060 |
| Change Request Fees | [g] 0 |
| Legal | [h] 5,670,452 |
| Consulting | [i] 1,025,957 |
| Insurance | [j] 852,768 |
| Professional and administration | [k] 749,151 |
| Public relations | [l] 0 |
| Interest Income | [m] (1,453,382) |
| Total Costs | 94,032,626 |
| Reserve (25% of Total Costs) | 23,508,157 |
| Total Costs and Reserve | 117,540,783 |
| Use of Existing Reserve | [n] (102,391,135) |
| Total Budgeted CAT Costs 2026–1 | 15,149,648 |

[a] The non-cash amortization of these capitalized developed technology costs to be incurred during the CAT Fee 2026–1 Period have been appropriately excluded from the above table.[34]

[b] Budgeted CAT Costs 2026–1 described in this table of costs were determined based on an analysis of a variety of factors, including historical costs/invoices, estimated costs from respective vendors/service providers, contractual terms with vendors/service providers, anticipated service levels and needs, and discussions with vendors and Participants.

[c] This cost number for capitalized developed technology costs reflects (1) capitalized developed technology costs of $3,450,000 for May, $0 for June and $0 for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget; and (2) $0 for the Software License Fee 2026 for the second, third, and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: ($3,450,000 + $0 + $0 + $0) + ($0 + $0 + $0) = $3,450,000.

[d] This cost number for cloud hosting services reflects two-thirds of the cloud hosting services costs for the second quarter and the cloud hosting services for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $18,700,000) + $18,700,000 + $18,700,000 = $49,866,667.

[e] This cost number for operating fees reflects (1) two-thirds of the Non-CAIS fixed operating fees for the second quarter and the Non-CAIS fixed operating fees for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget and (2) two-thirds of the market data vendor fees for the second quarter and the market data vendor fees for the third and fourth quarter of 2026 as included in the Updated 2026 CAT Budget: ((⅔ × $7,191,853) + $7,191,853 + $7,191,853) + ((⅔ × $192,630) + $192,630 + $192,630) = $19,691,953.

[f] This cost number for CAIS operating fees reflects two-thirds of the CAIS fixed operating fees for the second quarter and the CAIS fixed operating fees for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $5,317,147) + $5,317,147 + $5,317,147 = $14,179,060.

[g] This $0 cost number for change requests reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

[h] This cost number for legal services reflects two-thirds of the legal costs for the second quarter and the legal costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[i] This cost number for consulting services reflects two-thirds of the consulting costs for the second quarter and the consulting costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $384,734) + $384,734 + $384,734 = $1,025,957.

[j] This cost number for insurance reflects two-thirds of the insurance costs for the second quarter and the insurance costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $300,977) + $321,042 + $331,074 = $852,768.

[k] This cost number for professional and administration services reflects two-thirds of the professional and administration costs for the second quarter and the professional and administration costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $280,932) + $280,932 + $280,932 = $749,151.

[l] This $0 cost number of change requests reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

[m] This interest income reflects interest income (net of bank fees) of $517,208 for May and June and interest income (net of bank fees) for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: $517,208 + $571,010 + $365,164 = $1,453,382. Note that interest income for May and June 2026 of $517,208 is slightly less than two-thirds of $809,598 (which is $539,732) for the second quarter as the amount of interest income varies from month to month.

[n] This amount for the use of the existing reserve is calculated by subtracting from the Accrued Liquidity Reserve Balance as of the Beginning of the Year in the Updated 2026 CAT Budget the 25% Incremental Liquidity Reserve Accrued during 2026 for the first quarter and for April of 2026 as included in the Updated 2026 CAT Budget: $155,403,378 − ($41,800,153 + $11,212,091) = $102,391,135. Note that the 25% Incremental Liquidity Reserved Accrued during 2026 for April 2026 of $11,212,091 is slightly more than one-third of $33,366,432 (which is $11,122,144) for the second quarter as the amount of the 25% Incremental Liquidity Reserved Accrued during 2026 varies from month to month.

To the extent that CAT LLC enters into notes with Participants or others to pay costs incurred during the period in which CAT Fee 2026–1 is in effect, CAT LLC will use the proceeds from CAT Fee 2026–1 and the related Participant CAT fees to repay such notes.

The following table compares the annual budgeted CAT costs as set forth in the updated annual CAT budget for 2025 approved by the Operating Committee in May 2025 (''May Updated 2025 CAT Budget''),[35] the updated annual CAT budget for 2025 approved by the Operating Committee in November 2025 (''November Updated 2025 CAT Budget'') [36], the Original 2026

[34] With respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[35] The May Updated 2025 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-05/05.19.25-CAT-LLC-2025-Financial_and_Operating-Budget.pdf*).

[36] The November Updated 2025 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-12/*

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CAT Budget and the Updated 2026 CAT Budget, and is provided for informational purposes. In each case, the costs provided reflect the costs for the entire year for each of the budgets; this differs from the above chart which focuses on budgeted costs for the period from May 1, 2026 through December 31, 2026, which, as noted, are the costs that are used in the calculation of the fee rate in this fee filing.

COMPARISON OF FULL YEAR BUDGETED COSTS

| Budget category | Full year of 2025 budgeted CAT costs from updated 2025 CAT budget (May 2025) | Full year of 2025 budgeted CAT costs from updated 2025 budget (Nov. 2025) | Full year of 2026 budgeted CAT costs from original 2026 CAT budget | Full year of 2026 budgeted CAT costs from updated 2026 CAT budget |
|---|---|---|---|---|
| Capitalized Developed Technology Costs[a] | $4,871,962 | $5,163,991 | $8,228,827 | $8,378,964 |
| Technology Costs | 211,548,472 | 173,091,660 | 137,514,003 | 128,643,476 |
| Cloud Hosting Services | 159,230,937 | 122,084,811 | 81,900,006 | 77,529,362 |
| Operating Fees[b] | 30,817,686 | 29,932,001 | 34,345,413 | 29,845,524 |
| CAIS Operating Fees | 20,749,848 | 20,749,848 | 21,268,584 | 21,268,590 |
| Change Request Fees | 750,000 | 325,000 | 0 | 0 |
| Legal | 7,370,002 | 7,312,547 | 8,485,000 | 8,939,184 |
| Consulting | 1,749,998 | 1,750,000 | 1,550,000 | 1,550,000 |
| Insurance | 1,594,452 | 1,368,750 | 1,505,625 | 1,254,070 |
| Professional and administration | 1,193,090 | 1,392,679 | 1,145,500 | 1,085,500 |
| Public relations | 6,575 | 6,575 | 0 | 0 |
| Interest Income | 0 | (2,510,223) | (1,995,958) | (2,806,325) |
| Total Annual CAT Costs[c] | 228,334,551 | 187,575,979 | 156,432,998 | 147,044,869 |

[a] This cost number is calculated by adding together the Capitalized Developed Technology Costs and the Software License Fee for each budget.
[b] This cost number is calculated by adding together the Operating fees, the Cyber Insurance Premium Adjustment (if any) and market data vendor fees (if any separate fees) for each budget.
[c] This total cost number does not include an amount for a reserve.

In addition, the following table compares the budgeted costs for January and February 2026 that were used in drafting the Original 2026 CAT Budget with the actual costs for January and February 2026 that were used in drafting the Updated 2026 CAT Budget. The Original 2026 CAT Budget includes budgeted costs for January and February 2026, whereas the Updated 2026 CAT Budget includes actual costs for January and February 2026. The variance from the budgeted costs for January and February 2026 to the actual costs for January and February 2026 are used in this filing in supporting the reasonableness of the estimates for each category of costs.

COMPARISON OF BUDGETED AND ACTUAL COSTS FOR JANUARY & FEBRUARY 2026

| Budget category | Budgeted costs for January & February 2026 (as used in drafting the original 2026 CAT budget) | Actual costs for January & February 2026 (as used in drafting the updated 2026 CAT budget) | Variance from budgeted costs for January & February 2026 to actual costs for January & February of 2026 |
|---|---|---|---|
| Capitalized Developed Technology Costs[a] | $671,472 | $4,145,430 | Increase by $3,473,958.[b] |
| Technology Costs | 25,894,000 | 21,501,183 | |
| Cloud Hosting Services | 17,200,000 | 12,829,362 | Decrease by $4,370,638.[c] |
| Operating Fees | 5,149,236 | 5,127,057 | Decrease by $22,179. |
| CAIS Operating Fees | 3,544,764 | 3,544,764 | No change. |
| Change Request Fees | 0 | 0 | No change. |
| Legal | 1,424,166 | 1,838,617 | Increase by $414,451.[d] |
| Consulting | 258,334 | 267,554 | Increase by $9,220. |
| Insurance | 250,938 | 200,652 | Decrease by $50,286. |
| Professional and administration | 190,916 | 149,061 | Decrease by $41,855. |
| Public relations | 0 | 0 | No change. |
| Interest Income | (758,343) | (757,527) | Decrease by $816. |
| Total | 27,931,483 | 27,344,970 | Decrease by $586,513. |

[a] This cost number for capitalized developed technology costs is calculated by adding together the capitalized developed technology costs and the software license fee for each budget.
[b] The variance for capitalized developed technology costs is the result of costs related to the software license fee in accordance with the Plan Processor Agreement with FCAT.
[c] This variance is attributable to lower than forecasted market volumes and the impact of lower processing costs due to shutting down certain functionalities.
[d] The variance in legal costs is attributable to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created.

*12.22.25_CAT-LLC-2025-Finacial_and_Operating-Budget.pdf*).

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the cloud hosting services costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $49,866,667 in technology costs for cloud hosting services for the CAT Fee 2026–1 Period. The technology costs for cloud hosting services represent costs reasonably budgeted to be incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS'') during the CAT Fee 2026–1 Period.

In the agreement between CAT LLC and the Plan Processor for the CAT (''Plan Processor Agreement''), FINRA CAT, LLC (''FCAT''), AWS was named as the subcontractor to provide cloud hosting services. Under the Plan Processor Agreement, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments. FCAT utilizes such cloud hosting services for a broad array of services for the CAT, such as data ingestion, data management, and analytic tools for the CAT. AWS performs cloud hosting services for both the CAT transaction database as well as the Reference Database (previously referred to as the Customer and Account Information System, or ''CAIS'').[37] It is anticipated that such cloud hosting services will continue during the CAT Fee 2026–1 Period.

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data, largely as a result of the processing and storage of the CAT Data.[38] The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT Fee 2026–1 Period, it is expected that AWS would provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [39] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [40] In contrast with those estimates, the Q3 2025 data volumes averaged 792 billion events per day. The highest peak data volume to date of 1.45 trillion events was recorded on April 7, 2025. The top five peak days were recorded in April 2025.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2026–1 Period will be approximately $49,866,667.[41] The budget for cloud hosting services costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the cloud hosting services costs for the second quarter and the cloud hosting services for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget.[42]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2026–1 Period based on an assumption of 35% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for the Reference Database. CAT LLC determined these growth assumptions in coordination with FCAT.[43]

This process for estimating the budget for cloud hosting services costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2026 CAT Budget.

The Original 2026 CAT Budget estimated a budget for cloud hosting services of $17,200,000 for January and February 2026. The actual costs for cloud hosting services for January and February 2026, which are set forth in the Updated 2026 CAT Budget, were $12,829,362. Therefore, the variance between budgeted and actual cloud hosting services costs for January and February 2026 was an approximate decrease of $4,370,638 as a result of lower volumes and a change in functionality.[44] Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the cloud hosting services costs from the Original 2026 Budget.[45] Specifically, the following describes the differences in the costs for cloud hosting services included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for cloud hosting services included in the

[37] On January 13, 2026, the SEC approved an amendment to the CAT NMS Plan relating to the Customer and Account Information System (referred to as ''CAIS''). Effective with this amendment, CAIS has been renamed as the ''Reference Database.'' Securities Exchange Act Rel. No. 104586 (Jan. 13, 2026), 91 FR 2164 (Jan. 16, 2026) (''CAIS Amendment''). The SEC subsequently approved another amendment to the CAT NMS Plan to implement various cost savings measures that made further changes to the Reference Database. Securities Exchange Act Rel. No. 105107 (Mar. 27, 2026), 91 FR 16284 (Mar. 27, 2026) (''Cost Savings Amendment'').

[38] In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. For further discussion of the effect of processing timelines on cloud hosting costs, *see* Section 3(b)(2)(A)(i) below.

[39] Section 1.3 of Appendix D of the CAT NMS Plan, n.262.

[40] Section 1.3 of Appendix D of the CAT NMS Plan.

[41] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[42] This calculation is (⅔ × $18,700,000) + $18,700,000 + $18,700,000 = $49,866,667.

[43] Note that these growth rates are based on events processed and stored in the CAT. Executed transactions are a small subset of such events. As a result, the number of transactions in the CAT, and, hence, the number of executed equivalent shares, is not directly correlated with the number of events processed in the CAT or the costs of cloud hosting services for the CAT. Accordingly, the number of executed equivalent shares may stay relatively constant from year to year while the number of events processed and stored in the CAT may grow significantly.

[44] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[45] The last Prospective CAT Fee, CAT Fee 2025–2, was implemented pursuant to the prior CAT funding model. Moreover, the final invoice for CAT Fee 2025–2 was sent in December 2025, and, therefore, there is a six-month gap between the final invoice for CAT Fee 2025–2 and the first invoice for CAT Fee 2026–1, which would be in June 2026. Accordingly, this filing describes the changes in the cloud hosting services costs from the Original 2026 Budget.

Original 2026 CAT Budget were $81,900,006, and the annual 2026 budgeted costs for cloud hosting services included in the Updated 2026 CAT Budget are $77,529,362. Accordingly, budgeted annual costs for cloud hosting services decreased by $4,370,644 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 5% reduction in cloud hosting services costs for the full year of 2026.[46] The budgeted decrease in costs for cloud hosting services reflects lower costs for January and February 2026 due to lower than forecasted market volumes in January and the impact of lower processing costs due to shutting down certain functionalities.

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $19,691,953 in technology costs for operating fees for the CAT Fee 2026–1 Period. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan. Operating fees also include market data provider costs, as discussed below.

*Plan Processor: FCAT.* Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Provide the CAT-related functions and services as the Plan Processor as required by SEC Rule 613 and the CAT NMS Plan in connection with the operation and maintenance of the CAT;
- Address compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provide support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assist with interpretive efforts, exemptive requests and amendments regarding the CAT NMS Plan;
- Oversee the security of the CAT;
- Monitor the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provide support to subcontractors under the Plan Processor Agreement;
- Provide support in discussions with the Participants and the SEC and its staff;
- Operate the FINRA CAT Helpdesk;
- Facilitate communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administer the CAT website and all of its content;
- Maintain cyber security insurance related to the CAT;
- Assist with billing, collection and other CAT fee-related activity; and
- Provide technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

CAT LLC calculated the budget for the FCAT technology costs for operating fees for the CAT Fee 2026–1 Period based on the recurring monthly operating fees under the Plan Processor Agreement.

*Market Data Provider: Algoseek.* It is anticipated that the operating fees costs for the CAT Fee 2026–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Algoseek, LLC (''Algoseek''). CAT LLC determined that Algoseek would provide market data that included data elements set forth in Section 6.5(a)(ii) of the CAT NMS Plan, and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Algoseek for the CAT Fee 2026–1 Period based on the monthly rate set forth in the agreement between Algoseek and FCAT.

*Operating Fee Estimates.* CAT LLC estimates that the budget for operating fees during the CAT Fee 2026–1 Period will be approximately $19,691,953.[47] The budget for operating fees during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding (1) two-thirds of the Non-CAIS fixed operating fees for the second quarter and the Non-CAIS fixed operating fees for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget and (2) two-thirds of the market data vendor fees for the second quarter and the market data vendor fees for the third and fourth quarter of 2026 included in the Updated 2026 CAT Budget.[48]

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2026–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Algoseek. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for operating fees of $5,149,236 for January and February 2026, and the actual costs for operating fees for January and February 2026 were $5,127,057. Therefore, the variance between budgeted and actual operating fees for this period was small—$22,179.[49] Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the operating fees from the Original 2026 Budget. Specifically, the following describes the differences in the costs for operating fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for operating fees included in the Original

[46] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[47] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[48] This calculation is ((⅔ × $7,191,853) + $7,191,853 + $7,191,853) + ((⅔ × $192,630) + $192,630 + $192,630) = $19,691,953.

[49] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

2026 CAT Budget were $34,345,413, and the annual 2026 budgeted costs for operating fees included in the Updated 2026 CAT Budget are $29,845,524. Accordingly, budgeted annual costs for operating fees decreased by $4,499,889 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 13% reduction in operating fees for the full year of 2026.[50] The budgeted decrease in costs for operating fees reflects the proposed amendments to the Plan Processor Agreement related to the recent cost savings amendments to the CAT NMS Plan.[51]

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $14,179,060 in technology costs for CAIS operating fees for the CAT Fee 2026–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of the Reference Database (previously referred to as CAIS), and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Reference Data in the Reference Database and to create a CAT-Customer-ID for each Customer.[52]

During the CAT Fee 2026–1 Period, it is anticipated that FCAT will provide services related to the Reference Database. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT for services related to the Reference Database provided by FCAT on a monthly basis. CAT LLC negotiated the fees for FCAT's services related to the Reference Database on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. During the CAT Fee 2026–1 Period, it is anticipated that FCAT will continue to provide services relating to the ongoing operation, maintenance and support of the Reference Database.

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2026–1 Period will be approximately $14,179,060.[53] The budget for CAIS operating fees during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the CAIS fixed operating fees for the second quarter and the CAIS fixed operating fees for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[54]

CAT LLC calculated the budget for FCAT's services related to the Reference Database for the CAT Fee 2026–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget of $3,544,764 for CAIS operating fees for January and February of 2026. The actual costs for CAIS operating fees for January and February of 2026, which are included in the Updated 2026 CAT Budget, were $3,544,764. There was no variance between budgeted and actual CAIS operating fees for the first two months of 2026.[55] Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the CAIS operating fees from the Original 2026 Budget. Specifically, the following describes the differences in the costs for CAIS operating fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

CAIS operating fees are based on a recurring monthly rate payable to FCAT and are unchanged from the Original 2026 CAT Budget to the Updated 2026 CAT Budget. The annual 2026 budgeted costs for CAIS operating fees included in the Original 2026 CAT Budget were $21,268,584, and the annual 2026 budgeted costs for CAIS operating fees included in the Updated 2026 CAT Budget are $21,268,590.[56] Accordingly, the budgeted annual costs for CAIS operating fees are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the change request fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $0 in technology costs for change request fees for the CAT Fee 2026–1 Period. The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT.

Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other changes to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change.

The change request budget line is established to include expected costs to be incurred in which the nature of the costs (*i.e.,* capitalization versus expensing) have not yet been determined. Upon the incurrence of such costs, the final determination of capitalization versus expensing is determined and then such costs are reclassified from the change request line to the appropriate technology cost line item.

CAT LLC estimates that the budget for change requests during the CAT Fee 2026–1 Period will be approximately

[50] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[51] *See* CAIS Amendment and Cost Savings Amendment.

[52] *See* Section 9 of Appendix D of the CAT NMS Plan.

[53] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[54] This calculation is (⅔ × $5,317,147) + $5,317,147 + $5,317,147 = $14,179,060.

[55] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[56] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

$0.[57] The budget for change requests during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. This $0 cost number for change request fees reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2026–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a change request budget of $0 for January and February of 2026. The actual costs for change requests for January and February of 2026, which are set forth in the Updated 2026 CAT Budget, were $0. There was no variance between budgeted and actual change request costs for January and February of 2026.[58] Accordingly, CAT LLC believes that the process for estimating the budgeted change request costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the change request fees from the Original 2026 Budget. Specifically, the following describes the differences (if any) in the costs for change request fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for change requests included in the Original 2026 CAT Budget were $0, and the annual 2026 budgeted costs for change requests included in the Updated 2026 CAT Budget are $0.[59] Accordingly, budgeted annual costs for change requests are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the capitalized developed technology costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $3,450,000 in technology costs for capitalized developed technology costs for the CAT Fee 2026–1 Period. This category of costs includes the budget for capitalizable application development costs incurred in the development of the CAT. It is anticipated that such costs will include certain costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT related to the cost savings amendments[60] and the move to 23x5 trading.

CAT LLC estimates that the budget for capitalized developed technology costs during the CAT Fee 2026–1 Period will be approximately $3,450,000.[61] The budget for capitalized developed technology costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding (1) capitalized developed technology costs of $3,450,000 for May, $0 for June and $0 for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget; and (2) $0 for the Software License Fee 2026 for the second, third, and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[62]

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2026–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. This process for estimating the budget for capitalized developed technology costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the capitalized developed technology costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for capitalized developed technology costs of $671,472 for January and February 2026, and the actual costs for capitalized developed technology costs for January and February 2026 were $4,145,430.[63] The variance of $3,473,958 for January and February 2026 is the result of costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the capitalized developed technology costs from the Original 2026 Budget. Specifically, the following describes the differences in the costs for capitalized developed technology costs as included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budget for capitalized developed technology costs included in the Original 2026 CAT Budget was $8,228,827, and the annual 2026 budget for capitalized developed technology costs included in the Updated 2026 CAT Budget are $8,378,964.[64] Accordingly, the annual budget for capitalized developed technology costs increased by $150,137 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 2% increase in the capitalized developed technology costs for the full year of 2026. This budgeted increase in the annual budget for capitalized developed technology costs was the result of costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan requires the fee filing for a

[57] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[58] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[59] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[60] *See* CAIS Amendment and Cost Savings Amendment.

[61] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[62] This calculation is ($3,450,000 + $0 + $0 + $0) + ($0 + $0 + $0) = $3,450,000. Note that the $4,178,964 cost for the software license fee was not included in the CAT Fee 2026–1 Period.

[63] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[64] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

Prospective CAT Fee to provide a brief description of the legal costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $5,670,452 in legal costs for the CAT Fee 2026–1 Period. This category of costs represents budgeted costs for legal services for this period. CAT LLC anticipates that it will receive legal services from two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Jenner & Block LLP (''Jenner''), during the CAT Fee 2026–1 Period.

*Law Firm: WilmerHale.* It is anticipated that legal costs during the CAT Fee 2026–1 Period will include costs related to the legal services performed by WilmerHale. CAT LLC anticipates that it will continue to employ WilmerHale during the CAT Fee 2026–1 Period based on, among other things, their expertise, long history with the project and recognition that the hourly fee rates for this law firm are anticipated to be in line with market rates for specialized legal expertise. WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. The legal fees will be paid by CAT LLC to WilmerHale.

During the CAT Fee 2026–1 Period, it is anticipated that WilmerHale will provide legal services related to the following:

- Assist with CAT fee filings and related funding issues;
- Draft exemptive requests from CAT NMS Plan requirements and/or proposed amendments to the CAT NMS Plan;
- Provide legal guidance with respect to interpretations of CAT NMS Plan requirements;
- Provide legal support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team;
- Draft SRO rule filings related to the CAT Compliance Rule;
- Manage corporate governance matters, including supporting Operating Committee meetings and preparing resolutions and consents;
- Assist with communications with the industry, including CAT Alerts and presentations;
- Provide guidance regarding the confidentiality of CAT Data;
- Assist with cost management analyses and proposals;
- Assist with commercial contract-related matters, including change orders and amendments, Plan Processor Agreement items, and subcontract matters;
- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Provide legal guidance with respect to the CAT budgets;
- Provide background assistance to other counsel for CAT matters;
- Assist with legal responses related to third-party data requests; and
- Provide legal support regarding CAT policies and procedures.

CAT LLC estimated the budget for the legal costs for WilmerHale for the CAT Fee 2026–1 Period through an analysis of a variety of factors, including WilmerHale fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues.

*Law Firm: Jenner.* It is anticipated that legal costs during the CAT Fee 2026–1 Period will include costs related to the legal services performed by Jenner. CAT LLC anticipates that it will continue to employ Jenner during the CAT Fee 2026–1 Period based on, among other things, their expertise, history with the project and recognition that their hourly fee rates are in line with market rates for specialized legal expertise. The legal fees will be paid by CAT LLC to Jenner.

During the CAT Fee 2026–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against the SEC Chair, the SEC and CAT LLC challenging the validity of Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims;[65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;[66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order[67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model. Jenner also will continue to provide legal counseling to CAT LLC related to the above-listed litigation and other litigation risk.

CAT LLC estimated the budget for the legal costs for Jenner for the CAT Fee 2026–1 Period through an analysis of a variety of factors, including Jenner's fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues.

*Legal Cost Estimates.* CAT LLC estimates that the budget for legal services during the CAT Fee 2026–1 Period will be approximately $5,670,452.[69] The budget for legal services during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding budgeted costs for two-thirds of the legal costs for the second quarter and the legal costs for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[70]

CAT LLC estimated the budget for the legal services for the CAT Fee 2026–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues. This process for estimating the budget for the legal services for CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for legal costs of $1,424,166 for January and February of 2026. The actual costs for legal services for January and February 2026, which are included in the Updated 2026 Budget, were $1,838,617.[71] The increase of $414,451 was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs were primarily due to additional legal work related to litigation matters as well as regulatory and corporate legal matters. Accordingly, CAT LLC believes that the process for estimating the

[65] *Davidson et al.* v. *Atkins et al.,* Case No. 6:24–cv–197 (W.D. Tex.).

[66] *Am. Sec. Ass'n* v. *SEC,* Case No. 26–10936 (11th Cir.).

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

[68] *Citadel Securities* v. *SEC,* Case No. 24–12300 (11th Cir.).

[69] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[70] This calculation is (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[71] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

budgeted legal costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the legal costs from the Original 2026 Budget. Specifically, the following describes the differences in the legal costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted legal costs included in the Original 2026 CAT Budget were $8,485,000, and the annual 2026 budgeted legal costs included in the Updated 2026 CAT Budget are $8,939,184.[72] Accordingly, the annual budget for legal costs increased by $454,184 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 5% increase in the legal costs for the full year of 2026. This budgeted increase in the legal costs in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to an anticipated increase in legal costs related to litigation matters as well as regulatory and corporate legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,025,957 in consulting costs for the CAT Fee 2026–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the CAT Fee 2026–1 Period. The services provided by Deloitte to the CAT include advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses. In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee.

It is anticipated that the costs for CAT during the CAT Fee 2026–1 Period will include costs related to consulting services performed by Deloitte. CAT LLC anticipates that it will continue to employ Deloitte during the CAT Fee 2026–1 Period based on, among other things, their expertise, long history with the project, and the recognition that it is anticipated that the consulting fees will remain in line with market rates for this type of specialized consulting work. Deloitte's fee rates are negotiated on an annual basis. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. The consulting fees will be paid by CAT LLC to Deloitte.

It is anticipated that Deloitte will provide a variety of consulting services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Implement program operations for the CAT project;
- Provide support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assist with cost and funding matters for the CAT, including assistance with loans and the CAT bank account for CAT funding;
- Provide support for updating the SEC on the progress of the development of the CAT; and
- Provide support for third party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee, which is paid by CAT LLC.

CAT LLC estimates that the budget for consulting costs during the CAT Fee 2026–1 Period will be approximately $1,025,957.[73] The budget for consulting costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the consulting costs for the second quarter and the consulting costs for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[74]

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2026–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, and discussions with Deloitte, as well as the compensation arrangement for the Chair. This process for estimating the budget for consulting costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the consulting costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for consulting services of $258,334 for January and February 2026, and the actual costs for consulting services for January and February 2026, which are included in the Updated 2026 CAT Budget, were $267,554.[75] Therefore, the variance between budgeted and actual consulting costs for January and February was approximately 4%. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the consulting costs from the Original 2026 Budget. Specifically, the following describes the differences (if any) in the consulting costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budget for consulting costs included in the Original 2026 CAT Budget was $1,550,000, and the annual 2026 budget for consulting costs included in the Updated 2026 CAT Budget is $1,550,000.[76] Accordingly, the annual budget for consulting costs has not changed from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026.

(viii) Insurance Costs

(a) Description of Insurance Costs

Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the insurance costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $852,768 in insurance costs for the CAT Fee 2026–1 Period.[77] The

[72] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[73] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[74] This calculation is (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[75] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[76] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[77] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

insurance costs represent the costs to be incurred for insurance for the CAT during the CAT Fee 2026–1 Period.

It is anticipated that the insurance costs for CAT during the CAT Fee 2026–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during the CAT Fee 2026–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2026–1 Period based on the insurance estimate from USI for 2026. The annual premiums would be paid by CAT LLC to USI.

The budgeted insurance costs for the CAT Fee 2026–1 Period are based on an insurance cost estimate from USI for 2026. Accordingly, CAT LLC believes that the process for estimating the budgeted insurance costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for insurance costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the insurance costs from the Original 2026 Budget. Specifically, the following describes the differences in the insurance costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted insurance costs included in the Original 2026 CAT Budget were $1,505,625, and the annual 2026 budgeted insurance costs included in the Updated 2026 CAT Budget are $1,254,070.[78] Accordingly, the annual budget for insurance costs decreased by $251,555 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 16% decrease in the insurance costs for the full year of 2026. This budgeted decrease in the insurance costs in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to an anticipated decrease in insurance premiums.

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $749,151 in professional and administration costs for the CAT Fee 2026–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[79] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin, Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during the CAT Fee 2026–1 Period.

*Financial Advisory Firm: Anchin.* It is anticipated that the professional and administration costs for the CAT Fee 2026–1 Period will include costs related to financial advisory services performed by Anchin. CAT LLC anticipates that it will continue to employ Anchin during the CAT Fee 2026–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. The fees for these services will be paid by CAT LLC to Anchin.

It is anticipated that Anchin will provide a variety of services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Facilitate bill payments to vendors;
- Facilitate repayments of promissory notes to Participants;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Review documentation to ensure that repayments of promissory notes to Participants are in accordance with established policies and procedures;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual and interim operating and financial budgets, including budget to actual and budget to budget fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee, Leadership Team and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Review and reconcile the monthly FINRA CAT reports/analyses related to billings, collections, outstanding accounts receivable and cash account;
- Perform certain verification, completeness, and validation testing related to the monthly FINRA CAT reports/analyses related to billings;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

CAT LLC estimated the annual budget for the costs for Anchin based on historical costs adjusted for cost of living rate increases, and projected incremental advisory and support services.

*Accounting Firm: Grant Thornton.* It is anticipated that the professional and administration costs for the CAT Fee 2026–1 Period will include costs related to accounting services performed by Grant Thornton. CAT LLC anticipates that it will continue to employ Grant Thornton during the CAT Fee 2026–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. It is anticipated that Grant Thornton will continue to be engaged as an independent accounting firm to complete the audit of CAT LLC's financial statements, in accordance with

[78] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[79] Section 9.2 of the CAT NMS Plan.

the requirements of the CAT NMS Plan. The fees for these services will be paid by CAT LLC to Grant Thornton. CAT LLC estimated the budget for the accounting costs for Grant Thornton for the CAT Fee 2026–1 Period based on the anticipated hourly rates and the anticipated services plus an administrative fee.

*Professional and Administration Cost Estimates.* CAT LLC estimates that the budget for professional and administration services during the CAT Fee 2026–1 Period will be approximately $749,151.[80] The budget for professional and administration services during the CAT Fee 2026–1 Period is based on the Updated 2026 CAT Budget. CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2026–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for professional and administration costs of $190,916 for January and February 2026, and the actual costs for professional and administration services for January and February 2026, which are set forth in the Updated 2026 Budget, were $149,061.[81] The decrease of $41,855 was due to a lower than expected profressional and administration services costs and to the movement of bank fees from the professional and administration category to the interest income category. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for professional and administration costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the professional and administration costs from the Original 2026 Budget. Specifically, the following describes the differences in the professional and administration costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted professional and administration costs as included in the Original 2026 CAT Budget were $1,145,500, and the annual 2026 budgeted professional and administration costs included in the Updated 2026 CAT Budget are $1,085,500.[82] Accordingly, the budgeted annual costs for professional and administration services decreased by $60,000 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026. This budgeted decrease in the professional and administration costs in the Updated 2026 CAT Budget from the Original 2026 Budget was due to the movement of bank fees from the professional and administration category to the interest income category, and not a change in costs related to Anchin and Grant Thornton services.

(x) Public Relations Costs

(a) Description of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $0 in public relations costs for the CAT Fee 2026–1 Period. The public relations costs would represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. Because CAT LLC anticipates that it will not engage a public relations firm for the CAT Fee Period 2026–1, the budget for public relations costs for this period is $0.[83]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the public relations costs from the Original 2026 Budget. Specifically, the following describes the differences (if any) in public relations costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual budgeted public relations costs for 2026 included in the Original 2026 CAT Budget were $0, and the annual budgeted public relations costs for 2026 included in the Updated 2026 CAT Budget are $0.[84] Accordingly, the annual budgeted public relations costs for 2026 are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(xi) Interest Income

(a) Description of Interest Income

Section 11.1(a) of the CAT NMS Plan requires the CAT budget to include ''the sources of all revenues to cover costs.'' Accordingly, the Updated 2026 CAT Budget includes a line item for interest income. Specifically, the Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,453,382 in interest income for the CAT Fee 2026–1 Period.[85] Interest income represents the interest earned on the surplus reserve and other funds held by CAT LLC. Such income would be used to reduce the amount to be collected to fund the CAT.

CAT LLC estimates the budget for the interest income for the CAT Fee 2026–1 Period based on the estimate of the funds held by CAT LLC and the expected interest rates on such funds. The Original 2026 CAT Budget estimated interest income of $758,343 for January and February 2026, and the actual interest income for January and February 2026, which are included in the Updated 2026 CAT Budget, were $757,527.[86] As mentioned above, bank fees were moved from the professional and administration category in the Original 2026 CAT Budget to the interest income category in the Updated 2026 CAT Budget. Accordingly, the interest income amount for the Updated 2026 CAT Budget was net of $10,000 in bank fees. Therefore, the variance between budgeted and actual interest income (aside from bank fees) for January and February 2026 was approximately $10,000. Accordingly, CAT LLC believes that the process for

[80] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[81] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[82] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[83] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[84] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[85] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[86] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

estimating the budgeted interest income for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in each line item from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in interest income from the Original 2026 CAT Budget. Specifically, the following describes the differences in the interest income included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted interest income as included in the Original 2026 CAT Budget was $1,995,958, and the annual 2026 budgeted interest income included in the Updated 2026 CAT Budget is $2,806,325.[87] Accordingly, the budgeted interest income (not including bank fees) increased by $810,367 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 40% increase in the interest income for the full year of 2026. This budgeted increase in the interest income in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to higher than expected cash balances being maintained after the approval of the Original 2026 Budget.

(xii) Reserve

(a) Description of Reserve

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the reserve costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes a reserve amount for 2026. Section 11.1(a)(i) of the CAT NMS Plan states that the budget shall include a reserve. Section 11.1(a)(ii) of the CAT NMS Plan further describes the reserve as follows:

For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.

CAT LLC determined to maintain a reserve in the amount of 25% of the total expenses set forth in the Updated 2026 CAT Budget (which does not include the reserve amount). Accordingly, the total 25% reserve of $23,508,157 was calculated by multiplying the total expenses set forth in the Updated 2026 CAT Budget (other than the reserve) by 25%.[88]

The Updated 2026 CAT Budget estimates that CAT LLC will have $102,391,135 in reserve as of the beginning of the CAT Fee Period 2026–1. Such reserve is related, in part, to (i) the collection of CAT fees in excess of the budgeted CAT costs in light of the greater actual executed equivalent share volume than the projected executed equivalent share volume for prior CAT Fees, and (ii) a reduction in anticipated budgeted costs associated with the implementation of certain cost savings measures. This reserve balance of $102,391,135 would be used to offset a portion of CAT costs for CAT Fee Period 2026–1, thereby reducing the fee rate to be paid for CAT Fee 2026–1. Specifically, the total costs (including the 25% reserve) for CAT Fee 2026–1 of $117,540,783 would be reduced by the $102,391,135 in reserve. Therefore, the Total Budgeted CAT Costs 2026–1 would be $15,149,648.

Accordingly, the fee rate for CAT Fee 2026–1 is calculated based on this reduced amount of $15,149,648, resulting in a fee rate of $0.000001 per executed equivalent share. If the fee rate for CAT Fee 2026–1 were calculated solely based on the reasonably budgeted costs for CAT for May–December 2026, excluding the reduction in that amount due to the surplus reserve offset, the fee rate would be the higher rate of $0.000010.[89]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in reserve from the Original 2026 CAT Budget. Specifically, the following describes the differences in the reserve included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The accrued liquidity reserve balance at the beginning of the year included in the Original 2026 CAT Budget was $119,128,336. The Original 2026 CAT Budget contemplated using the reserve to pay CAT bills throughout the year as no CAT fee was in effect. The accrued liquidity reserve balance at the beginning of the year included in the Updated 2026 CAT Budget was $155,403,378. The increase in the accrued liquidity reserve balance at the beginning of the year from the Original 2026 CAT Budget to the Updated 2026 CAT Budget reflected the additional CAT Fees that had been received after the approval of the Original 2026 CAT Budget. In addition, the Updated 2026 CAT Budget not only reflected the use of the surplus reserve to pay CAT bills but also the accrual of additional reserve to establish a 25% reserve through CAT Fee 2026–1. Accordingly, the estimated liquidity reserve balance increased from a deficit of $37,304,661 included in the Original 2026 CAT Budget to a reserve balance of $23,508,157 included in the Updated 2026 CAT Budget for the full year of 2026.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2026–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2026–1 Period. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [90] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[91]

[87] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[88] The reserve was calculated by multiplying $94,032,626 by 25%, which equals approximately $23,508,157.

[89] *See* CAT Fee Alert 2026–1 (Apr. 1, 2026).

[90] Section 11.3(a)(i)(D) of the CAT NMS Plan.

[91] CAT Funding Model Approval Order at 13452.

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the eight-month recovery period for CAT Fee 2026–1 by multiplying by 8/12ths the executed equivalent share volume for the 12-month period from March 2025 through February 2026. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.41), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for the eight-month period for CAT Fee 2026–1 is projected to be 3,987,291,699,573.66 executed equivalent shares.[92]

The projected total executed equivalent share volume of all transactions in Eligible Securities for the eight-month recovery period for CAT Fee 2026–1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.[93]

(E) Fee Rate 2026–1

Fee Rate 2026–1 would be calculated by dividing the Budgeted CAT Costs 2026–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the eight-month recovery period for CAT Fee 2026–1, as described in detail above.[94] Specifically, Fee Rate 2026–1 would be calculated by dividing $15,149,648 by 3,987,291,699,573.66 executed equivalent shares. As a result, Fee Rate 2026–1 would be $0.000003799483243631228 per executed equivalent share. Fee Rate 2026–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[95]

Fee Rate 2026–1 would be used to calculate the fee rate to be paid by CEBSs and CEBBs for CAT Fee 2026–1. Such fee rate is calculated by multiplying Fee Rate 2026–1 of $0.000003799483243631228 by one-third, and rounding the result to six decimal places.[96] Accordingly, the fee rate to be paid by CEBSs and CEBBs for CAT Fee 2026–1 would be $0.000001 per executed equivalent share.

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2026–1 on a monthly basis for eight months, from July 2026 until January 2027. A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[97] Proposed paragraph (a)(6)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2026–1 in June 2026, and would receive an invoice for CAT Fee 2026–1 each month thereafter until January 2027. Proposed paragraph (a)(6)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis.'' In addition, paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2026–1, the Exchange proposes to add a new paragraph to the ''Consolidated Audit Trail Funding Fees'' section of the Exchange's fee schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2026–1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[98]

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(6) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(6) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for CAT Fee 2026–1 in June 2026, which shall set forth the CAT Fee 2026–1 fees calculated based on transactions in May 2026, and shall receive an invoice for CAT Fee 2026–1 for each month thereafter until January 2027.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000001 per executed equivalent share.

(C) Notwithstanding the last invoice date of January 2027 for CAT Fee 2026–1 in paragraph 6(A), CAT Fee 2026–1 shall continue in effect after January 2027, with each CAT Executing Broker receiving an invoice for CAT Fee 2026–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2026–1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for CAT Fee 2026–1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by

[92] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by 8/12ths.

[93] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[94] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is appropriate.'' CAT Funding Model Approval Order at 13435.

[95] *See* Section 11.3(a)(iii)(B)(A) of the CAT NMS Plan.

[96] This fee rate of $0.000001 is calculated by multiplying the Fee Rate of $0.000003799483243631228 by one-third and rounding this result (which equals $0.000001266494414543743) to 6 decimal places.

[97] *See* proposed paragraph (a)(6)(B) of the fee schedule.

[98] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

one-third and describing the relevant number of decimal places for the fee.'' [99] Accordingly, proposed paragraph (a)(6)(B) of the fee schedule would set forth a fee rate of $0.000001 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2026–1 of $0.000003799483243631228 by one-third, and rounding the result to six decimal places.[100] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(6)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2026–1. Specifically, CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2026–1 in June 2026 and the fees set forth in that invoice would be calculated based on transactions executed in May 2026. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(6)(A) of the fee schedule also would describe the monthly cadence of the invoices for CAT Fee 2026–1. Specifically, after the first invoices are provided to CAT Executing Brokers in June 2026, invoices will be sent to CAT Executing Brokers each month thereafter until January 2027.

Proposed paragraph (a)(6)(B) of the fee schedule would describe the invoices for CAT Fee 2026–1. Proposed paragraph (a)(6)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis.'' Proposed paragraph (a)(6)(B) of the fee schedule also would describe the fees to be set forth in the invoices for CAT Fee 2026–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000001 per executed equivalent share.''

Since CAT Fee 2026–1 is a monthly fee based on actual transaction volume from the prior month, CAT Fee 2026–1 may collect more or less than two-thirds of the Budgeted CAT Costs 2026–1. To the extent that CAT Fee 2026–1 collects more than two-thirds of the Budgeted CAT Costs 2026–1, any excess money collected will be used to offset future fees and/or to fund the reserve for the CAT. To the extent that CAT Fee 2026–1 collects less than two-thirds of the Budgeted CAT Costs 2026–1, the budget for the CAT in the ensuing months will reflect such shortfall.

Furthermore, proposed paragraph (a)(6)(C) of the fee schedule would describe how long CAT Fee 2026–1 would remain in effect. It would state that ''[n]otwithstanding the last invoice date of January 2027 for CAT Fee 2026–1 in paragraph 6(A), CAT Fee 2026–1 shall continue in effect after January 2027, with each CAT Executing Broker receiving an invoice for CAT Fee 2026–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2026–1 will no longer be in effect.''

Finally, proposed paragraph (a)(6)(D) of the fee schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2026–1. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2026–1 in accordance with paragraph (b).''

(B) Manner of Payment

Paragraph (b)(1) of the ''Consolidated Audit Trail Funding Fees'' section of the fee schedule describes the manner of payment of Industry Member CAT fees. It states that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.'' The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[101] The Plan Processor has established a billing system for CAT fees.[102] Accordingly, CAT Executing Brokers would be required to pay CAT Fee 2026–1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[103]

Paragraph (b)(2) of the fee schedule states that:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to CAT Fee 2026–1.

(5) CAT Fee Details

The CAT NMS Plan states that:

Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[104]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the

[99] CAT Funding Model Approval Order at 13445, n.677.

[100] This fee rate of $0.000001 is calculated by multiplying the Fee Rate of $0.000003799483243631228 by one-third, and rounding this result (which equals $0.000001266494414543743) to 6 decimal places.

[101] Section 11.4 of the CAT NMS Plan.

[102] The billing process and system are described in CAT Alert 2023–02 as well as in the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023 and Nov. 7, 2023), each available on the CAT website.

[103] Section 11.4 of the CAT NMS Plan.

[104] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

calculation of their CAT Fee.[105] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [106] Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that CAT Fee 2026–1 is in effect as well as the total amount invoiced for CAT Fee 2026–1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for CAT Fee 2026–1.

(6) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.'' [107] Under Section 1.1 of the CAT NMS Plan, a Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,[108] the Financial Accountability Milestone related to Period 4 was satisfied on July 15, 2024. In addition, the satisfaction of the Financial Accountability Milestone related to Period 4 was described in detail in the fee filing for the first Prospective CAT Fee, CAT Fee 2024–1.[109]

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[110] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[111] On March 31, 2026, the Operating Committee approved the Participant fee related to CAT Fee 2026–1. Specifically, pursuant to the requirements of CAT NMS Plan,[112] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000001 per executed equivalent share, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be invoiced such CAT fees on a monthly basis for eight months, from June 2026 until January 2027, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on an exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in June 2026, and would receive an invoice each month thereafter until January 2027. Like with the CAT Fee 2026–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(6)(C) of the fee schedule, notwithstanding the last invoice date of January 2027, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

[e]ach Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the ''Payment Date''). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [113], which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[114] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[115] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[116] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the

[105] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.'' CAT Funding Model Approval Order at 13454.

[106] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 13454.

[107] Section 11.3(a)(iii)(C) of the CAT NMS Plan.

[108] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[109] *See* Securities Exchange Act Rel. No. 100869, (Aug. 29, 2024), 89 FR 72570, (Sep. 5, 2024).

[110] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[111] CAT Funding Model Approval Order at 13448.

[112] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[113] 15 U.S.C. 78f(b)(6).

[114] 15 U.S.C. 78f(b)(4).

[115] 15 U.S.C. 78f(b)(8).

[116] *See* 15 U.S.C. 78f(b)(1).

Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [117] To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees to be paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the CAT Fee 2026–1 fees to be collected are directly associated with the budgeted costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, and professional and administration costs.

The proposed CAT Fee 2026–1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [118] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[119] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for CAT Fee 2026–1 Is Reasonable

The SEC has determined that the CAT Funding Model satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, satisfies the Exchange Act.[120] In each respect, as discussed above, CAT Fee 2026–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2026–1 is reasonable and consistent with the Exchange Act. The calculation of Fee Rate 2026–1 for CAT Fee 2026–1 requires the figures for Budgeted CAT Costs 2026–1, the executed equivalent share volume for the prior twelve months, the determination of the CAT Fee 2026–1 Period, and the projection of the executed equivalent share volume for the CAT Fee 2026–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2026–1

The formula for calculating a Fee Rate requires the amount of Budgeted CAT Costs to be recovered. Specifically, Section 11.3(a)(iii)(B) of the CAT NMS Plan requires a fee filing to provide:

the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.

In accordance with this requirement, the Exchange has set forth the amount and type of Budgeted CAT Costs 2026–1 for each of these categories above.

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2026–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2026–1 is reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or is consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.[121] CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. As described above, the cloud hosting services costs reflect, among other

[117] CAT NMS Plan Approval Order at 84697.

[118] *Id.*

[119] CAT Funding Model Approval Order at 13481.

[120] *Id.*

[121] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[122] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [123] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[124] In contrast to the 2016 projections, the actual daily Q3 2025 data volumes averaged 792 billion events per day.

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and amendments to the CAT NMS Plan to reduce costs, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[125]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.[126] CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[127] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[128] The services to be performed by FCAT for CAT Fee 2026–1 Period and the budgeted costs related to such services are described above.[129]

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates receiving certain market data from Algoseek during the CAT Fee 2026–1 Period. CAT LLC anticipates that Algoseek will provide data as set forth in the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.[130]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[131] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain the Reference Database and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's services related to the Reference Database, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS

[122] For a discussion of the amount and type of cloud hosting services fees, *see* Section 3(a)(2)(C)(i) above.

[123] Section 1.3 of Appendix D of the CAT NMS Plan at n.262.

[124] CAT NMS Plan Approval Order at 84801.

[125] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[126] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[127] *See* Section 3(a)(2)(C)(ii) above.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[132] The services to be performed by FCAT for the CAT Fee 2026–1 Period and the budgeted costs for such services are described above.[133]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.[134] CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,[135] CAT LLC determined that it was reasonable not to include any change request fees in the Budgeted CAT Costs 2026–1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.[136] In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2026–1 Period, which relate to the software license fee and technology changes to be implemented by FCAT, are described in more detail above.[137]

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[138] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2026–1 Period and the budgeted costs related to such services are described above.[139]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[140] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. Because there are no CAT employees [141] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[142] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[143]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as a part of CAT Fees.[144] CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [145] As discussed above,[146] CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[147]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[148] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs

[132] *See* Section 3(a)(2)(C)(iii) above.

[133] *Id.*

[134] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[135] *See* Section 3(a)(2)(C)(iv) above.

[136] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[137] *See* Section 3(a)(2)(C)(v) above.

[138] Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

[139] *See* Section 3(a)(2)(C)(vi) above.

[140] Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan.

[141] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

[142] CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. *See, e.g.,* CTA Plan and CQ Plan.

[143] Section 3(a)(2)(C)(vii) above.

[144] Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan.

[145] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[146] *See* Section 3(a)(2)(C)(viii) above.

[147] *Id.*

[148] Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

related to such services are described above.[149]

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.[150]

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.[151]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[152] However, as described above,[153] CAT LLC determined not to include any public relations costs in Budgeted CAT Costs 2026–1. CAT LLC determined that it was reasonable not to include any public relations costs in the Budgeted CAT Costs 2026–1.

(xi) Interest Income

Section 11.1(a) of the CAT NMS Plan requires the CAT budget to include ''the sources of all revenues to cover costs.'' Accordingly, the Updated 2026 CAT Budget includes a line item for interest income. Specifically, the Updated 2026 CAT Budget includes $1,453,382 in interest income for the CAT Fee 2026–1 Period.[154] CAT LLC determined that using interest income to reduce the amount to be collected via CAT Fees is reasonable and should be included as a part of the Budgeted CAT Costs 2026–1.

(xii) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.[155] CAT LLC determined that the reserve in the amount of 25% of the Updated 2026 CAT Budget (other than the reserve) complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount, and, therefore, should be included as a part of the Updated 2026 CAT Budget.

In its approval order for the CAT Funding Model, the Commission stated that it would be appropriate for the annual operating budget for the CAT to ''include a reserve of not more than 25% of the annual budget.'' [156] In making this statement, the Commission noted the following:

Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is appropriate to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[157]

The SEC also recognized that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.[158] The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.[159] The inclusion of the proposed reserve in the Updated 2026 CAT Budget would provide each of these benefits to the CAT. The reserve is discussed further above.[160]

As discussed further below,[161] however, a surplus reserve balance in excess of the budgeted 25% reserve has been collected as of the beginning of the year of 2026. Accordingly, the Updated 2026 CAT Budget indicates that this surplus would be used to offset a portion of CAT costs for the CAT Fee 2026–1 Period, thereby reducing the fee rate for CAT Fee 2026–1 ($0.000001 per executed equivalent share). If the fee rate for CAT Fee 2026–1 were calculated solely based on the reasonably budgeted costs for CAT for May–December 2026, excluding the reduction in that amount due to the surplus reserve offset, the fee rate would be $0.000010 per executed equivalent share.

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include ''a discussion of how the budget is reconciled to the collected fees.'' [162] As discussed above,[163] this reserve balance of $102,391,135 collected via prior CAT Fees would be used to offset a portion of CAT costs for CAT Fee Period 2026–1, thereby reducing the fee rate to be paid for CAT Fee 2026–1. Specifically, the total costs (including the 25% reserve) for CAT Fee 2026–1 of $117,540,783 would be reduced by the $102,391,135 in reserve. Therefore, the Total Budgeted CAT Costs 2026–1 would be $15,149,648. Such surplus reserve balance would be used to reduce the fee rate for CAT Fee 2026–1 ($0.000001 per executed equivalent share).

(C) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[164]

(D) Projected Executed Equivalent Share Volume for the CAT Fee 2026–1 Period

CAT LLC has determined that the projected total executed equivalent

[149] *See* Section 3(a)(2)(C)(ix) above.

[150] *Id.*

[151] *Id.*

[152] Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

[153] *See* Section 3(a)(2)(C)(x) above.

[154] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[155] Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

[156] CAT Funding Model Approval Order at 13444.

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] *See* Section 3(a)(2)(C)(xii) above.

[161] *See* Section 3(b)(2)(B) below.

[162] Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

[163] *See* Section 3(a)(2)(C)(xii) above.

[164] *See* Section 3(a)(2)(D) above.

share volume for the eight months of the CAT Fee 2026–1 Period by multiplying by 8/12ths the executed equivalent share volume for the prior twelve months: 8/12 times 5,980,937,549,360.49 executed equivalent shares.[165] The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.41), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level.

(E) Actual Fee Rate for CAT Fee 2026–1

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[166] Accordingly, proposed paragraph (a)(6)(B) of the fee schedule would set forth a fee rate of $0.000001 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2026–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.[167]

(ii) Reasonable Fee Level

The Exchange believes that charging CAT Fee 2026–1 with a fee rate of $0.000001 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with the Budgeted CAT Costs 2026–1. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is less than CAT Fee 2025–2 and is comparable to other transaction-based fees, including fees assessed pursuant to Section 31.[168] As a result, the magnitude of CAT Fee 2026–1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.[169]

(3) CAT Fee 2026–1 Provides for an Equitable Allocation of Fees

CAT Fee 2026–1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[170] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is appropriate and meets the Rule 608(b) approval standard.'' [171] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

CAT Fee 2026–1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. For example, as described above, the calculation of CAT Fee 2026–1 complies with the formula set forth in Section 11.3(a) of the CAT NMS Plan. In addition, CAT Fee 2026–1 would be charged to CEBBs and CEBSs in accordance with Section 11.3(a) of the CAT NMS Plan. Furthermore, the Participants would be charged for their designated share of the Budgeted CAT Costs 2026–1 through a fee implemented via the CAT NMS Plan, which would have the same fee rate as CAT Fee 2026–1.

In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2026–1—the Budgeted CAT Costs 2026–1, the count for the executed equivalent share volume for the prior 12 months, and the projected executed equivalent share volume for the CAT Fee 2026–1 Period—is reasonable. Moreover, these inputs lead to a reasonable fee rate for CAT Fee 2026–1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) CAT Fee 2026–1 Is Not Unfairly Discriminatory

CAT Fee 2026–1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfies the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of CAT Fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. CAT Fee 2026–1 complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2026–1 and the resulting fee rate for CAT Fee 2026–1 is reasonable. Therefore, CAT Fee 2026–1 does not impose an unfairly discriminatory fee on Industry Members.

The Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and with specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Act [172] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2026–1 implements provisions of the CAT NMS Plan that were approved by the

[165] *Id.*

[166] CAT Funding Model Approval Order at 13445, n.677.

[167] *See* Section 3(a)(5)(A) above.

[168] For example, as the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. CAT Funding Model Approval Order at 13469.

[169] *Id.*

[170] *See* Section 11.3(a) of the CAT NMS Plan.

[171] CAT Funding Model Approval Order at 13412.

[172] 15 U.S.C. 78f(b)(8).

Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce CAT Fee 2026–1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[173] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2026–1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of CAT Fee 2026–1 is reasonable and the resulting fee rate for CAT Fee 2026–1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, CAT Fee 2026–1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[174]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2026–24 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–ISE–2026–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2026–24 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[175]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09859 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

[173] CAT Funding Model Approval Order at 13457–81.

[174] 15 U.S.C. 78s(b)(3)(A)(ii).

[175] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105474; File No. SR–LTSE–2026–12]**

## Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related To Reasonably Budgeted CAT Costs of the National Market System Plan Governing the Consolidated Audit Trail for May 1, 2026 Through December 31, 2026

May 13, 2026.

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 April 29, 2026, Long-Term Stock Exchange, Inc. (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to establish fees for Industry Members [3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from May 1, 2026 through December 31, 2026.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/* and at the principal office of the Exchange.

## II. Self-Regulatory Organization's Statement on 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' LTSE Rule 11.610(u). *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. LTSE Rule Series 11.600.

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

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[4] On November 15, 2016, the Commission approved the CAT NMS Plan.[5] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On March 16, 2026, the Commission approved the CAT Funding Model after concluding that the model satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (''Historical CAT Assessment'' fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (''CAT Fees'').[8]

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. ''The Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs').'' [9] In establishing a CAT Fee, the Operating Committee will calculate a ''Fee Rate'' for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

The CAT Fees to be paid by CEBBs and CEBSs are designed to contribute toward the recovery of two-thirds of the budgeted CAT costs for the relevant period.[10] The CAT Funding Model is designed to require that the Participants contribute to the recovery of the remaining one-third of the budgeted CAT costs.[11] Participants would be subject to the same Fee Rate as CEBBs and CEBSs.[12] While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[13] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[14] Accordingly, this filing does not address Participant CAT fees as they are described in the CAT NMS Plan.[15]

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2026–1 to recover the reasonably budgeted CAT costs for the period from May 1, 2026 through December 31, 2026 in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [16] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [17] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2026–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

CAT Fee 2026–1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.[18] The CAT NMS Plan defines a ''CAT Executing Broker'' to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

[6] Section 11.1(b) of the CAT NMS Plan.

[7] Securities Exchange Act Rel. No. 105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 19, 2026) (''CAT Funding Model Approval Order''). This CAT Funding Model replaced the prior funding model that was approved by the Commission on September 6, 2023. Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023).

[8] Under the CAT Funding Model, the Operating Committee may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing only establishes CAT Fee 2026–1 related to reasonably budgeted CAT costs for the period from May 1, 2026 through December 31, 2026 as described herein; it does not address any other potential CAT Fees related to CAT costs. Any such other CAT Fee will be subject to a separate fee filing. In addition, under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing does not address any Historical CAT Assessments.

[9] Section 11.3(a) of the CAT NMS Plan.

[10] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[11] Section 11.3(a)(ii)(A) of the CAT NMS Plan.

[12] Section 11.3(a)(ii) of the CAT NMS Plan.

[13] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[14] CAT Funding Model Approval Order at 13448.

[15] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[16] Section 11.1(b) of the CAT NMS Plan.

[17] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[18] In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was appropriate. In reaching this conclusion, the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 13413.

required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.[19]

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange:

EQUITY ORDER TRADE (EOT)[20]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 12.*n*.8/13.*n*.8 | member | Member Alias | The identifier for the member firm that is responsible for the order on this side of the trade.<br>Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction.<br>This must be provided if orderID is provided. | C |

OPTION TRADE (OT)[21]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 16.*n*.13/17.*n*.13 | member | Member Alias | The identifier for the member firm that is responsible for the order. | R |

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange:

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)[22]

| No. | Field vame | Data type | Description | Include key |
|---|---|---|---|---|
| 26 | reportingExecutingMpid | Member Alias | MPID of the executing party | R |
| 28 | contraExecutingMpid | Member Alias | MPID of the contra-side executing party | C |

(2) Calculation of Fee Rate 2026–1

The Operating Committee determined the Fee Rate to be used in calculating CAT Fee 2026–1 (''Fee Rate 2026–1'') by dividing the reasonably budgeted CAT costs (''Budgeted CAT Costs 2026–1'') for the period from May 1, 2026 through December 31, 2026 (''CAT Fee 2026–1 Period'') by the reasonably projected total executed share volume of all transactions in Eligible Securities for the eight-month recovery period, as discussed in detail below.[23] Based on this calculation, the Operating Committee has determined that Fee Rate 2026–1 would be $0.000003799483243631228 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of $0.000001 per executed equivalent share that will be assessed to CEBBs and CEBSs, as also discussed in detail below.

(A) CAT Fee 2026–1 Period

CAT LLC proposes to implement CAT Fee 2026–1. CAT LLC proposes to commence CAT Fee 2026–1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2026–1 ''would be calculated as described in paragraph (II)'' of Section 11.3(a)(i)(A) of the CAT NMS Plan,[24] which states that ''[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.'' [25] For CAT Fee 2026–1, the reasonably budgeted CAT costs for ''the remainder of the year'' are the reasonably budgeted CAT costs from May 1, 2026 through December 31, 2026 as set forth in the updated annual budget for 2026 for CAT LLC approved by the Operating Committee on March

[19] Section 1.1 of the CAT NMS Plan. In its approval order for the CAT Funding Model, the Commission ''recognize[d] that Industry Members may pass-through CAT fees for customer executed volume.'' *See* CAT Funding Model Approval Order at 13424.

[20] *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.2.0–r2 (Feb. 24, 2026), *https://www.catnmsplan.com/sites/default/files/2026-02/02.24.2026-CAT_Reporting_Technical_Specifications_for_Participants_4.2.0-r2.pdf* (''CAT Reporting Technical Specifications for Plan Participants'').

[21] *See* Table 52, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

[22] *See* Table 62, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

[23] Section 11.3(a)(i) of the CAT NMS Plan.

[24] Section 11.3(a)(i)(A)(IV) of the CAT NMS Plan.

[25] Section 11.3(a)(i)(A)(II) of the CAT NMS Plan.

31, 2026 (''Updated 2026 CAT Budget'').[26]

(B) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities will be counted as 0.01 executed equivalent share.[27]

(C) Budgeted CAT Costs 2026–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.'' [28] Section 11.1(a) of the CAT NMS Plan describes the requirement for the

Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that:

[w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

In accordance with the requirements under the CAT NMS Plan, the Operating Committee approved an annual budget for 2026 for CAT LLC (''Original 2026 CAT Budget'') on December 11, 2025.[29] On March 31, 2026, the Operating Committee approved an updated budget for 2026, referred to as the Updated 2026 CAT Budget. The Updated 2026 CAT Budget includes actual costs for each category for January and February 2026, with updated estimated costs for the remainder of the year. The updated costs for May through December as included in the Updated 2026 CAT Budget (*i.e.,* Budgeted CAT Costs 2026–1) are the costs used in calculating CAT Fee 2026–1.[30] The 2026 CAT budgets, both the Original 2026 CAT Budget and the Updated 2026 CAT Budget, were prepared on the accrual basis of accounting.[31]

As described in detail below, the Budgeted CAT Costs 2026–1 would be $15,149,648. CEBBs collectively will be responsible for one-third of the Budgeted CAT Costs 2026–1 (which is $5,049,882.67), and CEBSs collectively will be responsible for one-third of the Budgeted CAT Costs 2026–1 (which is $5,049,882.67).

The following describes in detail the Budgeted CAT Costs 2026–1 for CAT Fee 2026–1. The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing the following:

the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.[32]

Each of the costs described below is reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

The following table breaks down the Budgeted CAT Costs 2026–1 into the categories set forth in Section 11.3(a)(iii)(B) of the CAT NMS Plan.[33] The Budgeted CAT Costs 2026–1 reflect the costs for May through December as included in the Updated 2026 CAT Budget. The Budgeted CAT Costs 2026–1 are the costs used in calculating CAT Fee 2026–1.

BUDGETED CAT COSTS 2026–1

| Budget category | Budgeted CAT costs 2026–1 [b] (*i.e.,* costs for May–December 2026) |
|---|---|
| Capitalized Developed Technology Costs [a] | [c] $3,450,000 |
| Technology Costs | 83,737,680 |
| Cloud Hosting Services | [d] 49,866,667 |
| Operating Fees | [e] 19,691,953 |
| CAIS Operating Fees | [f] 14,179,060 |
| Change Request Fees | [g] 0 |

[26] The Updated 2026 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2026-04/03.31.26-CAT-2026-Budget.pdf*).

[27] Section 11.3(a)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that ''the use of executed equivalent share volume provides an appropriate basis for the calculation of CAT fees.'' CAT Funding Model Approval Order at 13413.

[28] Section 11.3(a)(i)(C) of the CAT NMS Plan.

[29] The Original 2026 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-12/12.08.25-CAT-LLC-2026-Financial_and_Operating_Budget.pdf*).

[30] The version of the Updated 2026 CAT Budget set forth on the CAT website is presented on a quarterly basis, but is prepared based on more granular detail. The costs for May and June are estimated based on two-thirds of costs for Q2 where the budgeted monthly amounts are consistent. For those cases in which the costs for a category vary from month to month in Q2, the specific budgeted amounts for May and June are noted.

[31] CAT budgets for periods prior to 2025 were prepared on the cash basis of accounting, as such budgets were primarily used to determine the dollar amount of promissory notes from the Participants that were required to fund the ongoing operations of the CAT. Commencing in 2025, with the contemplated recovery of costs from Industry Members and the Participants via CAT Fees, the Original 2025 CAT Budget was prepared on the accrual basis of accounting to properly match projected revenues with estimated expenses incurred. A cash basis budget reflects expenditures when paid, while an accrual basis budget reflects expenditures when incurred. In moving from a cash basis budget to an accrual basis budget, there is no double counting of expenses.

[32] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[33] Note that costs and related cost calculations provided in this filing may reflect minor variations from the budgeted costs due to rounding.

BUDGETED CAT COSTS 2026–1—Continued

| Budget category | Budgeted CAT costs 2026–1 [b] (*i.e.,* costs for May–December 2026) |
|---|---|
| Legal | [h] 5,670,452 |
| Consulting | [i] 1,025,957 |
| Insurance | [j] 852,768 |
| Professional and administration | [k] 749,151 |
| Public relations | [l] 0 |
| Interest Income | [m] (1,453,382) |
| Total Costs | 94,032,626 |
| Reserve (25% of Total Costs) | 23,508,157 |
| Total Costs and Reserve | 117,540,783 |
| Use of Existing Reserve | [n] (102,391,135) |
| Total Budgeted CAT Costs 2026–1 | 15,149,648 |

[a] The non-cash amortization of these capitalized developed technology costs to be incurred during the CAT Fee 2026–1 Period have been appropriately excluded from the above table.[34]

[b] Budgeted CAT Costs 2026–1 described in this table of costs were determined based on an analysis of a variety of factors, including historical costs/invoices, estimated costs from respective vendors/service providers, contractual terms with vendors/service providers, anticipated service levels and needs, and discussions with vendors and Participants.

[c] This cost number for capitalized developed technology costs reflects (1) capitalized developed technology costs of $3,450,000 for May, $0 for June and $0 for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget; and (2) $0 for the Software License Fee 2026 for the second, third, and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: ($3,450,000 + $0 + $0 + $0) + ($0 + $0 + $0) = $3,450,000.

[d] This cost number for cloud hosting services reflects two-thirds of the cloud hosting services costs for the second quarter and the cloud hosting services for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $18,700,000) + $18,700,000 + $18,700,000 = $49,866,667.

[e] This cost number for operating fees reflects (1) two-thirds of the Non-CAIS fixed operating fees for the second quarter and the Non-CAIS fixed operating fees for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget and (2) two-thirds of the market data vendor fees for the second quarter and the market data vendor fees for the third and fourth quarter of 2026 as included in the Updated 2026 CAT Budget: ((⅔ × $7,191,853) + $7,191,853 + $7,191,853) + ((⅔ × $192,630) + $192,630 + $192,630) = $19,691,953.

[f] This cost number for CAIS operating fees reflects two-thirds of the CAIS fixed operating fees for the second quarter and the CAIS fixed operating fees for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $5,317,147) + $5,317,147 + $5,317,147 = $14,179,060.

[g] This $0 cost number for change requests reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

[h] This cost number for legal services reflects two-thirds of the legal costs for the second quarter and the legal costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[i] This cost number for consulting services reflects two-thirds of the consulting costs for the second quarter and the consulting costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $384,734) + $384,734 + $384,734 = $1,025,957.

[j] This cost number for insurance reflects two-thirds of the insurance costs for the second quarter and the insurance costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $300,977) + $321,042 + $331,074 = $852,768.

[k] This cost number for professional and administration services reflects two-thirds of the professional and administration costs for the second quarter and the professional and administration costs for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: (⅔ × $280,932) + $280,932 + $280,932 = $749,151.

[l] This $0 cost number of change requests reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

[m] This interest income reflects interest income (net of bank fees) of $517,208 for May and June and interest income (net of bank fees) for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget: $517,208 + $571,010 + $365,164 = $1,453,382. Note that interest income for May and June 2026 of $517,208 is slightly less than two-thirds of $809,598 (which is $539,732) for the second quarter as the amount of interest income varies from month to month.

[n] This amount for the use of the existing reserve is calculated by subtracting from the Accrued Liquidity Reserve Balance as of the Beginning of the Year in the Updated 2026 CAT Budget the 25% Incremental Liquidity Reserve Accrued during 2026 for the first quarter and for April of 2026 as included in the Updated 2026 CAT Budget: $155,403,378 − ($41,800,153 + $11,212,091) = $102,391,135. Note that the 25% Incremental Liquidity Reserved Accrued during 2026 for April 2026 of $11,212,091 is slightly more than one-third of $33,366,432 (which is $11,122,144) for the second quarter as the amount of the 25% Incremental Liquidity Reserved Accrued during 2026 varies from month to month.

To the extent that CAT LLC enters into notes with Participants or others to pay costs incurred during the period in which CAT Fee 2026–1 is in effect, CAT LLC will use the proceeds from CAT Fee 2026–1 and the related Participant CAT fees to repay such notes.

The following table compares the annual budgeted CAT costs as set forth in the updated annual CAT budget for 2025 approved by the Operating Committee in May 2025 (''May Updated 2025 CAT Budget''),[35] the updated annual CAT budget for 2025 approved by the Operating Committee in November 2025 (''November Updated 2025 CAT Budget''),[36] the Original 2026 CAT Budget and the Updated 2026 CAT Budget, and is provided for informational purposes. In each case, the costs provided reflect the costs for the entire year for each of the budgets; this differs from the above chart which focuses on budgeted costs for the period from May 1, 2026 through December 31, 2026, which, as noted, are the costs that are used in the calculation of the fee rate in this fee filing.

[34] With respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[35] The May Updated 2025 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-05/05.19.25-CAT-LLC-2025-Financial_and_Operating-Budget.pdf*).

[36] The November Updated 2025 CAT Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2025-12/12.22.25_CAT-LLC-2025-Finacial_and_Operating-Budget.pdf*).

COMPARISON OF FULL YEAR BUDGETED COSTS

| Budget category | Full year of 2025 budgeted CAT costs from updated 2025 CAT budget (May 2025) | Full year of 2025 budgeted CAT costs from updated 2025 budget (Nov. 2025) | Full year of 2026 budgeted CAT costs from original 2026 CAT budget | Full year of 2026 budgeted CAT costs from updated 2026 CAT budget |
|---|---|---|---|---|
| Capitalized Developed Technology Costs [a] | $4,871,962 | $5,163,991 | $8,228,827 | $8,378,964 |
| Technology Costs | 211,548,472 | 173,091,660 | 137,514,003 | 128,643,476 |
| Cloud Hosting Services | 159,230,937 | 122,084,811 | 81,900,006 | 77,529,362 |
| Operating Fees [b] | 30,817,686 | 29,932,001 | 34,345,413 | 29,845,524 |
| CAIS Operating Fees | 20,749,848 | 20,749,848 | 21,268,584 | 21,268,590 |
| Change Request Fees | 750,000 | 325,000 | 0 | 0 |
| Legal | 7,370,002 | 7,312,547 | 8,485,000 | 8,939,184 |
| Consulting | 1,749,998 | 1,750,000 | 1,550,000 | 1,550,000 |
| Insurance | 1,594,452 | 1,368,750 | 1,505,625 | 1,254,070 |
| Professional and administration | 1,193,090 | 1,392,679 | 1,145,500 | 1,085,500 |
| Public relations | 6,575 | 6,575 | 0 | 0 |
| Interest Income | 0 | (2,510,223) | (1,995,958) | (2,806,325) |
| Total Annual CAT Costs [c] | 228,334,551 | 187,575,979 | 156,432,998 | 147,044,869 |

[a] This cost number is calculated by adding together the Capitalized Developed Technology Costs and the Software License Fee for each budget.
[b] This cost number is calculated by adding together the Operating fees, the Cyber Insurance Premium Adjustment (if any) and market data vendor fees (if any separate fees) for each budget.
[c] This total cost number does not include an amount for a reserve.

In addition, the following table compares the budgeted costs for January and February 2026 that were used in drafting the Original 2026 CAT Budget with the actual costs for January and February 2026 that were used in drafting the Updated 2026 CAT Budget. The Original 2026 CAT Budget includes budgeted costs for January and February 2026, whereas the Updated 2026 CAT Budget includes actual costs for January and February 2026. The variance from the budgeted costs for January and February 2026 to the actual costs for January and February 2026 are used in this filing in supporting the reasonableness of the estimates for each category of costs.

COMPARISON OF BUDGETED AND ACTUAL COSTS FOR JANUARY & FEBRUARY 2026

| Budget category | Budgeted costs for January & February 2026 (as used in drafting the original 2026 CAT budget) | Actual costs for January & February 2026 (as used in drafting the updated 2026 CAT budget) | Variance from budgeted costs for January & February 2026 to actual costs for January & February of 2026 |
|---|---|---|---|
| Capitalized Developed Technology Costs [a] | $671,472 | $4,145,430 | Increase by $3,473,958.[b] |
| Technology Costs | 25,894,000 | 21,501,183 | |
| Cloud Hosting Services | 17,200,000 | 12,829,362 | Decrease by 4,370,638.[c] |
| Operating Fees | 5,149,236 | 5,127,057 | Decrease by 22,179. |
| CAIS Operating Fees | 3,544,764 | 3,544,764 | No change. |
| Change Request Fees | 0 | 0 | No change. |
| Legal | 1,424,166 | 1,838,617 | Increase by 414,451.[d] |
| Consulting | 258,334 | 267,554 | Increase by 9,220. |
| Insurance | 250,938 | 200,652 | Decrease by 50,286. |
| Professional and administration | 190,916 | 149,061 | Decrease by 41,855. |
| Public relations | 0 | 0 | No change. |
| Interest Income | (758,343) | (757,527) | Decrease by 816. |
| Total | 27,931,483 | 27,344,970 | Decrease by 586,513. |

[a] This cost number for capitalized developed technology costs is calculated by adding together the capitalized developed technology costs and the software license fee for each budget.
[b] The variance for capitalized developed technology costs is the result of costs related to the software license fee in accordance with the Plan Processor Agreement with FCAT.
[c] This variance is attributable to lower than forecasted market volumes and the impact of lower processing costs due to shutting down certain functionalities.
[d] The variance in legal costs is attributable to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created.

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the cloud hosting services costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $49,866,667 in technology costs for cloud hosting services for the CAT Fee 2026–1 Period. The technology costs for cloud hosting services represent costs reasonably budgeted to be incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS'') during the CAT Fee 2026–1 Period.

In the agreement between CAT LLC and the Plan Processor for the CAT (''Plan Processor Agreement''), FINRA CAT, LLC (''FCAT''), AWS was named as the subcontractor to provide cloud hosting services. Under the Plan Processor Agreement, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments. FCAT utilizes such cloud hosting services for a broad array of services for the CAT, such as data ingestion, data management, and analytic tools for the CAT. AWS performs cloud hosting services for both the CAT transaction database as well as the Reference Database (previously referred to as the Customer and Account Information System, or ''CAIS'').[37] It is anticipated that such cloud hosting services will continue during the CAT Fee 2026–1 Period.

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data, largely as a result of the processing and storage of the CAT Data.[38] The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT Fee 2026–1 Period, it is expected that AWS would provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [39] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [40] In contrast with those estimates, the Q3 2025 data volumes averaged 792 billion events per day. The highest peak data volume to date of 1.45 trillion events was recorded on April 7, 2025. The top five peak days were recorded in April 2025.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2026–1 Period will be approximately $49,866,667.[41] The budget for cloud hosting services costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the cloud hosting services costs for the second quarter and the cloud hosting services for the third and fourth quarters of 2026 as included in the Updated 2026 CAT Budget.[42]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2026–1 Period based on an assumption of 35% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for the Reference Database. CAT LLC determined these growth assumptions in coordination with FCAT.[43]

This process for estimating the budget for cloud hosting services costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2026 CAT Budget.

The Original 2026 CAT Budget estimated a budget for cloud hosting services of $17,200,000 for January and February 2026. The actual costs for cloud hosting services for January and February 2026, which are set forth in the Updated 2026 CAT Budget, were $12,829,362. Therefore, the variance between budgeted and actual cloud hosting services costs for January and February 2026 was an approximate decrease of $4,370,638 as a result of lower volumes and a change in functionality.[44] Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the cloud hosting services costs from the Original 2026 Budget.[45] Specifically, the following describes the differences in the costs for cloud hosting services included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for cloud hosting services included in the

[37] On January 13, 2026, the SEC approved an amendment to the CAT NMS Plan relating to the Customer and Account Information System (referred to as ''CAIS''). Effective with this amendment, CAIS has been renamed as the ''Reference Database.'' Securities Exchange Act Rel. No. 104586 (Jan. 13, 2026), 91 FR 2164 (Jan. 16, 2026) (''CAIS Amendment''). The SEC subsequently approved another amendment to the CAT NMS Plan to implement various cost savings measures that made further changes to the Reference Database. Securities Exchange Act Rel. No. 105107 (Mar. 27, 2026), 91 FR 16284 (Mar. 27, 2026) (''Cost Savings Amendment'').

[38] In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. For further discussion of the effect of processing timelines on cloud hosting costs, *see* Section 3(b)(2)(A)(i) below.

[39] Section 1.3 of Appendix D of the CAT NMS Plan, n.262.

[40] Section 1.3 of Appendix D of the CAT NMS Plan.

[41] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[42] This calculation is (⅔ × $18,700,000) + $18,700,000 + $18,700,000 = $49,866,667.

[43] Note that these growth rates are based on events processed and stored in the CAT. Executed transactions are a small subset of such events. As a result, the number of transactions in the CAT, and, hence, the number of executed equivalent shares, is not directly correlated with the number of events processed in the CAT or the costs of cloud hosting services for the CAT. Accordingly, the number of executed equivalent shares may stay relatively constant from year to year while the number of events processed and stored in the CAT may grow significantly.

[44] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[45] The last Prospective CAT Fee, CAT Fee 2025–2, was implemented pursuant to the prior CAT funding model. Moreover, the final invoice for CAT Fee 2025–2 was sent in December 2025, and, therefore, there is a six-month gap between the final invoice for CAT Fee 2025–2 and the first invoice for CAT Fee 2026–1, which would be in June 2026. Accordingly, this filing describes the changes in the cloud hosting services costs from the Original 2026 Budget.

Original 2026 CAT Budget were $81,900,006, and the annual 2026 budgeted costs for cloud hosting services included in the Updated 2026 CAT Budget are $77,529,362. Accordingly, budgeted annual costs for cloud hosting services decreased by $4,370,644 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 5% reduction in cloud hosting services costs for the full year of 2026.[46] The budgeted decrease in costs for cloud hosting services reflects lower costs for January and February 2026 due to lower than forecasted market volumes in January and the impact of lower processing costs due to shutting down certain functionalities.

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $19,691,953 in technology costs for operating fees for the CAT Fee 2026–1 Period. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan. Operating fees also include market data provider costs, as discussed below.

*Plan Processor: FCAT.* Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Provide the CAT-related functions and services as the Plan Processor as required by SEC Rule 613 and the CAT NMS Plan in connection with the operation and maintenance of the CAT;
- Address compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provide support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assist with interpretive efforts, exemptive requests and amendments regarding the CAT NMS Plan;
- Oversee the security of the CAT;
- Monitor the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provide support to subcontractors under the Plan Processor Agreement;
- Provide support in discussions with the Participants and the SEC and its staff;
- Operate the FINRA CAT Helpdesk;
- Facilitate communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administer the CAT website and all of its content;
- Maintain cyber security insurance related to the CAT;
- Assist with billing, collection and other CAT fee-related activity; and
- Provide technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

CAT LLC calculated the budget for the FCAT technology costs for operating fees for the CAT Fee 2026–1 Period based on the recurring monthly operating fees under the Plan Processor Agreement.

*Market Data Provider: Algoseek.* It is anticipated that the operating fees costs for the CAT Fee 2026–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Algoseek, LLC (''Algoseek''). CAT LLC determined that Algoseek would provide market data that included data elements set forth in Section 6.5(a)(ii) of the CAT NMS Plan, and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Algoseek for the CAT Fee 2026–1 Period based on the monthly rate set forth in the agreement between Algoseek and FCAT.

*Operating Fee Estimates.* CAT LLC estimates that the budget for operating fees during the CAT Fee 2026–1 Period will be approximately $19,691,953.[47] The budget for operating fees during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding (1) two-thirds of the Non-CAIS fixed operating fees for the second quarter and the Non-CAIS fixed operating fees for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget and (2) two-thirds of the market data vendor fees for the second quarter and the market data vendor fees for the third and fourth quarter of 2026 included in the Updated 2026 CAT Budget.[48]

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2026–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Algoseek. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for operating fees of $5,149,236 for January and February 2026, and the actual costs for operating fees for January and February 2026 were $5,127,057. Therefore, the variance between budgeted and actual operating fees for this period was small—$22,179.[49] Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the operating fees from the Original 2026 Budget. Specifically, the following describes the differences in the costs for operating fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for operating fees included in the Original

[46] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[47] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[48] This calculation is ((⅔ × $7,191,853) + $7,191,853 + $7,191,853) + ((⅔ × $192,630) + $192,630 + $192,630) = $19,691,953.

[49] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

2026 CAT Budget were $34,345,413, and the annual 2026 budgeted costs for operating fees included in the Updated 2026 CAT Budget are $29,845,524. Accordingly, budgeted annual costs for operating fees decreased by $4,499,889 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 13% reduction in operating fees for the full year of 2026.[50] The budgeted decrease in costs for operating fees reflects the proposed amendments to the Plan Processor Agreement related to the recent cost savings amendments to the CAT NMS Plan.[51]

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $14,179,060 in technology costs for CAIS operating fees for the CAT Fee 2026–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of the Reference Database (previously referred to as CAIS), and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Reference Data in the Reference Database and to create a CAT-Customer-ID for each Customer.[52]

During the CAT Fee 2026–1 Period, it is anticipated that FCAT will provide services related to the Reference Database. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT for services related to the Reference Database provided by FCAT on a monthly basis. CAT LLC negotiated the fees for FCAT's services related to the Reference Database on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. During the CAT Fee 2026–1 Period, it is anticipated that FCAT will continue to provide services relating to the ongoing operation, maintenance and support of the Reference Database.

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2026–1 Period will be approximately $14,179,060.[53] The budget for CAIS operating fees during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the CAIS fixed operating fees for the second quarter and the CAIS fixed operating fees for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[54]

CAT LLC calculated the budget for FCAT's services related to the Reference Database for the CAT Fee 2026–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget of $3,544,764 for CAIS operating fees for January and February of 2026. The actual costs for CAIS operating fees for January and February of 2026, which are included in the Updated 2026 CAT Budget, were $3,544,764. There was no variance between budgeted and actual CAIS operating fees for the first two months of 2026.[55] Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the CAIS operating fees from the Original 2026 Budget. Specifically, the following describes the differences in the costs for CAIS operating fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

CAIS operating fees are based on a recurring monthly rate payable to FCAT and are unchanged from the Original 2026 CAT Budget to the Updated 2026 CAT Budget. The annual 2026 budgeted costs for CAIS operating fees included in the Original 2026 CAT Budget were $21,268,584, and the annual 2026 budgeted costs for CAIS operating fees included in the Updated 2026 CAT Budget are $21,268,590.[56] Accordingly, the budgeted annual costs for CAIS operating fees are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the change request fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $0 in technology costs for change request fees for the CAT Fee 2026–1 Period. The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT.

Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other changes to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change.

The change request budget line is established to include expected costs to be incurred in which the nature of the costs (*i.e.,* capitalization versus expensing) have not yet been determined. Upon the incurrence of such costs, the final determination of capitalization versus expensing is determined and then such costs are reclassified from the change request line to the appropriate technology cost line item.

CAT LLC estimates that the budget for change requests during the CAT Fee 2026–1 Period will be approximately

[50] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[51] *See* CAIS Amendment and Cost Savings Amendment.

[52] *See* Section 9 of Appendix D of the CAT NMS Plan.

[53] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[54] This calculation is (⅔ × $5,317,147) + $5,317,147 + $5,317,147 = $14,179,060.

[55] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[56] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

$0.[57] The budget for change requests during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. This $0 cost number for change request fees reflects the fact that there were no change request fees set forth in the Updated 2026 CAT Budget.

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2026–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a change request budget of $0 for January and February of 2026. The actual costs for change requests for January and February of 2026, which are set forth in the Updated 2026 CAT Budget, were $0. There was no variance between budgeted and actual change request costs for January and February of 2026.[58] Accordingly, CAT LLC believes that the process for estimating the budgeted change request costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the change request fees from the Original 2026 Budget. Specifically, the following describes the differences (if any) in the costs for change request fees included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted costs for change requests included in the Original 2026 CAT Budget were $0, and the annual 2026 budgeted costs for change requests included in the Updated 2026 CAT Budget are $0.[59] Accordingly, budgeted annual costs for change requests are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the capitalized developed technology costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $3,450,000 in technology costs for capitalized developed technology costs for the CAT Fee 2026–1 Period. This category of costs includes the budget for capitalizable application development costs incurred in the development of the CAT. It is anticipated that such costs will include certain costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT related to the cost savings amendments[60] and the move to 23x5 trading.

CAT LLC estimates that the budget for capitalized developed technology costs during the CAT Fee 2026–1 Period will be approximately $3,450,000.[61] The budget for capitalized developed technology costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding (1) capitalized developed technology costs of $3,450,000 for May, $0 for June and $0 for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget; and (2) $0 for the Software License Fee 2026 for the second, third, and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[62]

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2026–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. This process for estimating the budget for capitalized developed technology costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the capitalized developed technology costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for capitalized developed technology costs of $671,472 for January and February 2026, and the actual costs for capitalized developed technology costs for January and February 2026 were $4,145,430.[63] The variance of $3,473,958 for January and February 2026 is the result of costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the capitalized developed technology costs from the Original 2026 Budget. Specifically, the following describes the differences in the costs for capitalized developed technology costs as included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budget for capitalized developed technology costs included in the Original 2026 CAT Budget was $8,228,827, and the annual 2026 budget for capitalized developed technology costs included in the Updated 2026 CAT Budget are $8,378,964.[64] Accordingly, the annual budget for capitalized developed technology costs increased by $150,137 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget, which is an approximate 2% increase in the capitalized developed technology costs for the full year of 2026. This budgeted increase in the annual budget for capitalized developed technology costs was the result of costs related to the software license fee for the Reference Database in accordance with the Plan Processor Agreement with FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan requires the fee filing for a

[57] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[58] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[59] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[60] *See* CAIS Amendment and Cost Savings Amendment.

[61] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[62] This calculation is ($3,450,000 +$0 + $0 + $0) + ($0 + $0 + $0) = $3,450,000. Note that the $4,178,964 cost for the software license fee was not included in the CAT Fee 2026–1 Period.

[63] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[64] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

Prospective CAT Fee to provide a brief description of the legal costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $5,670,452 in legal costs for the CAT Fee 2026–1 Period. This category of costs represents budgeted costs for legal services for this period. CAT LLC anticipates that it will receive legal services from two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Jenner & Block LLP (''Jenner''), during the CAT Fee 2026–1 Period.

*Law Firm: WilmerHale.* It is anticipated that legal costs during the CAT Fee 2026–1 Period will include costs related to the legal services performed by WilmerHale. CAT LLC anticipates that it will continue to employ WilmerHale during the CAT Fee 2026–1 Period based on, among other things, their expertise, long history with the project and recognition that the hourly fee rates for this law firm are anticipated to be in line with market rates for specialized legal expertise. WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. The legal fees will be paid by CAT LLC to WilmerHale.

During the CAT Fee 2026–1 Period, it is anticipated that WilmerHale will provide legal services related to the following:

- Assist with CAT fee filings and related funding issues;
- Draft exemptive requests from CAT NMS Plan requirements and/or proposed amendments to the CAT NMS Plan;
- Provide legal guidance with respect to interpretations of CAT NMS Plan requirements;
- Provide legal support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team;
- Draft SRO rule filings related to the CAT Compliance Rule;
- Manage corporate governance matters, including supporting Operating Committee meetings and preparing resolutions and consents;
- Assist with communications with the industry, including CAT Alerts and presentations;
- Provide guidance regarding the confidentiality of CAT Data;
- Assist with cost management analyses and proposals;
- Assist with commercial contract-related matters, including change orders and amendments, Plan Processor Agreement items, and subcontract matters;
- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Provide legal guidance with respect to the CAT budgets;
- Provide background assistance to other counsel for CAT matters;
- Assist with legal responses related to third-party data requests; and
- Provide legal support regarding CAT policies and procedures.

CAT LLC estimated the budget for the legal costs for WilmerHale for the CAT Fee 2026–1 Period through an analysis of a variety of factors, including WilmerHale fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues.

*Law Firm: Jenner.* It is anticipated that legal costs during the CAT Fee 2026–1 Period will include costs related to the legal services performed by Jenner. CAT LLC anticipates that it will continue to employ Jenner during the CAT Fee 2026–1 Period based on, among other things, their expertise, history with the project and recognition that their hourly fee rates are in line with market rates for specialized legal expertise. The legal fees will be paid by CAT LLC to Jenner.

During the CAT Fee 2026–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against the SEC Chair, the SEC and CAT LLC challenging the validity of Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims;[65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;[66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order[67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model. Jenner also will continue to provide legal counseling to CAT LLC related to the above-listed litigation and other litigation risk.

CAT LLC estimated the budget for the legal costs for Jenner for the CAT Fee 2026–1 Period through an analysis of a variety of factors, including Jenner's fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues.

*Legal Cost Estimates.* CAT LLC estimates that the budget for legal services during the CAT Fee 2026–1 Period will be approximately $5,670,452.[69] The budget for legal services during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding budgeted costs for two-thirds of the legal costs for the second quarter and the legal costs for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[70]

CAT LLC estimated the budget for the legal services for the CAT Fee 2026–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues. This process for estimating the budget for the legal services for CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for legal costs of $1,424,166 for January and February of 2026. The actual costs for legal services for January and February 2026, which are included in the Updated 2026 Budget, were $1,838,617.[71] The increase of $414,451 was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs were primarily due to additional legal work related to litigation matters as well as regulatory and corporate legal matters. Accordingly, CAT LLC believes that the process for estimating the

[65] *Davidson et al.* v. *Atkins et al.,* Case No. 6:24-cv-197 (W.D. Tex.).

[66] *Am. Sec. Ass'n* v. *SEC,* Case No. 26–10936 (11th Cir.).

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

[68] *Citadel Securities* v. *SEC,* Case No. 24–12300 (11th Cir.).

[69] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[70] This calculation is (⅔ x $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[71] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

budgeted legal costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the legal costs from the Original 2026 Budget. Specifically, the following describes the differences in the legal costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted legal costs included in the Original 2026 CAT Budget were $8,485,000, and the annual 2026 budgeted legal costs included in the Updated 2026 CAT Budget are $8,939,184.[72] Accordingly, the annual budget for legal costs increased by $454,184 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 5% increase in the legal costs for the full year of 2026. This budgeted increase in the legal costs in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to an anticipated increase in legal costs related to litigation matters as well as regulatory and corporate legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,025,957 in consulting costs for the CAT Fee 2026–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the CAT Fee 2026–1 Period. The services provided by Deloitte to the CAT include advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses. In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee.

It is anticipated that the costs for CAT during the CAT Fee 2026–1 Period will include costs related to consulting services performed by Deloitte. CAT LLC anticipates that it will continue to employ Deloitte during the CAT Fee 2026–1 Period based on, among other things, their expertise, long history with the project, and the recognition that it is anticipated that the consulting fees will remain in line with market rates for this type of specialized consulting work. Deloitte's fee rates are negotiated on an annual basis. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. The consulting fees will be paid by CAT LLC to Deloitte.

It is anticipated that Deloitte will provide a variety of consulting services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Implement program operations for the CAT project;
- Provide support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assist with cost and funding matters for the CAT, including assistance with loans and the CAT bank account for CAT funding;
- Provide support for updating the SEC on the progress of the development of the CAT; and
- Provide support for third party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee, which is paid by CAT LLC.

CAT LLC estimates that the budget for consulting costs during the CAT Fee 2026–1 Period will be approximately $1,025,957.[73] The budget for consulting costs during the CAT Fee 2026–1 Period is calculated based on the Updated 2026 CAT Budget. Specifically, this estimate was calculated by adding two-thirds of the consulting costs for the second quarter and the consulting costs for the third and fourth quarters of 2026 included in the Updated 2026 CAT Budget.[74]

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2026–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, and discussions with Deloitte, as well as the compensation arrangement for the Chair. This process for estimating the budget for consulting costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the consulting costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for consulting services of $258,334 for January and February 2026, and the actual costs for consulting services for January and February 2026, which are included in the Updated 2026 CAT Budget, were $267,554.[75] Therefore, the variance between budgeted and actual consulting costs for January and February was approximately 4%. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the consulting costs from the Original 2026 Budget. Specifically, the following describes the differences (if any) in the consulting costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budget for consulting costs included in the Original 2026 CAT Budget was $1,550,000, and the annual 2026 budget for consulting costs included in the Updated 2026 CAT Budget is $1,550,000.[76] Accordingly, the annual budget for consulting costs has not changed from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026.

(viii) Insurance Costs

(a) Description of Insurance Costs

Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the insurance costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $852,768 in insurance costs for

[72] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[73] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[74] This calculation is (⅔ x $2,145,170) + $2,125,170 + $2,115,170 = $5,670,452.

[75] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[76] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

the CAT Fee 2026–1 Period.[77] The insurance costs represent the costs to be incurred for insurance for the CAT during the CAT Fee 2026–1 Period.

It is anticipated that the insurance costs for CAT during the CAT Fee 2026–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during the CAT Fee 2026–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2026–1 Period based on the insurance estimate from USI for 2026. The annual premiums would be paid by CAT LLC to USI.

The budgeted insurance costs for the CAT Fee 2026–1 Period are based on an insurance cost estimate from USI for 2026. Accordingly, CAT LLC believes that the process for estimating the budgeted insurance costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for insurance costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the insurance costs from the Original 2026 Budget. Specifically, the following describes the differences in the insurance costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted insurance costs included in the Original 2026 CAT Budget were $1,505,625, and the annual 2026 budgeted insurance costs included in the Updated 2026 CAT Budget are $1,254,070.[78] Accordingly, the annual budget for insurance costs decreased by $251,555 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 16% decrease in the insurance costs for the full year of 2026. This budgeted decrease in the insurance costs in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to an anticipated decrease in insurance premiums.

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $749,151 in professional and administration costs for the CAT Fee 2026–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[79] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin, Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during the CAT Fee 2026–1 Period.

*Financial Advisory Firm: Anchin.* It is anticipated that the professional and administration costs for the CAT Fee 2026–1 Period will include costs related to financial advisory services performed by Anchin. CAT LLC anticipates that it will continue to employ Anchin during the CAT Fee 2026–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. The fees for these services will be paid by CAT LLC to Anchin.

It is anticipated that Anchin will provide a variety of services to the CAT during the CAT Fee 2026–1 Period, including the following:

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Facilitate bill payments to vendors;
- Facilitate repayments of promissory notes to Participants;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Review documentation to ensure that repayments of promissory notes to Participants are in accordance with established policies and procedures;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual and interim operating and financial budgets, including budget to actual and budget to budget fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee, Leadership Team and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Review and reconcile the monthly FINRA CAT reports/analyses related to billings, collections, outstanding accounts receivable and cash account;
- Perform certain verification, completeness, and validation testing related to the monthly FINRA CAT reports/analyses related to billings;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

CAT LLC estimated the annual budget for the costs for Anchin based on historical costs adjusted for cost of living rate increases, and projected incremental advisory and support services.

*Accounting Firm: Grant Thornton.* It is anticipated that the professional and administration costs for the CAT Fee 2026–1 Period will include costs related to accounting services performed by Grant Thornton. CAT LLC anticipates that it will continue to employ Grant Thornton during the CAT Fee 2026–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. It is anticipated that Grant Thornton will continue to be engaged as an independent accounting firm to complete the audit of CAT LLC's

[77] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[78] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[79] Section 9.2 of the CAT NMS Plan.

financial statements, in accordance with the requirements of the CAT NMS Plan. The fees for these services will be paid by CAT LLC to Grant Thornton. CAT LLC estimated the budget for the accounting costs for Grant Thornton for the CAT Fee 2026–1 Period based on the anticipated hourly rates and the anticipated services plus an administrative fee.

*Professional and Administration Cost Estimates.* CAT LLC estimates that the budget for professional and administration services during the CAT Fee 2026–1 Period will be approximately $749,151.[80] The budget for professional and administration services during the CAT Fee 2026–1 Period is based on the Updated 2026 CAT Budget. CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2026–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2026–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2026 CAT Budget. The Original 2026 CAT Budget estimated a budget for professional and administration costs of $190,916 for January and February 2026, and the actual costs for professional and administration services for January and February 2026, which are set forth in the Updated 2026 Budget, were $149,061.[81] The decrease of $41,855 was due to a lower than expected profressional and administration services costs and to the movement of bank fees from the professional and administration category to the interest income category. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for professional and administration costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the professional and administration costs from the Original 2026 Budget. Specifically, the following describes the differences in the professional and administration costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted professional and administration costs as included in the Original 2026 CAT Budget were $1,145,500, and the annual 2026 budgeted professional and administration costs included in the Updated 2026 CAT Budget are $1,085,500.[82] Accordingly, the budgeted annual costs for professional and administration services decreased by $60,000 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026. This budgeted decrease in the professional and administration costs in the Updated 2026 CAT Budget from the Original 2026 Budget was due to the movement of bank fees from the professional and administration category to the interest income category, and not a change in costs related to Anchin and Grant Thornton services.

(x) Public Relations Costs

(a) Description of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $0 in public relations costs for the CAT Fee 2026–1 Period. The public relations costs would represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. Because CAT LLC anticipates that it will not engage a public relations firm for the CAT Fee Period 2026–1, the budget for public relations costs for this period is $0.[83]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in the public relations costs from the Original 2026 Budget. Specifically, the following describes the differences (if any) in public relations costs included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual budgeted public relations costs for 2026 included in the Original 2026 CAT Budget were $0, and the annual budgeted public relations costs for 2026 included in the Updated 2026 CAT Budget are $0.[84] Accordingly, the annual budgeted public relations costs for 2026 are the same for both the Original 2026 CAT Budget and the Updated 2026 CAT Budget.

(xi) Interest Income

(a) Description of Interest Income

Section 11.1(a) of the CAT NMS Plan requires the CAT budget to include ''the sources of all revenues to cover costs.'' Accordingly, the Updated 2026 CAT Budget includes a line item for interest income. Specifically, the Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,453,382 in interest income for the CAT Fee 2026–1 Period.[85] Interest income represents the interest earned on the surplus reserve and other funds held by CAT LLC. Such income would be used to reduce the amount to be collected to fund the CAT.

CAT LLC estimates the budget for the interest income for the CAT Fee 2026–1 Period based on the estimate of the funds held by CAT LLC and the expected interest rates on such funds. The Original 2026 CAT Budget estimated interest income of $758,343 for January and February 2026, and the actual interest income for January and February 2026, which are included in the Updated 2026 CAT Budget, were $757,527.[86] As mentioned above, bank fees were moved from the professional and administration category in the Original 2026 CAT Budget to the interest income category in the Updated 2026 CAT Budget. Accordingly, the interest income amount for the Updated 2026 CAT Budget was net of $10,000 in bank fees. Therefore, the variance between budgeted and actual interest income (aside from bank fees) for January and February 2026 was approximately $10,000. Accordingly,

[80] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[81] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

[82] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[83] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[84] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[85] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[86] *See* chart entitled ''Comparison of Budgeted and Actual Costs for January & February 2026'' in Section 3(a)(2)(C) above.

CAT LLC believes that the process for estimating the budgeted interest income for the CAT Fee 2026–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in each line item from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in interest income from the Original 2026 CAT Budget. Specifically, the following describes the differences in the interest income included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The annual 2026 budgeted interest income as included in the Original 2026 CAT Budget was $1,995,958, and the annual 2026 budgeted interest income included in the Updated 2026 CAT Budget is $2,806,325.[87] Accordingly, the budgeted interest income (not including bank fees) increased by $810,367 from the Original 2026 CAT Budget to the Updated 2026 CAT Budget for the full year of 2026, which is an approximate 40% increase in the interest income for the full year of 2026. This budgeted increase in the interest income in the Updated 2026 CAT Budget from the Original 2026 Budget was primarily due to higher than expected cash balances being maintained after the approval of the Original 2026 Budget.

(xii) Reserve

(a) Description of Reserve

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the reserve costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes a reserve amount for 2026. Section 11.1(a)(i) of the CAT NMS Plan states that the budget shall include a reserve. Section 11.1(a)(ii) of the CAT NMS Plan further describes the reserve as follows:

For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.

CAT LLC determined to maintain a reserve in the amount of 25% of the total expenses set forth in the Updated 2026 CAT Budget (which does not include the reserve amount). Accordingly, the total 25% reserve of $23,508,157 was calculated by multiplying the total expenses set forth in the Updated 2026 CAT Budget (other than the reserve) by 25%.[88]

The Updated 2026 CAT Budget estimates that CAT LLC will have $102,391,135 in reserve as of the beginning of the CAT Fee Period 2026–1. Such reserve is related, in part, to (i) the collection of CAT fees in excess of the budgeted CAT costs in light of the greater actual executed equivalent share volume than the projected executed equivalent share volume for prior CAT Fees, and (ii) a reduction in anticipated budgeted costs associated with the implementation of certain cost savings measures. This reserve balance of $102,391,135 would be used to offset a portion of CAT costs for CAT Fee Period 2026–1, thereby reducing the fee rate to be paid for CAT Fee 2026–1. Specifically, the total costs (including the 25% reserve) for CAT Fee 2026–1 of $117,540,783 would be reduced by the $102,391,135 in reserve. Therefore, the Total Budgeted CAT Costs 2026–1 would be $15,149,648.

Accordingly, the fee rate for CAT Fee 2026–1 is calculated based on this reduced amount of $15,149,648, resulting in a fee rate of $0.000001 per executed equivalent share. If the fee rate for CAT Fee 2026–1 were calculated solely based on the reasonably budgeted costs for CAT for May—December 2026, excluding the reduction in that amount due to the surplus reserve offset, the fee rate would be the higher rate of $0.000010.[89]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. As this is the first Prospective CAT Fee filing under this CAT Funding Model, this filing describes the changes in reserve from the Original 2026 CAT Budget. Specifically, the following describes the differences in the reserve included in the Original 2026 CAT Budget versus the Updated 2026 CAT Budget, and the reasons for any changes.

The accrued liquidity reserve balance at the beginning of the year included in the Original 2026 CAT Budget was $119,128,336. The Original 2026 CAT Budget contemplated using the reserve to pay CAT bills throughout the year as no CAT fee was in effect. The accrued liquidity reserve balance at the beginning of the year included in the Updated 2026 CAT Budget was $155,403,378. The increase in the accrued liquidity reserve balance at the beginning of the year from the Original 2026 CAT Budget to the Updated 2026 CAT Budget reflected the additional CAT Fees that had been received after the approval of the Original 2026 CAT Budget. In addition, the Updated 2026 CAT Budget not only reflected the use of the surplus reserve to pay CAT bills but also the accrual of additional reserve to establish a 25% reserve through CAT Fee 2026–1. Accordingly, the estimated liquidity reserve balance increased from a deficit of $37,304,661 included in the Original 2026 CAT Budget to a reserve balance of $23,508,157 included in the Updated 2026 CAT Budget for the full year of 2026.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2026–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2026–1 Period. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [90] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[91]

[87] *See* chart entitled ''Comparison of Full Year Budgeted Costs'' in Section 3(a)(2)(C) above.

[88] The reserve was calculated by multiplying $94,032,626 by 25%, which equals approximately $23,508,157.

[89] *See* CAT Fee Alert 2026–1 (Apr. 1, 2026).

[90] Section 11.3(a)(i)(D) of the CAT NMS Plan.

[91] CAT Funding Model Approval Order at 13452.

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the eight-month recovery period for CAT Fee 2026–1 by multiplying by 8/12ths the executed equivalent share volume for the 12-month period from March 2025 through February 2026. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.41), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for the eight-month period for CAT Fee 2026–1 is projected to be 3,987,291,699,573.66 executed equivalent shares.[92]

The projected total executed equivalent share volume of all transactions in Eligible Securities for the eight-month recovery period for CAT Fee 2026–1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.[93]

(E) Fee Rate 2026–1

Fee Rate 2026–1 would be calculated by dividing the Budgeted CAT Costs 2026–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the eight-month recovery period for CAT Fee 2026–1, as described in detail above.[94] Specifically, Fee Rate 2026–1 would be calculated by dividing $15,149,648 by 3,987,291,699,573.66 executed equivalent shares. As a result, Fee Rate 2026–1 would be $0.000003799483243631228 per executed equivalent share. Fee Rate 2026–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[95]

Fee Rate 2026–1 would be used to calculate the fee rate to be paid by CEBSs and CEBBs for CAT Fee 2026–1. Such fee rate is calculated by multiplying Fee Rate 2026–1 of $0.000003799483243631228 by one-third, and rounding the result to six decimal places.[96] Accordingly, the fee rate to be paid by CEBSs and CEBBs for CAT Fee 2026–1 would be $0.000001 per executed equivalent share.

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2026–1 on a monthly basis for eight months, from July 2026 until January 2027. A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[97] Proposed paragraph (a)(6)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2026–1 in June 2026, and would receive an invoice for CAT Fee 2026–1 each month thereafter until January 2027. Proposed paragraph (a)(6)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis.'' In addition, paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2026–1, the Exchange proposes to add a new paragraph to the ''Consolidated Audit Trail Funding Fees'' section of the Exchange's fee schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2026–1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[98]

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(6) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(6) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for CAT Fee 2026–1 in June 2026, which shall set forth the CAT Fee 2026–1 fees calculated based on transactions in May 2026, and shall receive an invoice for CAT Fee 2026–1 for each month thereafter until January 2027.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000001 per executed equivalent share.

(C) Notwithstanding the last invoice date of January 2027 for CAT Fee 2026–1 in paragraph 6(A), CAT Fee 2026–1 shall continue in effect after January 2027, with each CAT Executing Broker receiving an invoice for CAT Fee 2026–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2026–1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for CAT Fee 2026–1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by

[92] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by 8/12ths.

[93] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[94] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is appropriate.'' CAT Funding Model Approval Order at 13435.

[95] *See* Section 11.3(a)(iii)(B)(A) of the CAT NMS Plan.

[96] This fee rate of $0.000001 is calculated by multiplying the Fee Rate of $0.000003799483243631228 by one-third and rounding this result (which equals $0.000001266494414543743) to 6 decimal places.

[97] *See* proposed paragraph (a)(6)(B) of the fee schedule.

[98] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

one-third and describing the relevant number of decimal places for the fee.'' [99] Accordingly, proposed paragraph (a)(6)(B) of the fee schedule would set forth a fee rate of $0.000001 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2026–1 of $0.000003799483243631228 by one-third, and rounding the result to six decimal places.[100] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(6)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2026–1. Specifically, CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2026–1 in June 2026 and the fees set forth in that invoice would be calculated based on transactions executed in May 2026. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(6)(A) of the fee schedule also would describe the monthly cadence of the invoices for CAT Fee 2026–1. Specifically, after the first invoices are provided to CAT Executing Brokers in June 2026, invoices will be sent to CAT Executing Brokers each month thereafter until January 2027.

Proposed paragraph (a)(6)(B) of the fee schedule would describe the invoices for CAT Fee 2026–1. Proposed paragraph (a)(6)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2026–1 on a monthly basis.'' Proposed paragraph (a)(6)(B) of the fee schedule also would describe the fees to be set forth in the invoices for CAT Fee 2026–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000001 per executed equivalent share.''

Since CAT Fee 2026–1 is a monthly fee based on actual transaction volume from the prior month, CAT Fee 2026–1 may collect more or less than two-thirds of the Budgeted CAT Costs 2026–1. To the extent that CAT Fee 2026–1 collects more than two-thirds of the Budgeted CAT Costs 2026–1, any excess money collected will be used to offset future fees and/or to fund the reserve for the CAT. To the extent that CAT Fee 2026–1 collects less than two-thirds of the Budgeted CAT Costs 2026–1, the budget for the CAT in the ensuing months will reflect such shortfall.

Furthermore, proposed paragraph (a)(6)(C) of the fee schedule would describe how long CAT Fee 2026–1 would remain in effect. It would state that ''[n]otwithstanding the last invoice date of January 2027 for CAT Fee 2026–1 in paragraph 6(A), CAT Fee 2026–1 shall continue in effect after January 2027, with each CAT Executing Broker receiving an invoice for CAT Fee 2026–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2026–1 will no longer be in effect.''

Finally, proposed paragraph (a)(6)(D) of the fee schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2026–1. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2026–1 in accordance with paragraph (b).''

(B) Manner of Payment

Paragraph (b)(1) of the ''Consolidated Audit Trail Funding Fees'' section of the fee schedule describes the manner of payment of Industry Member CAT fees. It states that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.'' The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[101] The Plan Processor has established a billing system for CAT fees.[102] Accordingly, CAT Executing Brokers would be required to pay CAT Fee 2026–1 in accordance with such system.

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[103]

Paragraph (b)(2) of the fee schedule states that:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to CAT Fee 2026–1.

(5) CAT Fee Details

The CAT NMS Plan states that:

Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[104]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the

[99] CAT Funding Model Approval Order at 13445, n.677.

[100] This fee rate of $0.000001 is calculated by multiplying the Fee Rate of $0.000003799483243631228 by one-third, and rounding this result (which equals $0.000001266494414543743) to 6 decimal places.

[101] Section 11.4 of the CAT NMS Plan.

[102] The billing process and system are described in CAT Alert 2023–02 as well as in the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023 and Nov. 7, 2023), each available on the CAT website.

[103] Section 11.4 of the CAT NMS Plan.

[104] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

calculation of their CAT Fee.[105] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [106] Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that CAT Fee 2026–1 is in effect as well as the total amount invoiced for CAT Fee 2026–1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for CAT Fee 2026–1.

(6) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.'' [107] Under Section 1.1 of the CAT NMS Plan, a Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,[108] the Financial Accountability Milestone related to Period 4 was satisfied on July 15, 2024. In addition, the satisfaction of the Financial Accountability Milestone related to Period 4 was described in detail in the fee filing for the first Prospective CAT Fee, CAT Fee 2024–1.[109]

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[110] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[111] On March 31, 2026, the Operating Committee approved the Participant fee related to CAT Fee 2026–1. Specifically, pursuant to the requirements of CAT NMS Plan,[112] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000001 per executed equivalent share, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be invoiced such CAT fees on a monthly basis for eight months, from June 2026 until January 2027, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on an exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in June 2026, and would receive an invoice each month thereafter until January 2027. Like with the CAT Fee 2026–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(6)(C) of the fee schedule, notwithstanding the last invoice date of January 2027, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

[e]ach Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the ''Payment Date''). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[113] which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[114] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[115] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[116] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the

[105] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.'' CAT Funding Model Approval Order at 13454.

[106] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 13454.

[107] Section 11.3(a)(iii)(C) of the CAT NMS Plan.

[108] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[109] *See* Securities Exchange Act Rel. No. 100892 (September 9, 2024), 89 FR 73150 (September 19, 2024) (SR–LTSE–2024–04).

[110] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[111] CAT Funding Model Approval Order at 13448.

[112] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[113] 15 U.S.C. 78f(b)(6).

[114] 15 U.S.C. 78f(b)(4).

[115] 15 U.S.C. 78f(b)(8).

[116] *See* 15 U.S.C. 78f(b)(1).

Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [117] To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees to be paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the CAT Fee 2026–1 fees to be collected are directly associated with the budgeted costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, and professional and administration costs.

The proposed CAT Fee 2026–1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [118] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[119] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for CAT Fee 2026–1 Is Reasonable

The SEC has determined that the CAT Funding Model satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, satisfies the Exchange Act.[120] In each respect, as discussed above, CAT Fee 2026–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2026–1 is reasonable and consistent with the Exchange Act. The calculation of Fee Rate 2026–1 for CAT Fee 2026–1 requires the figures for Budgeted CAT Costs 2026–1, the executed equivalent share volume for the prior twelve months, the determination of the CAT Fee 2026–1 Period, and the projection of the executed equivalent share volume for the CAT Fee 2026–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2026–1

The formula for calculating a Fee Rate requires the amount of Budgeted CAT Costs to be recovered. Specifically, Section 11.3(a)(iii)(B) of the CAT NMS Plan requires a fee filing to provide: the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.

In accordance with this requirement, the Exchange has set forth the amount and type of Budgeted CAT Costs 2026–1 for each of these categories above.

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2026–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2026–1 is reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or is consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.[121] CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. As

[117] CAT NMS Plan Approval Order at 84697.

[118] *Id.*

[119] CAT Funding Model Approval Order at 13481.

[120] *Id.*

[121] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[122] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [123] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[124] In contrast to the 2016 projections, the actual daily Q3 2025 data volumes averaged 792 billion events per day.

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and amendments to the CAT NMS Plan to reduce costs, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[125]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.[126] CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[127] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[128] The services to be performed by FCAT for CAT Fee 2026–1 Period and the budgeted costs related to such services are described above.[129]

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates receiving certain market data from Algoseek during the CAT Fee 2026–1 Period. CAT LLC anticipates that Algoseek will provide data as set forth in the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.[130]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[131] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain the Reference Database and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's services related to the Reference Database, negotiated on an arm's length basis with the goals of

[122] For a discussion of the amount and type of cloud hosting services fees, *see* Section 3(a)(2)(C)(i) above.

[123] Section 1.3 of Appendix D of the CAT NMS Plan at n.262.

[124] CAT NMS Plan Approval Order at 84801.

[125] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[126] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[127] *See* Section 3(a)(2)(C)(ii) above.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[132] The services to be performed by FCAT for the CAT Fee 2026–1 Period and the budgeted costs for such services are described above.[133]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.[134] CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,[135] CAT LLC determined that it was reasonable not to include any change request fees in the Budgeted CAT Costs 2026–1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.[136] In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2026–1 Period, which relate to the software license fee and technology changes to be implemented by FCAT, are described in more detail above.[137]

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[138] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2026–1 Period and the budgeted costs related to such services are described above.[139]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[140] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. Because there are no CAT employees [141] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[142] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[143]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as a part of CAT Fees.[144] CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of the Budgeted CAT Costs 2026–1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [145] As discussed above,[146] CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[147]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[148] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2026–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included

[132] *See* Section 3(a)(2)(C)(iii) above.

[133] *Id.*

[134] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[135] *See* Section 3(a)(2)(C)(iv) above.

[136] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[137] *See* Section 3(a)(2)(C)(v) above.

[138] Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

[139] *See* Section 3(a)(2)(C)(vi) above.

[140] Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan.

[141] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

[142] CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. *See, e.g.,* CTA Plan and CQ Plan.

[143] Section 3(a)(2)(C)(vii) above.

[144] Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan.

[145] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[146] *See* Section 3(a)(2)(C)(viii) above.

[147] *Id.*

[148] Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs related to such services are described above.[149]

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.[150]

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.[151]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[152] However, as described above,[153] CAT LLC determined not to include any public relations costs in Budgeted CAT Costs 2026–1. CAT LLC determined that it was reasonable not to include any public relations costs in the Budgeted CAT Costs 2026–1.

(xi) Interest Income

Section 11.1(a) of the CAT NMS Plan requires the CAT budget to include ''the sources of all revenues to cover costs.'' Accordingly, the Updated 2026 CAT Budget includes a line item for interest income. Specifically, the Updated 2026 CAT Budget includes $1,453,382 in interest income for the CAT Fee 2026–1 Period.[154] CAT LLC determined that using interest income to reduce the amount to be collected via CAT Fees is reasonable and should be included as a part of the Budgeted CAT Costs 2026–1.

(xii) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.[155] CAT LLC determined that the reserve in the amount of 25% of the Updated 2026 CAT Budget (other than the reserve) complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount, and, therefore, should be included as a part of the Updated 2026 CAT Budget.

In its approval order for the CAT Funding Model, the Commission stated that it would be appropriate for the annual operating budget for the CAT to ''include a reserve of not more than 25% of the annual budget.'' [156] In making this statement, the Commission noted the following:

Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is appropriate to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[157]

The SEC also recognized that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.[158] The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.[159] The inclusion of the proposed reserve in the Updated 2026 CAT Budget would provide each of these benefits to the CAT. The reserve is discussed further above.[160]

As discussed further below,[161] however, a surplus reserve balance in excess of the budgeted 25% reserve has been collected as of the beginning of the year of 2026. Accordingly, the Updated 2026 CAT Budget indicates that this surplus would be used to offset a portion of CAT costs for the CAT Fee 2026–1 Period, thereby reducing the fee rate for CAT Fee 2026–1 ($0.000001 per executed equivalent share). If the fee rate for CAT Fee 2026–1 were calculated solely based on the reasonably budgeted costs for CAT for May–December 2026, excluding the reduction in that amount due to the surplus reserve offset, the fee rate would be $0.000010 per executed equivalent share.

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include ''a discussion of how the budget is reconciled to the collected fees.'' [162] As discussed above,[163] this reserve balance of $102,391,135 collected via prior CAT Fees would be used to offset a portion of CAT costs for CAT Fee Period 2026–1, thereby reducing the fee rate to be paid for CAT Fee 2026–1. Specifically, the total costs (including the 25% reserve) for CAT Fee 2026–1 of $117,540,783 would be reduced by the $102,391,135 in reserve. Therefore, the Total Budgeted CAT Costs 2026–1 would be $15,149,648. Such surplus reserve balance would be used to reduce the fee rate for CAT Fee 2026–1 ($0.000001 per executed equivalent share).

(C) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[164]

[149] *See* Section 3(a)(2)(C)(ix) above.

[150] *Id.*

[151] *Id.*

[152] Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

[153] *See* Section 3(a)(2)(C)(x) above.

[154] *See* chart entitled ''Budgeted CAT Costs 2026–1'' in Section 3(a)(2)(C) above.

[155] Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

[156] CAT Funding Model Approval Order at 13444.

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] *See* Section 3(a)(2)(C)(xii) above.

[161] *See* Section 3(b)(2)(B) below.

[162] Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

[163] *See* Section 3(a)(2)(C)(xii) above.

[164] *See* Section 3(a)(2)(D) above.

(D) Projected Executed Equivalent Share Volume for the CAT Fee 2026–1 Period

CAT LLC has determined that the projected total executed equivalent share volume for the eight months of the CAT Fee 2026–1 Period by multiplying by 8/12ths the executed equivalent share volume for the prior twelve months: 8/12 times 5,980,937,549,360.49 executed equivalent shares.[165] The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.41), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level.

(E) Actual Fee Rate for CAT Fee 2026–1

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[166] Accordingly, proposed paragraph (a)(6)(B) of the fee schedule would set forth a fee rate of $0.000001 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2026–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.[167]

(ii) Reasonable Fee Level

The Exchange believes that charging CAT Fee 2026–1 with a fee rate of $0.000001 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with the Budgeted CAT Costs 2026–1. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is less than CAT Fee 2025–2 and is comparable to other transaction-based fees, including fees assessed pursuant to Section 31.[168] As a result, the magnitude of CAT Fee 2026–1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.[169]

(3) CAT Fee 2026–1 Provides for an Equitable Allocation of Fees

CAT Fee 2026–1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[170] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is appropriate and meets the Rule 608(b) approval standard.'' [171] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

CAT Fee 2026–1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. For example, as described above, the calculation of CAT Fee 2026–1 complies with the formula set forth in Section 11.3(a) of the CAT NMS Plan. In addition, CAT Fee 2026–1 would be charged to CEBBs and CEBSs in accordance with Section 11.3(a) of the CAT NMS Plan. Furthermore, the Participants would be charged for their designated share of the Budgeted CAT Costs 2026–1 through a fee implemented via the CAT NMS Plan, which would have the same fee rate as CAT Fee 2026–1.

In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2026–1—the Budgeted CAT Costs 2026–1, the count for the executed equivalent share volume for the prior 12 months, and the projected executed equivalent share volume for the CAT Fee 2026–1 Period—is reasonable. Moreover, these inputs lead to a reasonable fee rate for CAT Fee 2026–1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) CAT Fee 2026–1 Is Not Unfairly Discriminatory

CAT Fee 2026–1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfies the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of CAT Fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. CAT Fee 2026–1 complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2026–1 and the resulting fee rate for CAT Fee 2026–1 is reasonable. Therefore, CAT Fee 2026–1 does not impose an unfairly discriminatory fee on Industry Members.

The Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and with specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Act [172] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

[165] *Id.*

[166] CAT Funding Model Approval Order at 13445, n.677.

[167] *See* Section 3(a)(5)(A) above.

[168] For example, as the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. CAT Funding Model Approval Order at 13469.

[169] *Id.*

[170] *See* Section 11.3(a) of the CAT NMS Plan.

[171] CAT Funding Model Approval Order at 13412.

[172] 15 U.S.C. 78f(b)(8).

Exchange notes that CAT Fee 2026–1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce CAT Fee 2026–1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[173] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2026–1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of CAT Fee 2026–1 is reasonable and the resulting fee rate for CAT Fee 2026–1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, CAT Fee 2026–1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange 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**

This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act[174] and paragraph (f)(2) of Rule 19b–4 thereunder.[175] Accordingly, the proposed rule change would take effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–LTSE–2026–12 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–LTSE–2026–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of LTSE and on its internet website at *https://longtermstockexchange.com/.* Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–LTSE–2026–12 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[176]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09856 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

[173] CAT Funding Model Approval Order at 13457–81.

[174] 15 U.S.C. 78s(b)(3)(A)(ii).

[175] 17 CFR 240.19b–4(f)(2).

[176] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #21581 and #21582; Texas Disaster Number TX–20081]**

### Administrative Declaration Amendment of a Disaster for the State of Texas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Administrative declaration of disaster for the State of Texas dated May 7, 2026.

*Incident:* Severe Storms and Tornadoes.

**DATES:** Issued on May 13, 2026.

*Incident Period:* April 24, 2026 through May 1, 2026.

*Physical Loan Application Deadline Date:* July 6, 2026.

*Economic Injury (EIDL) Loan Application Deadline Date:* February 8, 2027.

**ADDRESSES:** *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Talarico, Office of Disaster Recovery and Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of an Administrative declaration for the State of TEXAS, dated May 7, 2026 is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Victoria.

*Contiguous Counties:*

Texas: Calhoun, Dewitt, Goliad, Jackson, Lavaca, Refugio.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.(b).)

**James Stallings,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2026–09875 Filed 5–15–26; 8:45 am]

**BILLING CODE 8026–09–P**

## DEPARTMENT OF STATE

**[Public Notice: 13019]**

### Notice of Public Meeting To Prepare for International Maritime Organization TC 76 Session

The Department of State will conduct a public meeting at 10:00 a.m. on Friday, June 5, 2026, by teleconference. The primary purpose of the meeting is to prepare for the 76th session of the International Maritime Organization's (IMO) Technical Cooperation Committee (TC 76) to be held at IMO Headquarters in London, United Kingdom from Monday, June 8, 2026 to Friday, June 12, 2026.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other bodies and organizations
—Technical cooperation planning and reporting
—The 2030 Agenda for Sustainable Development
—The Capacity-Development Strategy
—Review and implementation of the regional presence and coordination scheme
—Integration of IMSAS audit outcomes into technical cooperation activities and projects
—Capacity-Development: Empowering all women and the promotion of diversity, equality, equity, and inclusion (DEEI) in the maritime sector
—Advancing maritime education and training for the global maritime sector
—Technical Cooperation evaluation and reporting on the implementation of the recommendations
—Application of the Committee's method of work
—Work programme
—Election of Chair and Vice-Chair for 2027
—Any other business

*Please note:* The IMO may, on short notice, adjust the TC 76 agenda to accommodate any constraints associated with the meeting. Although no changes to the agenda are anticipated, if any are necessary, they will be provided to those who RSVP.

Those who plan to participate may contact the meeting coordinator, LT Justus Martin, by email at *Justus.D.Martin@uscg.mil,* by phone at (571) 610–0444, or in writing at United States Coast Guard (CG–5PS), ATTN: LT Justus Martin, 2703 Martin Luther King Jr. Ave. SE Stop 7509, Washington DC 20593–7509, by May 29, 2026. Members of the public needing reasonable accommodation should advise LT Justus Martin no later than May 29, 2026. Requests made after that date will be considered but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

**Emily Miletello,**

*Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, U.S. Department of State.*

[FR Doc. 2026–09899 Filed 5–15–26; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Motorcyclist Advisory Council Notice of Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the Motorcyclist Advisory Council (MAC).

**DATES:** This meeting will be transmitted via virtual interface. It will be held on July 15, 2026, from 1:00 p.m. to 5:00 p.m. ET. Pre-registration is required to attend this meeting. Once registered, a link permitting access to the meeting will be distributed to registrants by email. If you wish to speak during the meeting, you must submit a written copy of your remarks to DOT for consideration by July 3, 2026.

**ADDRESSES:** General information about the Council is available on the MAC internet website at *https://www.nhtsa.gov/motorcyclist-advisory-council.* The registration portal and meeting agenda will be available on the MAC internet website at *https://www.nhtsa.gov/motorcyclist-advisory-council* at least one week in advance of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle Atwell, Designated Federal Officer, National Highway Traffic Safety Administration, U.S. Department of Transportation is available by phone at (202) 222–5799 or by email at *Michelle.Atwell@dot.gov.* Any committee-related requests should be sent to the person listed in this section.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

MAC has been re-established under the Infrastructure Investment and Jobs Act (IIJA), (Pub. L. 117–58) (codified at 49 U.S.C. 355). In accordance with Section 24111 of IIJA, the Secretary of Transportation is required to establish a MAC comprised of 13 members to advise on transportation safety issues of concern to motorcyclists, including:

1. Motorcycle and motorcyclist safety;

2. Barrier and road design, construction, and maintenance practices; and

3. The architecture and implementation of intelligent transportation system technologies.

The purposes of the MAC are: (a) to provide advice on transportation safety issues of concern to motorcyclists consistent with the Council's statutorily specified advising duties; (b) to provide a forum for the development, consideration, and communication of information from a knowledgeable and independent perspective; and (c) not later than October 31 of the calendar year following the calendar year in which the Council is established, and not less than once every 2 years thereafter, to submit to the Secretary a report containing recommendations of the Council regarding (1) motorcycle and motorcyclist safety; (2) barrier and road design, construction, and maintenance practices; and (3) the architecture and implementation of intelligent transportation system technologies.

The last appointments of a previous version of the MAC were in 2017, in accordance with the provisions of the Fixing America's Surface Transportation (FAST) Act, Section 1426. The 2017 MAC was established to advise the Federal Highway Administration (FHWA) on infrastructure recommendations. The Council accomplished this purpose by conducting five committee meetings focused on infrastructure issues that directly affected motorcyclists. On March 11, 2020, the 2017 MAC issued a final report to FHWA that included infrastructure recommendations. After receiving the MAC's recommendations, FHWA initiated a motorcyclist safety project to identify implementation and research needs, appropriate strategies, and corresponding projects. In October 2020, the 2017 MAC was terminated.

#### II. Agenda

At the meeting, the agenda will cover the following topics:

- Representative Introductions
- Informational sessions
- Updates from NHTSA and FHWA
- Strategic Planning
- Public Comment

## III. Public Participation

This meeting will be open to the public. We are committed to providing equal access to this meeting for all participants. Persons with disabilities in need of an accommodation should send a request to the individual in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than July 1, 2026.

A period of time will be allotted for comments from members of the public joining the meeting. Members of the public may present questions and comments to the Council using the live chat feature available during the meeting. Members of the public may also submit materials, questions, and comments in advance for consideration to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Members of the public wishing to reserve time to speak directly to the Council during the meeting must submit a request. The request must include the name, contact information (address, phone number, and email address), and organizational affiliation of the individual wishing to address MAC; it must also include a written copy of prepared remarks and must be forwarded to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than July 3, 2026 for consideration.

All advance submissions will be reviewed by the Council Chairperson and Designated Federal Officer. If approved, advance submissions shall be circulated to MAC representatives for review prior to the meeting. All advance submissions will become part of the official record of the meeting.

*Authority:* 49 U.S.C. 355(b)(1); 49 CFR part 1.95(i)(4).

Issued in Washington, DC.

**Jane Terry,**

*Acting Associate Administrator, Research and Program Development.*

[FR Doc. 2026–09844 Filed 5–15–26; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Superfund Tax on Chemical Substances; Request To Modify List of Taxable Substances; Notice of Filing for Methyl Methacrylate-ethyl Methacrylate-methacrylic Acid Copolymer in a Styrene Solution (x=75.76, y=8.46, z=1, s=168.4); Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of filing and request for comments; notice of hearing.

**SUMMARY:** This document provides a notice of public hearing on the notice of filing published in the **Federal Register** on Wednesday, January 14, 2026. This notice of filing announced that a petition has been filed requesting that methyl methacrylate-ethyl methacrylate-methacrylic acid copolymer in a styrene solution ($(C_5H_8O_2)_x$-$(C_6H_{10}O_2)_y$-$(C_4H_6O_2)_z$-$(C_8H_8)_s$; x=75.76, y=8.46, z=1, s=168.4) be added to the list of taxable substances.

**DATES:** The hearing is scheduled to be held on Thursday, June 18, 2026, at 10:00 a.m. Eastern Time (ET). The IRS must receive speakers' outlines of the topics to be discussed by Thursday, June 4, 2026. If no outlines are received by Thursday, June 4, 2026, the hearing will be cancelled.

**ADDRESSES:** The hearing will be conducted by telephone only. Send an outline of topic submission electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and IRS–2025–0599). Send paper submissions to CC:PA:01:PR, (IRS–2025–0599), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the notice of filing, Jacob W. Peeples or Andrew J. Clark at (202) 317–6855 (not a toll-free number); concerning submissions of requests to testify or attend the hearing, the Publications and Regulations Section at (202) 317–6901 (not toll-free number) or by email at *publichearings@irs.gov* (preferred).

**SUPPLEMENTARY INFORMATION:** The subject of the hearing is the notice (Public docket number: IRS–2025–0599) published in the **Federal Register** on Wednesday, January 14, 2026 (91 FR 1599). This hearing is limited to testimony about the notice of filing for methyl methacrylate-ethyl methacrylate-methacrylic acid copolymer in a styrene solution ($(C_5H_8O_2)_x$-$(C_6H_{10}O_2)_y$-$(C_4H_6O_2)_z$-$(C_8H_8)_s$; x=75.76, y=8.46, z=1, s=168.4). Testimony regarding the operation of the Superfund excise taxes, the related proposed regulations, and the petition process are outside the scope of this hearing.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Individuals who wish to testify at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by Thursday, June 4, 2026. A period of 10 minutes will be allotted to each testimony.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available via *www.regulations.gov* under the title of Supporting & Related Material. If no outline of the topics to be discussed is received Thursday, June 4, 2026, the hearing will be cancelled and a notice of cancellation of the hearing will be published in the **Federal Register**.

Individuals who want to testify by telephone must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (IRS–2025–0599) and the language ''TESTIFY Telephonically.'' For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for IRS–2025–0599.

Individuals who want to attend the hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (IRS–2025–0599) and the language ''ATTEND Hearing Telephonically.'' For example, the subject line may say: Request to ATTEND Hearing Telephonically for IRS–2025–0599. Requests to attend the hearing must be received by Tuesday, June 16, 2026, 5:00 p.m. ET.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by Thursday, June 11, 2026.

Any additional questions regarding speaking at or attending the hearing may also be emailed to *publichearings@irs.gov.*

**Oluwafunmilayo A. Taylor,**

*Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2026–09916 Filed 5–15–26; 8:45 am]

**BILLING CODE 4831–GV–P**

## DEPARTMENT OF THE TREASURY

### Privacy Act of 1974; Matching Program

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of a new matching program.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, and Office of Management and Budget (OMB) guidance on computer matching, the Department of the Treasury (Treasury) is providing notice of the establishment of a new matching program. Pursuant to the Payment Integrity Information Act of 2019, Treasury, including its component bureaus and program offices, is establishing a new matching program consisting of the computerized comparison of systems of records for benefits programs at Treasury with the Do Not Pay (DNP) Working System, which is administered by Treasury's Bureau of the Fiscal Service. This matching program will enable the Treasury programs listed in the appendix of this notice to compare records maintained in their respective systems of records with records maintained in the DNP Working System for the purposes of identifying and preventing improper payments and conducting any related recovery activities by verifying through DNP prepayment or pre-award eligibility.

**DATES:** Submit comments on or before June 17, 2026. These new matching programs will be effective 30 days after publication of this notice through September 10, 2029.

**ADDRESSES:** Written comments on this notice may be submitted electronically through the Federal government eRulemaking portal at *http://www.regulations.gov;* docket number TREAS–DO–2026–0364. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables Treasury to make the comments available to the public. Please note that comments submitted through *https://www.regulations.gov* will be made available for viewing by the public.

Comments on this proposed matching program may also be addressed to U.S. Department of the Treasury, Attention: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records, 1500 Suite #8100, JBAB, 250 Murray Lane SW, Bldg. 410/Door 123, Washington, DC 20222, or by email: *Privacy@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records, U.S. Department of the Treasury, 1500 Suite #8100, JBAB, 250 Murray Lane SW, Bldg. 410/Door 123, Washington, DC 20222, or by email: *Privacy@treasury.gov.*

**SUPPLEMENTARY INFORMATION:** The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act of 1974 (5 U.S.C. 552a) by establishing procedural safeguards related to agencies' use of records when performing certain types of computerized matching. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101– 508) further amended the Privacy Act regarding protections for individuals when agencies perform these functions. Additionally, the Payment Integrity Information Act of 2019 (31 U.S.C. 3351 *et seq.*) provides the head of the agency operating the DNP Working System with the authority, in consultation with OMB, to waive the requirements in 5 U.S.C. 552a(o) in any case or class of cases for matching activities conducted under the DNP Initiative (31 U.S.C. 3354). Pursuant to this authority, the Secretary of the Treasury, after consulting with the OMB Director, authorized the issuance of a four-year waiver of the requirement for entering into a matching agreement under 5 U.S.C. 552a(o) for the class of matching programs that meet all of the criteria defined in OMB Memorandum M–25–32, *Preventing Improper Payments and Protecting Privacy through Do Not Pay.*

Treasury has determined that the DNP matching program described in this notice is eligible for the waiver described in OMB Memorandum M–25–32, which is effective from September 10, 2025 through September 10, 2029. For purposes of this notice, matching activities conducted between the Federal benefit programs listed in the appendix to this document and the DNP Working System constitute a single agency-wide matching program implementing DNP for Treasury's listed programs.[1]

*Participating Agencies:* The Treasury programs listed in the appendix of this notice will match against the DNP Working System, which is maintained by the Bureau of the Fiscal Service at the U.S. Department of the Treasury.

*Authority for Conducting the Matching Program:* The Payment Integrity Information Act of 2019 (31 U.S.C. 3351 *et seq.*) establishes the DNP Initiative and requires, for the purposes of identifying and preventing improper payments, each executive agency to have access to, and use of, the relevant databases in DNP to verify payment or award eligibility. Additional applicable authorities for this matching program include Executive Order 13520, *Reducing Improper Payments* (74 FR 62201); Executive Order 14249, *Protecting America's Bank Account Against Fraud, Waste, and Abuse* (90 FR 14011); and OMB Memorandum M–25–32, *Preventing Improper Payments and Protecting Privacy Through Do Not Pay.* Additional information regarding the statutory authorities for the collection and maintenance of information for each of the Treasury programs that will conduct matches with the DNP Working System are contained within the systems of records notices listed in the appendix below.

*Purpose(s):* The purposes of the matching program are identifying and preventing improper payments and conducting any related recovery activities by verifying through Do Not Pay prepayment or pre-award eligibility. Data elements that are necessary for eligibility determinations for a relevant Treasury program that are contained in records from Treasury systems of records will be compared with records in the DNP Working System. When there is a match between a record provided by the Treasury program and a record in the DNP Working System, the DNP Working System will provide to the submitting Treasury program notice of a potentially matching record and will identify the database(s) that contain the potentially matching record(s). The Treasury program will then review the information to determine whether additional action is needed. If no matches are identified, the DNP Working System will provide a no match response to the submitting Treasury program.

*Categories of Individuals:* Applicants for, or recipients of, Federal funds from those Treasury programs listed in the appendix below.

*Categories of Records:* Data elements that will be matched include: applicant's name (which may include individual name and/or business/trading names, if applicable); Social Security Number (SSN); State and federal Taxpayer Identification Number (TIN); Individual Taxpayer Identification Number (ITIN); Taxpayer Identification Number for pending U.S. adoptions (ATIN); Preparer Taxpayer Identification Number (PTIN); Unique Entity Identifier (UEI); National Provider Identifier (NPI); home and work address(es); date of birth; sex;

[1] The statutory definition of the term ''matching program'' means ''any computerized comparison of—(i) two *or more* automated systems of records or a system of records with non-Federal records'' for certain enumerated purposes. 5 U.S.C. 552a(a)(8) (emphasis added). There is a separate statutory definition for ''Federal benefit program.'' *See* OMB Memorandum M–25–32 at Appendix II, page 2, sec. a.3.iii.1 (recognizing that a single agency matching program may consist of multiple systems of records). Thus, this notice applies to the DNP matching program for multiple Federal benefits programs and associated systems of records within Treasury.

home, work, and mobile telephone numbers; email address(es); bank account information, including account number and financial institution routing and transit number; and tracking numbers used to locate payment information.

*System(s) of Records:* The records contained within the DNP Working System are maintained in the system of records known as Department of the Treasury, Bureau of the Fiscal Service .017—Do Not Pay Payment Verification Records (85 FR 11776). This system of records includes those databases designated to be included in the DNP Working System by the Payment Integrity Information Act of 2019 as well as other databases designated for inclusion by the Director of the Office of Management and Budget, or the designee of the Director, in consultation with executive agencies. The other Treasury records involved in the matching program are maintained in Treasury systems of records listed in the appendix below.

*Appendix:* Below is a list of the Treasury programs that will match records with the DNP Working System, and the applicable system of records notice(s) for each Treasury program. For purposes of this notice, matching activities conducted between the Federal benefit programs listed in the following appendix and the DNP Working System constitute a single agency-wide matching program implementing DNP for the agency.

| Bureau/office | Agency program name | System of records notice(s) |
|---|---|---|
| Bureau of Engraving and Printing (BEP). | BEP Fund | BEP .045—Mail Order Sales Customer File. |
| Bureau of Fiscal Service (BFS). | American Indian & Alaskan Native | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | District of Columbia Water and Sewer Authority | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | Debt Collection Special Fund | BFS .012—Debt Collection Operations System.<br>BFS .002—Payment Records. |
| BFS | Emergency Planning and Security | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | Payment to the Legal Services Corporation | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | Payment to the Resolution Funding Corporation | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | Resident Tuition Support Program | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | Travel Promotion Fund | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | Criminal Justice Coordination | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | Federal Payments for HIV/AIDS Treatment | Department of the Treasury .009—Treasury Financial Management Systems. |
| BFS | Federal Payments for Judicial Commissions | Department of the Treasury .009—Treasury Financial Management Systems. |
| BFS | Federal Payments for the District of Columbia National Guard. | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| BFS | Presidential Election Campaign Fund | Department of the Treasury .009—Treasury Financial Management Systems.<br>BFS .002—Payment Records. |
| Departmental Offices (DO) | Coronavirus Capital Projects Fund | Treasury .009—Treasury Financial Management Systems.<br>DO .197—Financial Assistance Programs. |
| DO | Coronavirus Relief Fund | Treasury .009—Treasury Financial Management Systems.<br>DO .197—Financial Assistance Programs. |
| DO | Local Assistance and Tribal Consistency Fund | Treasury .009—Treasury Financial Management Systems.<br>DO .197—Financial Assistance Programs. |
| DO | State Small Business Credit Initiative—Technical Assistance Grant Program. | Treasury .009—Treasury Financial Management Systems.<br>DO .197—Financial Assistance Programs. |
| DO | Department-wide Systems and Capital Investment Programs. | Treasury .009—Treasury Financial Management Systems. |
| DO | State Small Business Credit Initiative—Competitive Technical Assistance. | Treasury .009—Treasury Financial Management Systems. |
| DO | Cybersecurity Enhancement Account | Treasury .009—Treasury Financial Management Systems. |

| Bureau/office | Agency program name | System of records notice(s) |
|---|---|---|
| DO | Emergency Capital Investment Program | Treasury .009—Treasury Financial Management Systems. |
| DO | Emergency Rental Assistance Program | Treasury .009—Treasury Financial Management Systems.<br>DO .197—Financial Assistance Programs. |
| DO | Federal Research Fund | Treasury .009—Treasury Financial Management Systems. |
| DO | Homeowner Assistance Fund | Treasury .009—Treasury Financial Management Systems.<br>DO .197—Financial Assistance Programs. |
| DO | Office of Terrorism and Financial Intelligence | Department of the Treasury .009—Treasury Financial Management Systems.<br>DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions. |
| DO | State Small Business Credit Initiative—Non-Federal Financial Assistance Payments. | Treasury .009—Treasury Financial Management Systems.<br>DO .197—Financial Assistance Programs. |
| DO | Transportation Services Economic Relief Program | Treasury .009—Treasury Financial Management Systems. |
| DO | Coronavirus State and Local Fiscal Recovery Funds | Treasury .009—Treasury Financial Management Systems. |
| DO | Small Business Lending Fund Program | Treasury .009—Treasury Financial Management Systems.<br>DO .197—Financial Assistance Programs. |
| DO | Terrorism Insurance Program | DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions. |
| DO | District of Columbia Federal Pension Fund | DO .214—D.C. Pensions Retirement Records. |
| DO | District of Columbia Judicial Retirement and Survivors Annuity Fund. | DO .214—D.C. Pensions Retirement Records. |
| DO | Treasury Franchise Fund | Treasury .009—Treasury Financial Management Systems. |
| Internal Revenue Service (IRS). | Federal Tax Lien Revolving Fund | IRS 26.009—Lien Files.<br>IRS 34.021—Personnel Security Investigations.<br>IRS 34.037—Audit Trail and Security Records.<br>IRS 42.017—International Enforcement Program Information Files.<br>IRS 42.021 Compliance Programs and Projects Files. |
| IRS | Business Systems Modernization | IRS 24.046—Customer Account Data Engine Business Master File.<br>IRS 34.021—Personnel Security Investigations.<br>IRS 34.037—Audit Trail and Security Records.<br>IRS 36.003—General Personnel and Payroll Files.<br>IRS 42.021—Compliance Programs and Project Files.<br>IRS 90.006—Chief Counsel Human Resources and Administrative Records. |
| IRS | Energy Security | IRS 34.021—Personnel Security Investigations.<br>IRS 34.037—Audit Trail and Security Records.<br>IRS 36.003—General Personnel and Payroll Files.<br>IRS 90.006—Chief Counsel Human Resources and Administrative Records. |
| IRS | Operations Support | IRS 24.030—Customer Account Data Engine Individual Master File.<br>IRS 24.046—Customer Account Data Engine Business Master File.<br>IRS 34.021—Personnel Security Investigations.<br>IRS 34.037—Audit Trail and Security Records.<br>IRS 36.003—General Personnel and Payroll Files.<br>IRS 42.017—International Enforcement Program Information Files.<br>IRS 42.021 Compliance Programs and Projects Files.<br>IRS 44.003—Appeals Centralized Data.<br>IRS 90.006—Chief Counsel Human Resources and Administrative Records. |
| IRS | Special Compliance Personnel Program Account | IRS 24.046—Customer Account Data Engine Business Master File.<br>IRS 34.021—Personnel Security Investigations.<br>IRS 34.037—Audit Trail and Security Records.<br>IRS 36.003—General Personnel and Payroll Files.<br>IRS 42.021—Compliance Programs and Project Files.<br>IRS 90.006—Chief Counsel Human Resources and Administrative Records |

| Bureau/office | Agency program name | System of records notice(s) |
|---|---|---|
| IRS | Tax Law Enforcement | IRS 24.030—Customer Account Data Engine Individual Master File.<br>IRS 24.046—Customer Account Data Engine Business Master File.<br>IRS 34.021—Personnel Security Investigations.<br>IRS 34.037—Audit Trail and Security Records.<br>IRS 36.003 -General Personnel and Payroll Files.<br>IRS 42.017—International Enforcement Program Information Files.<br>IRS 42.021 Compliance Programs and Projects Files.<br>IRS 44.003—Appeals Centralized Data.<br>IRS 90.006—Chief Counsel Human Resources and Administrative Records. |
| IRS | Taxpayer Services—Non-Federal Financial Assistance Payments. | IRS 24.030—Customer Account Data Engine Individual Master File.<br>IRS 24.046—Customer Account Data Engine Business Master File.<br>IRS 34.021—Personnel Security Investigations.<br>IRS 34.037—Audit Trail and Security Records.<br>IRS 36.003—General Personnel and Payroll Files.<br>IRS 42.017—International Enforcement Program Information Files.<br>IRS 42.021 Compliance Programs and Projects Files.<br>IRS 44.003—Appeals Centralized Data.<br>IRS 90.006—Chief Counsel Human Resources and Administrative Records. |
| Office of the Comptroller of the Currency. | Assessment Funds | Treasury .009—Treasury Financial Management Systems. |
| United States Mint | United States Mint Public Enterprise Fund | Treasury .009—Treasury Financial Management Systems.<br>United States Mint .001—Cash Receivable Accounting Information System. |

**Ryan Law,**

*Deputy Assistant Secretary for Privacy, Transparency, and Records.*

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Part II

## Securities and Exchange Commission

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6897 (Consolidated Audit Trail Funding Fees) To Establish Fees for Industry Members Related to Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105470; File No. SR–FINRA–2026–011]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6897 (Consolidated Audit Trail Funding Fees) To Establish Fees for Industry Members Related to Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

May 13, 2026.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2026, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6897 (Consolidated Audit Trail Funding Fees) to establish fees for Industry Members [3] related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') incurred prior to January 1, 2022 that were not previously invoiced via Historical CAT Assessment 1. Industry Members were previously invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1. Historical CAT Assessment 1 is no longer in effect. Historical CAT Assessment 1A is being established to collect the remaining $38,964,855.34 of Historical CAT Costs 1. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or ''the Company'') [4] and referred to as Historical CAT Assessment 1A, and would be described in paragraph (a)(1)(B) of FINRA Rule 6897 (Consolidated Audit Trail Funding Fees). The fee rate for Historical CAT Assessment 1A will be $0.000002 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1A in June 2026 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in May 2026.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org* and at the principal office of FINRA.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[5] On November 15, 2016, the Commission approved the CAT NMS Plan.[6] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[7] On September 5, 2025, CAT LLC proposed a revised funding model to fund the CAT (''CAT Funding Model'').[8] On March 16, 2026, the Commission approved the CAT Funding Model, after concluding that the model satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[9]

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (''Historical CAT Assessment'' fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (''Prospective CAT Costs'' fees).[10]

Under the CAT Funding Model, ''[t]he Operating Committee will establish one or more fees (each a 'Historical CAT Assessment') to be payable by Industry Members with regard to CAT costs previously paid by the Participants ('Past CAT Costs').'' [11] In establishing a Historical CAT Assessment, the Operating Committee will determine a ''Historical Recovery Period'' and calculate a ''Historical Fee Rate'' for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* FINRA Rule 6810(u). *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule).

[4] The term ''CAT LLC'' may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

[5] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45721 (August 1, 2012) (''Rule 613 Adopting Release'').

[6] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order'').

[7] *See* Section 11.1(b) of the CAT NMS Plan.

[8] *See* Securities Exchange Act Release No. 103960 (September 12, 2025), 90 FR 44910 (September 17, 2025).

[9] *See* Securities Exchange Act Release No. 105003 (March 16, 2026), 91 FR 13410 (March 19, 2026) (''CAT Funding Model Approval Order''). This CAT Funding Model replaced the prior funding model that was approved by the Commission on September 6, 2023. *See* Securities Exchange Act Release No. 98290 (September 6, 2023), 88 FR 62628 (September 12, 2023).

[10] Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. *See* Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1A related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. *See* Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

[11] *See* Section 11.3(b) of the CAT NMS Plan.

fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.[12]

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.[13] In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) Historical CAT Assessment 1A to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model.[14] To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' ''[15] The Plan further states that ''Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.''[16] Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1A, in accordance with the CAT NMS Plan.[17]

FINRA, along with the other Participants in the CAT, previously filed a fee filing to implement Historical CAT Assessment 1.[18] Based on the fee filing for Historical CAT Assessment 1, Historical CAT Assessment 1 was expected to be in effect from the first invoice in November 2024 until $212,039,879.34 (two-thirds of Historical CAT Costs 1) was invoiced to CAT Executing Brokers collectively.[19] However, Historical CAT Assessment 1 ceased before the entire amount was invoiced.[20] The last invoice for Historical CAT Assessment 1 was provided on December 2025, after only $173,075,024 of the total $212,039,879.34 had been invoiced to Industry Members.[21] Accordingly, $38,964,855.34 of Historical CAT Costs 1 has not been invoiced. Historical CAT Assessment 1A would seek to recover this outstanding amount of Historical CAT Costs 1 that has not been invoiced.

(1) CAT Executing Brokers

Historical CAT Assessment 1A will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.[22] The CAT NMS Plan defines a ''CAT Executing Broker'' to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and

(b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.[23]

Fields Nos. 26 and 28 of the Participant Technical Specifications, listed below, indicate the CAT Executing Brokers for transactions executed otherwise than on an exchange.

TRF/ORF/ADF Transaction Data Event (TRF)[24]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 26 | reportingExecutingMpid | Member Alias | MPID of the executing party | R |
| 28 | contraExecutingMpid | Member Alias | MPID of the contra-side executing party | C |

[12] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is appropriate.'' CAT Funding Model Approval Order, 91 FR 13410, 13450.

[13] *See* Section 11.3(b)(ii) of the CAT NMS Plan.

[14] *See* CAT Funding Model Approval Order.

[15] *See* Section 11.1(b) of the CAT NMS Plan.

[16] *See* Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

[17] Note that there may be one or more Historical CAT Assessments. *See* Section 11.3(b) of the CAT NMS Plan.

[18] *See* Securities Exchange Act Release No. 101012 (September 12, 2024), 89 FR 76626 (September 18, 2024) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2024–013).

[19] *See* FINRA Rule 6897(a)(1)(A)(iii).

[20] In response to the Eleventh Circuit's decision vacating the prior CAT NMS Plan funding model, the last invoices for Historical CAT Assessment 1 were sent in December 2025 based on November 2025 transactions. *See Am. Sec. Ass'n* v. *Securities and Exchange Comm'n,* 147 F.4th 1264 (11th Cir. 2025).

[21] *See* CAT Fee Alert 2025–4 (Nov. 25, 2025), *https://www.catnmsplan.com/sites/default/files/2025-11/11.25.25-CAT-Fee-Alert-2025-4.pdf.*

[22] In its approval order for the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was appropriate. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. *See* CAT Funding Model Approval Order, 91 FR 13410, 13413.

[23] *See* Section 1.1 of the CAT NMS Plan. In its approval order for the CAT Funding Model, the Commission ''recognize[d] that Industry Members may pass-through CAT fees for customer executed volume.'' *See* CAT Funding Model Approval Order, 91 FR 13410, 13424.

(2) Calculation of Fee Rate for Historical CAT Assessment 1A

The Operating Committee determined the fee rate to be used in calculating Historical CAT Assessment 1A based on the Historical CAT Costs for Historical CAT Assessment 1A and the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1A (''Historical Recovery Period 1A''), as discussed in detail below. Based on this calculation, the Operating Committee has determined that the fee rate for Historical CAT Assessment 1A would be $0.000002, as discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.[25]

(B) Historical CAT Costs

The CAT NMS Plan states that ''[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.'' [26] Historical CAT Assessment 1, the original Historical CAT Assessment, was implemented to recover $212,039,879.34 of Historical CAT Costs 1 from CEBBs and CEBSs collectively.[27] As described in the fee filings for Historical CAT Assessment 1, Historical CAT Costs 1 of $212,039,879.34 includes Past CAT Costs of $401,312,909 minus certain Excluded Costs of $83,253,090. As described in the filing for Historical CAT Assessment 1, Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), plus the Excluded Costs of $83,253,090. Accordingly, CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), and CEBSs collectively will be responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), for a total of $212,039,879.34. CEBBs and CEBSs collectively have been invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1. Accordingly, Historical CAT Assessment 1A would charge CEBBs and CEBSs collectively for the remaining $38,964,855.34 of Historical CAT Costs 1 that was not invoiced to CEBBs and CEBSs via Historical CAT Assessment 1. Historical CAT Assessment 1A will be designed to recover the remaining $38,964,855.34 of Historical CAT Costs 1 from CEBBs and CEBSs collectively, with CEBBs collectively responsible for $19,482,427.67 and CEBSs collectively responsible for $19,482,427.67.

(i) Historical CAT Costs 1

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (''Excluded Costs''). The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing ''a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.'' [28] Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT. These Historical CAT Costs 1 are the same as described in the fee filing for Historical CAT Assessment 1.[29]

(a) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (''Pre-FAM Period'') and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of $124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($41,430,243.33) and CEBSs paying one-third ($41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table [30] breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT Costs 1 for Pre-FAM Period (prior to June 22, 2020) |
|---|---|
| Capitalized Developed Technology Costs * | $51,847,150 |
| Technology Costs | 33,568,579 |
| Cloud Hosting Services | 10,268,840 |
| Operating Fees | 21,085,485 |
| CAIS Operating Fees | 2,072,908 |

[24] *See* Table 62, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

[25] *See* Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that ''in the Commission's view, the use of executed equivalent share volume as the basis for determining and allocating CAT costs during the two-year interim period is appropriate and consistent with the funding principles of the CAT NMS Plan.'' CAT Funding Model Approval Order, 91 FR 13410, 13427.

[26] *See* Section 11.3(b)(i)(C) of the CAT NMS Plan.

[27] *See supra,* note 20.

[28] Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

[29] *See supra,* note 20.

[30] The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with ''an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available.'' The audit is available on the CAT website.

| Operating expense | Historical CAT Costs 1 for Pre-FAM Period (prior to June 22, 2020) |
|---|---|
| Change Request Fees | 141,346 |
| Legal | 19,674,463 |
| Consulting | 17,013,414 |
| Insurance | 880,419 |
| Professional and administration | 1,082,036 |
| Public relations | 224,669 |
| Total Operating Expenses | 124,290,730 |

* The non-cash amortization of these capitalized developed technology costs of $2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.[31]

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(I) Technology Costs—Cloud Hosting Services

The $10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS''), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FINRA CAT, LLC (''FCAT'') selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC [32] and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as ''CAT LLC''),[33] and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.[34]

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [35] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [36] However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,[37] Phase 2a and Phase 2b Industry Member Data [38] (including certain linkages), as well as SIP Data,[39] reference data and other types of Other Data.[40] The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.[41]

[31] With respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[32] CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. *See* CAT NMS Plan Approval Order, *supra* note 8.

[33] On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. *See* Securities Exchange Act Release No. 87149 (September 27, 2019), 84 FR 52905 (October 3, 2019).

[34] For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

[35] *See* Appendix D–4 of the CAT NMS Plan at n.262.

[36] *See* Appendix D–5 of the CAT NMS Plan.

[37] *See* Section 6.3(d) of the CAT NMS Plan.

[38] *See* Securities Exchange Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020) (''Phased Reporting Exemptive Relief Order'') for a description of Phase 2a and Phase 2b Industry Member Data.

[39] *See* Section 6.5(a)(ii) of the CAT NMS Plan.

[40] *See* Appendix C–109 of the CAT NMS Plan.

[41] Note that the volume data described in this table does not include CAIS data.

| | Date range: 3/29/19 to 4/12/20 * | Date range: 4/13/20 to 6/21/20 ** |
|---|---|---|
| Average Daily Volume in Billions: | | |
| Participant—Equities | 5 | 5 |
| Participant—Options | 80 | 981 |
| Industry Member—Equities | ..... | 3 |
| Industry Member—Options | ..... | 0.04 |
| SIP—Options & Equities | 64 | 70 |
| Average Total Daily Volume | 149 | 166 |
| Cumulative Total Events for the Period | 3,890 | 4,990 |
| Total Compute Hours for the Period | N/A | 5,663,247 |
| Storage Footprint at End of Period (Petabytes) | 30.57 | 47.96 |

* The Participant Equities in RSA format.
** Start of Industry Member reporting on 4/13/2020.
*** Although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(II) Technology Costs—Operating Fees

The $21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders [42] for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CAT LLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.[43]

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.[44] On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated (''Exegy''), a market data provider; [45]
- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated testing for Phase 2a and 2b reporting for Industry Members;
- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;
- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;
- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to

[42] The term ''Bidder'' is defined in Section 1.1 of the CAT NMS Plan.

[43] *See* Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC, dated April 9, 2019, *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf.*

[44] *See supra* note 45.

[45] The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Item II.A.1(2)(B)(a)(IX).

Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;[46] and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

The $2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System (''CAIS''). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation (''Kingland''). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC was required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.[47] Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers (''LTID'') earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.[48]

(IV) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of $141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.[49]

(V) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of $51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

*Initial Plan Processor: Thesys CAT, LLC.* The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.[50] The Participants utilized a request for proposal (''RFP'') to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC (''Thesys CAT''), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements,

[46] The CAT website is *https://www.catnmsplan.com.*

[47] For a discussion of the CCID Alternative, *see* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020).

[48] *See* Phased Reporting Exemptive Relief Order, 85 FR 23075, 23079–80.

[49] Note that CAT LLC also has incurred costs related to specific Industry Members (*e.g.,* reprocessing costs related to Industry Member reporting errors).

[50] *See* Letter from the Participants to Brent J. Fields, Secretary, SEC, dated January 18, 2017, *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf.*

establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

*Successor Plan Processor: FCAT.* The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee for an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(VI) Legal Costs

The legal costs of $19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Pillsbury Winthrop Shaw Pittman LLP (''Pillsbury''), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

*Law Firm: WilmerHale.* Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group (''DAG'');
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

*Law Firm: Pillsbury.* The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to

address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the ''Reporter Agreement''). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(VII) Consulting Costs

The consulting costs of $17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing Order Audit Trail System (''OATS'') and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(IX) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[51] The professional

[51] *See* Section 9.2 of the CAT NMS Plan.

and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were $1,082,036 for the Pre-FAM Period.

*Financial Advisory Firm: Anchin Accountants & Advisors (''Anchin'').* CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Accounting Firm: Grant Thornton LLP (''Grant Thornton'').* In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

*Market Data Provider: Exegy.* The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.[52] In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

*Security Assessment: RSM US LLP (''RSM'').* The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(X) Public Relations Costs

The public relations costs of $224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market

[52] *See* Section 6.5(a)(ii) of the CAT NMS Plan.

participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

*Public Relations Firm: Peppercomm, Inc. (''Peppercomm'').* The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

*Public Relations Firm: Sloane & Company (''Sloane'').* CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

*Public Relations Firm: Peak Strategies.* CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(b) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones (''FAM Period 1''),[53] which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of $6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($2,125,781) and CEBSs paying one-third ($2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan. [54]

| Operating expense | Historical CAT costs for FAM Period 1 |
|---|---|
| Capitalized Developed Technology Costs* | $1,684,870 |
| *Technology Costs* | 3,996,800 |
| Cloud Hosting Services | 2,642,122 |
| Operating Fees | 1,099,680 |
| CAIS Operating Fees | 254,998 |
| Change Request Fees | |
| Legal | 481,687 |
| Consulting | 137,209 |
| Insurance | |
| Professional and administration | 69,077 |
| Public relations | 7,700 |
| Total Operating Expenses | 6,377,343 |

* The non-cash amortization of these capitalized developed technology costs of $362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.[55]

By thecompletion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.[56] CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the $2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different

[53] *See* Section 11.6(a)(i)(A) of the CAT NMS Plan.

[54] The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

[55] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[56] *See* definition of ''Initial Industry Member Core Equity and Options Reporting'' in Section 1.1 of the CAT NMS Plan.

cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.[57]

| | Date Range: 6/22/20–7/31/20 |
|---|---|
| Average Daily Volume in Billions: | |
| Participant—Equities | 6 |
| Participant—Options | 103 |
| Industry Member—Equities | 7 |
| Industry Member—Options | 0.31 |
| SIP—Options & Equities | 74 |
| Average Total Daily Volume | 185 |
| Cumulative Total Events for the Period | 5,190 |
| Total Compute Hours for the Period | 2,612,082 |
| Storage Footprint at End of Period (Petabytes) | 57.47 |

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the $1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the $254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(IV) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of $1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(VI) Legal Costs

The legal costs of $481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to

[57] Note that the volume data described in this table does not include CAIS data.

the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(VII) Consulting Costs

The consulting costs of $137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(IX) Professional and Administration Costs

*Financial Advisory Firm: Anchin.* The professional and administration costs of $69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(X) Public Relations Costs

The public relations costs of $7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(c) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones (''FAM Period 2''),[58] which covers the period from August 1, 2020—December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of $42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($14,325,493) and CEBSs paying one-third ($14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.[59]

| Operating expense | Historical CAT costs for FAM Period 2 |
|---|---|
| Capitalized Developed Technology Costs* | $6,761,094 |
| Technology Costs | 31,460,033 |
| Cloud Hosting Services | 20,709,212 |
| Operating Fees | 9,108,700 |
| CAIS Operating Fees | 1,590,298 |
| Change Request Fees | 51,823 |
| Legal | 2,766,644 |
| Consulting | 532,146 |
| Insurance | 976,098 |
| Professional and administration | 438,523 |
| Public relations | 41,940 |
| Total Operating Expenses | 42,976,478 |

*The non-cash amortization of these capitalized developed technology costs of $1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.[60]

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.[61]

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the $20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.[62]

| | Date range: 8/1/20–12/31/20 |
|---|---|
| Average Daily Volume in Billions: | |
| Participant—Equities | 6 |
| Participant—Options | 116 |
| Industry Member—Equities | 11 |
| Industry Member—Options | 0.98 |
| SIP—Options & Equities | 80 |

[58] *See* Section 11.6(a)(i)(B) of the CAT NMS Plan.

[59] The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

[60] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[61] *See* definition of ''Full Implementation of Core Equity Reporting Requirements'' in Section 1.1 of the CAT NMS Plan.

[62] Note that the volume data described in this table does not include CAIS data.

| | Date range: 8/1/20–12/31/20 |
|---|---|
| Average Total Daily Volume | 282 |
| Cumulative Total Events for the Period | 2,170 |
| Total Compute Hours for the Period | 15,660,392 |
| Storage Footprint at End of Period (Petabytes) | 114.59 |

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the $9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the $1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(IV) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of $51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of $6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(VI) Legal Costs

The legal costs of $2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings,

including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (*e.g.,* with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(VII) Consulting Costs

The consulting costs of $532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(IX) Professional and Administration Costs

The professional and administration costs of $438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

*Financial Advisory Firm: Anchin.* CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

*Accounting Firm: Grant Thornton.* CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(X) Public Relations Costs

The public relations costs of $41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(d) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones (''FAM Period 3''),[63] which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of $144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($48,138,423) and CEBSs paying one-third ($48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan. [64]

| Operating expense | Historical CAT costs for FAM Period 3 |
|---|---|
| Capitalized Developed Technology Costs * | $10,763,372 |
| Technology Costs | 123,639,402 |
| Cloud Hosting Services | 94,574,759 |
| Operating Fees | 23,106,091 |
| CAIS Operating Fees | 5,562,383 |
| Change Request Fees | 396,169 |
| Legal | 6,333,248 |
| Consulting | 1,408,209 |
| Insurance | 1,582,714 |
| Professional and administration | 595,923 |
| Public relations | 92,400 |
| Total Operating Expenses | 144,415,268 |

* The non-cash amortization of these capitalized developed technology costs of $5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.[65]

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard to the CAT:
(a) reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.[66]

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM Period 3. Accordingly, the $94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.[67]

[63] Section 11.6(a)(i)(C) of the CAT NMS Plan.

[64] The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

[65] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[66] *See* definition of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' in Section 1.1 of the CAT NMS Plan.

[67] Note that the volume data described in this table does not include CAIS data.

| | Date range: 1/1/21 to 4/25/21 | Date range: 4/26/21/to 12/31/21 * |
|---|---|---|
| Average Daily Volume in Billions: | | |
| Participant—Equities | 9 | 9 |
| Participant—Options | 135 | 136 |
| Industry Member—Equities | 20 | 19 |
| Industry Member—Options | 2 | 2 |
| SIP—Options & Equities | 129 | 137 |
| Average Total Daily Volume | 297 | 304 |
| Cumulative Total Events for the Period | 7,480 | 5,310 |
| Total Compute Hours for the Period | 15,860,304 | 33,487,318 |
| Storage Footprint at End of Period (Petabytes) | 180.22 | 284.62 |

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the $23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the $5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(IV) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of $396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of $10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(VI) Legal Costs

The legal costs of $6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP (''Covington'') during FAM Period 3.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

• Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
• Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
• Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
• Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
• Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
• Drafted SRO rule filings related to the CAT Compliance Rule;
• Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
• Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
• Provided guidance regarding SRO rule filings for the retirement of systems;
• Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
• Provided assistance with change requests;
• Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
• Assisted with communications with the industry, including CAT Alerts and presentations;
• Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
• Assisted with cost management analysis and proposals; and
• Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,[68] and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.[69]

*Law Firm: Covington.* CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.[70] CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 Orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.[71]

(VII) Consulting Costs

The consulting costs of $1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

• Implemented program operations for the CAT project;
• Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
• Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
• Provided support for updating the SEC on the progress of the development of the CAT; and
• Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

[68] *See* Securities Exchange Act Release No. 91487 (April 6, 2021), 86 FR 19054 (April 12, 2021).

[69] *See* Securities Exchange Act Release No. 93484 (October 29, 2021), 86 FR 60933 (November 4, 2021).

[70] *See* Securities Exchange Act Release No. 90688 (December 16, 2020), 85 FR 83634 (December 22, 2020); and Securities Exchange Act Release No. 90689 (December 16, 2020), 85 FR 83667 (December 22, 2020) (collectively, the ''2020 Orders'').

[71] As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(IX) Professional and Administration Costs

The professional and administration costs of $595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

*Financial Advisory Firm: Anchin.* CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Accounting Firm: Grant Thornton.* CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(X) Public Relations Costs

The public relations costs of $92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(e) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (''Excluded Costs''): (1) $14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) $48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) $19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total $83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.[72]

(I) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include $14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these $14,749,362 in costs.

(II) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of $48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these $48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.[73]

| Operatinge expense | Excluded Costs for November 15, 2017–November 15, 2018 |
|---|---|
| Capitalized Developed Technology Costs | $37,852,083 |
| *Technology Costs:* | |

[72] In approving the CAT Funding Model, the Commission states that ''the proposed exclusion of the excluded costs from Past CAT Costs is appropriate in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.'' *See* CAT Funding Model Approval Order, 91 FR 13410, 13450.

[73] The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

| Operatinge expense | Excluded Costs for November 15, 2017–November 15, 2018 |
|---|---|
| Cloud Hosting Services | |
| Operating Fees | |
| CAIS Operating Fees | |
| Change Request Fees | |
| Legal | 6,143,278 |
| Consulting | 4,452,106 |
| Insurance | |
| Professional and administration | 340,145 |
| Public relations | 87,325 |
| Total Operating Expenses | $48,874,937 |

The following provides additional detail regarding the Excluded Costs.

(a) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(b) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of $37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(c) Legal Costs

The legal costs of $6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT, including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(d) Consulting Costs

The consulting costs of $4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (*e.g.,* Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(e) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(f) Professional and Administration Costs

The professional and administration costs of $340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

*Financial Advisory Firm: Anchin.* From the commencement of its engagement in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from

CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Market Data Provider: Exegy.* From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

*Security Assessment: RSM.* From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(g) Public Relations Costs

The public relations costs of $87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan).

(III) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the $19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,[74] which was the date by which Participants were required to begin reporting to the CAT.[75] As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes $37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the $19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these $19,628,791 in costs.

(ii) Previously Invoiced Costs for Historical CAT Costs 1

CEBBs and CEBSs collectively have been invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1, where $86,537,512 was invoiced collectively to CEBBs and $86,537,512 was invoiced collectively to CEBSs. Accordingly, Historical CAT Assessment 1A would seek to recover the remaining $38,964,855.34 of Historical CAT Costs 1 collectively from CEBBs and CEBSs, where CEBBs collectively will be responsible for $19,482,427.67, and CEBSs collectively will be responsible for $19,482,427.67.

(C) Historical Recovery Period 1A

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.[76] The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.[77] The Operating Committee has determined to establish a Historical Recovery Period 1A of 24 months for Historical CAT Assessment 1A.

The Operating Committee determined that the length of Historical Recovery Period 1A appropriately weighs the need for a reasonable Historical Fee Rate 1A that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1A would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.[78] In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1A were less than the total costs for 2022 and 2023,[79] and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.[80]

The length of the Historical Recovery Period 1A and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.[81]

(D) Projected Total Executed Equivalent Share Volume

The calculation of the fee rate for Historical CAT Assessment 1A also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1A. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve

[74] As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. *See* Item II.A.1(10)(E) below.

[75] The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. *See* Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

[76] *See* Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[77] *See* Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that ''[i]n the Commission's view, it is appropriate for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years.'' *See* CAT Funding Model Approval Order, 91 FR 13410, 13451.

[78] For example, as the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. *See* CAT Funding Model Approval Order, 91 FR 13410, 13469.

[79] The total CAT costs for 2022 were approximately $186 million and the total CAT costs for 2023 were approximately $233 million.

[80] Note that the proposed 24-month recovery period also recognizes the prohibition on the collection of Historical CAT Assessments after March 31, 2028 as set forth in Section 11.3(f) of the CAT NMS Plan.

[81] *See* Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

months.'' [82] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[83]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1A by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.4), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1A is projected to be 11,961,875,098,720.98 executed equivalent shares.[84]

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1A and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.[85]

(E) Fee Rate for Historical CAT Assessment 1A

The fee rate for Historical CAT Assessment 1A would be calculated by dividing the total amount of costs to be recovered by Historical CAT Assessment 1A by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1A, and dividing by 2. Specifically, the fee rate for Historical CAT Assessment 1A would be calculated by dividing $38,964,855.34 by 11,961,875,098,720.98, and then dividing by 2, which equals $0.00000162871017371542 per executed equivalent shares. Rounding this to six decimal places results in a fee rate of $0.000002 per executed equivalent share.[86] This fee rate is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.[87]

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1A as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.[88]

The CAT NMS Plan further states that ''Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs.'' [89]

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1A on a monthly basis for the period in which Historical CAT Assessment 1A is in effect.[90] A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[91] Proposed paragraph (a)(1)(B)(i) of Rule 6897 would state that each CAT Executing Broker would receive its first invoice in June 2026, and ''would receive an invoice each month thereafter in which Historical CAT Assessment 1A is in effect.'' Proposed paragraph (a)(1)(B)(ii) of Rule 6897 would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis.'' In addition, paragraph (a)(2) of Rule 6897 states that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(5) Actual Recovery Period for Historical CAT Assessment 1A

The CAT NMS Plan states that, ''[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected.'' [92] Accordingly, Historical CAT Assessment 1A will remain in effect until the remaining $38,964,855.34 of Historical CAT Costs 1 have been collected.[93] The actual recovery period for Historical CAT Assessment 1A may be shorter or longer than Historical Recovery Period 1A depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1A is in effect and subject to any time limitation in the CAT NMS Plan.[94]

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1A, FINRA proposes to adopt FINRA Rule 6897(a)(1)(B) (Historical CAT Assessment 1A), including the proposed paragraphs described below.

(A) Historical CAT Assessment 1A

The CAT NMS Plan states that:

[82] *See* Section 11.3(b)(i)(E) of the CAT NMS Plan.

[83] *See* CAT Funding Model Approval Order, 91 FR 13410, 13452.

[84] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by two.

[85] *See* Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

[86] As the SEC noted in approving the CAT Funding Model, the fee filing would provide the exact fee per executed equivalent share and describe the relevant number of decimal places for the fee rate. *See* CAT Funding Model Approval Order, 91 FR 13410, 13445 n.677. The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

[87] *See* Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

[88] Section 11.3(b)(ii) of the CAT NMS Plan.

[89] *See supra* note 90. In approving the CAT Funding Model, the Commission stated that the proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs is appropriate. The Historical CAT Assessment will still be divided into thirds, as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. *See* CAT Funding Model Approval Order, 91 FR 13410, 13453.

[90] *See* Section 11.3(b)(iii)(A) of the CAT NMS Plan.

[91] *See* proposed paragraph (a)(1)(B)(ii) of Rule 6897.

[92] *See* Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

[93] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, it is appropriate for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected.'' *See* CAT Funding Model Approval Order, 91 FR 13410, 13452.

[94] *See* Section 11.3(f) of the CAT NMS Plan would prohibit the billing of Historical CAT Assessments after March 31, 2028.

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.[95]

Accordingly, based on the factors discussed above, FINRA proposes to adopt paragraph (a)(1)(B) of FINRA Rule 6897, which would state that:

(i) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1A in June 2026, which shall set forth the Historical CAT Assessment 1A fees calculated based on transactions in May 2026, and shall receive an invoice for Historical CAT Assessment 1A for each month thereafter in which Historical CAT Assessment 1A is in effect.

(ii) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000002 per executed equivalent share.

(iii) Historical CAT Assessment 1A will remain in effect until $38,964,855.34 is collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1A will no longer be in effect.

(iv) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1A in accordance with paragraph (a)(2) of this Rule.

Proposed paragraph (a)(1)(B)(ii) of Rule 6897 would set forth the fee rate of $0.000002 per executed equivalent share for Historical CAT Assessment 1A, which is calculated as discussed above.

The proposed language in paragraph (a)(1)(B)(i) would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1A. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1A in June 2026 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in May 2026. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (a)(2)(B) of Rule 6897.

Proposed paragraph (a)(1)(B)(i) also would describe the monthly cadence of the invoices for Historical CAT Assessment 1A. Specifically, after the first invoices are provided to CAT Executing Brokers in June 2026, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1A is in effect.

Proposed paragraph (a)(1)(B)(ii) would describe the invoices for Historical CAT Assessment 1A. Proposed paragraph (a)(1)(B)(ii) would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis.'' Proposed paragraph (a)(1)(B)(ii) also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1A. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000002 per executed equivalent share.''

Furthermore, proposed paragraph (a)(1)(B)(iii) would describe how long Historical CAT Assessment 1A would remain in effect. It would state that ''Historical CAT Assessment 1A will remain in effect until $38,964,855.34 is collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.'' This proposed paragraph would further state that ''Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1A will no longer be in effect.''

Historical CAT Assessment 1A will be assessed for all transactions executed in each month through the end of the month in which $38,964,855.34 is assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1A is no longer in effect. Since Historical CAT Assessment 1A is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1A may collect more than $38,964,855.34. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1A is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(B)(iv) sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1A. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1A in accordance with paragraph (a)(2) of this Rule.''

(B) Manner of Payment

Paragraph (a)(2) of Rule 6897 (Consolidated Audit Trail Funding Fees) describes the manner of payment of Industry Member CAT fees. Paragraph (a)(2)(A) states that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a)(1) of this Rule each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.'' The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[96] The Plan Processor has established a billing system for CAT fees.[97] Therefore, FINRA proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1A in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any

[95] *See* Section 11.3(b)(iii)(A) of the CAT NMS Plan.

[96] *See* Section 11.4 of the CAT NMS Plan.

[97] The billing process and system are described in CAT Alert 2023–02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[98]

Accordingly, FINRA previously has added this requirement to Rule 6897. Specifically, paragraph (a)(2)(B) of Rule 6897 states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a)(1) of this Rule within 30 days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (a)(2)(B) would apply to Historical CAT Assessment 1A.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[99]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.[100] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [101] Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1A is in effect as well as the total amount invoiced for Historical CAT Assessment 1A for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1A. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1A, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1A is likely to be in place.

(8) Billing Implementation

To date, CAT LLC, via FCAT, has billed Industry Members for Historical CAT Assessment 1 and certain Prospective CAT Fees. Industry Members will be billed for Historical CAT Assessment 1A via the same processes established for Historical CAT Assessment 1 and the Prospective CAT Fees. Accordingly, Industry Members have substantial experience with the CAT billing processes.

(9) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.'' [102] The CAT NMS Plan further states that ''in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.'' [103] As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1A—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1A relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1A seeks to recover costs that are related to ''all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved'' [104] (''Post-Amendment Expenses'') incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines ''Initial Industry Member Core Equity and Options Reporting'' as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants'

[98] *See* Section 11.4 of the CAT NMS Plan.

[99] *See* Section 11.3(a)(iv)(A) of the CAT NMS Plan.

[100] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.'' *See* CAT Funding Model Approval Order, 91 FR 13410, 13454.

[101] *See* Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' *See* CAT Funding Model Approval Order, 91 FR 13410, 13454.

[102] *See* Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

[103] *See* Section 11.6(b) of the CAT NMS Plan.

[104] *See* Section 11.6 of the CAT NMS Plan.

Quarterly Progress Reports.[105] As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,[106] Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.[107]

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 ''is consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Equities 2a file submission and data integrity validations.' '' [108] The Phase 2a Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF''); (3) electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;
- Firm Designated IDs (''FDIDs''), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;
- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;
- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system;
- Manual and Electronic Capture Time for Manual Order Events;
- Special handling instructions for the original receipt or origination of an order during Phase 2a; and
- When routing an order, whether the order was routed as an intermarket sweep order (''ISO'').

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.[109]

The Quarterly Progress Report for the third quarter of 2020 states that ''Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)'' was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of ''equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information'' was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is ''consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Options 2b file submission and data integrity validations.' '' [110] The Phase 2b Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined

[105] The Quarterly Progress Reports are available at *https://www.catnmsplan.com/implementation-plan.*

[106] *See* CAT Q3 2020 Quarterly Progress Report (October. 30, 2020), *https://catnmsplan.com/sites/default/files/2020-10/CAT-Q3-2020-QPR.pdf* and Updated CAT Q3 2020 Quarterly Progress Report (January 29, 2021), *https://catnmsplan.com/sites/default/files/2021-02/CAT-Q3-2020-QPR-Updated.pdf.*

[107] *See* Phased Reporting Exemptive Relief Order, *supra,* note 40. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. *See* Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

[108] *See* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (''FAM Adopting Release'').

[109] *See* Phased Reporting Exemptive Relief Order, 85 FR 23075, 23076–78.

[110] *See* FAM Adopting Release, 85 FR 31322, 31330 n.98.

order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.[111]

The Quarterly Progress Report for the third quarter of 2020 states that ''Interim Step: Production Go-Live for Options 2b file submission and data integrity validations'' was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of ''options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information'' was completed on July 20, 2020.

As discussed above, the remaining Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are $6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($2,125,781) and CEBSs paying one-third ($2,125,781) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1A seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines ''Full Implementation of Core Equity Reporting'' as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2020,[112] Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order's lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.[113] In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- ''Production Go-Live for Equities 2a Intrafirm Linkage validations'' was completed on 7/27/2020; [114]
- ''Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)'' was completed on October 26, 2020; and
- ''Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)'' was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.[115] As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.[116]

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.[117]

As discussed above, the remaining Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1,

[111] *See* Phased Reporting Exemptive Relief Order, 85 FR 23075, 23078.

[112] *See* CAT Q4 2020 Quarterly Progress Report (January 29, 2021), *https://catnmsplan.com/sites/default/files/2021-02/CAT-Q4-2020-QPR.pdf.*

[113] For a description of the requirements of Phases 2a, *see* Phased Reporting Exemptive Relief Order, *supra* note 40.

[114] *See* CAT Q3 2020 Quarterly Progress Report (October 30, 2020), *https://catnmsplan.com/sites/default/files/2020-10/CAT-Q3-2020-QPR.pdf.*

[115] At the time of this FAM, Section 6.10(c)(i)(A) of the CAT NMS Plan required the Plan Processor to ''provide Participants and the SEC with access to all CAT Data stored in the Central Repository'' via an ''online targeted query tool,'' and Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan described the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will ''deliver large sets of data that can then be used in internal surveillance or market analysis applications.''

[116] *See* CAT Q3 2020 Quarterly Progress Report (October 30, 2020); Updated CAT Q3 2020 Quarterly Progress Report (January 29, 2021); and CAT Q4 2020 Quarterly Progress Report (January 29, 2021).

[117] *See* Securities Exchange Act Release No. 98848 (November 2, 2023), 88 FR 77128, 77129 n.13 (November 8, 2023) (''Settlement Exemptive Order'').

2020 through December 31, 2020. The total costs for this period, as discussed above, are $42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($14,325,492.70) and CEBSs paying one-third ($14,325,492.70) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1A seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' as:

the point at which: (a) reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2021,[118] Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' requires the satisfaction of five prongs. The first prong requires that reporting to OATS is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,[119] FINRA retired OATS effective September 1, 2021.[120] Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that ''Phase 2c Industry Member Data'' is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[121]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an ''interdealer quotation system,'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is

[118] *See* CAT Q4 2021 Quarterly Progress Report (January 27, 2022), *https://catnmsplan.com/sites/default/files/2022-01/CAT-Q4-2021-QPR.pdf.*

[119] *See supra* note 120.

[120] *See* Securities Exchange Act Release No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–017).

[121] *See* Phase Reporting Exemptive Relief Order, 85 FR 23075, 23078–79.

required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[122]

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format *(e.g.,* FIX) that meets this definition is reportable in Phase 2d for options.[123]

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).[124]

The Quarterly Progress Report for the fourth quarter of 2021 states that ''Phase 2a was fully implemented as of October 26, 2020;'' ''Phase 2b was fully implemented as of January 4, 2021;'' ''Phase 2c was implemented as of April 26, 2021;'' and ''Phase 2d was fully implemented as of December 13, 2021.'' [125] The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- ''Production Go-Live for Equities 2c reporting requirements (Large Industry Members)'' was completed on April 26, 2021;
- ''LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)'' was completed on April 26, 2021;
- ''FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2d reporting requirements (Large Industry Members)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)'' was completed on December 13, 2021; and
- ''LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)'' was completed on December 13, 2021.[126]

The third prong of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.[127]

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to ''develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in

[122] *See supra* note 123, at 23079.

[123] *See supra* note 124.

[124] *See supra* note 123, at 23079–80.

[125] *See* CAT Q4 2021 Quarterly Progress Report (January 27, 2022), *https://catnmsplan.com/sites/default/files/2022-01/CAT-Q4-2021-QPR.pdf.*

[126] *See* CAT Q2 2021 Quarterly Progress Report (July 27, 2021), *https://catnmsplan.com/sites/default/files/2021-07/CAT-Q2-2021-QPR.pdf;* and CAT Q4 2021 Quarterly Progress Report (January 27, 2022), *https://catnmsplan.com/sites/default/files/2022-01/CAT-Q4-2021-QPR.pdf.*

[127] *See* CAT Q4 2021 Quarterly Progress Report (January 27, 2022), *https://catnmsplan.com/sites/default/files/2022-01/CAT-Q4-2021-QPR.pdf..*

the Central Repository.'' FINRA implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.[128]

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.[129]

As discussed above, the remaining Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are $144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($48,138,422.70) and CEBSs paying one-third ($48,138,422.70) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (''FAMs'') for Periods 1 through 3.[130] As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (''RFQs'') that are not immediately actionable (''NIA Electronic RFQ Responses'') affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered ''orders'' reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are ''orders,'' as the definition of ''order'' is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members', not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that ''Industry Members must determine whether trading interest falls within the definition of an 'order' for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an 'order'' as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.'' [131]

Only ''orders'' as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are ''orders'' reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).[132] Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an ''order'' reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.[133]

On May 20, 2024, the Commission granted CAT LLC's request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered ''orders'' reportable pursuant to Rule 613(j)(8).[134] The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that ''[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.'' [135]

When the Commission proposed the FAMs, the Participants expressed concern that, ''by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission's proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.'' [136] The Participants further warned that ''Industry Members may request or

[128] *See* CAT Q1 2021 Quarterly Progress Report (April 30, 2021); CAT Q2 2021 Quarterly Progress Report (July 27, 2021); CAT Q3 2021 Quarterly Progress Report (November 1, 2021); and CAT Q4 2021 Quarterly Progress Report (January 27, 2022).

[129] *See* Settlement Exemptive Order, 88 FR 77128, 77129 n.13.

[130] In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. *See* FAM Adopting Release, *supra* note 110.

[131] *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, SEC, dated February 13, 2024, at 2.

[132] *See, e.g.,* Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair, dated April 25, 2024.

[133] *See supra* note 134.

[134] *See* Securities Exchange Act Release No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

[135] *See supra* note 136, 89 FR 45715, 45716 n.11.

[136] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated October 28, 2019, at 9.

require unanticipated reporting delays to address Industry Member implementation issues or concerns,'' but that, ''[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.'' [137] CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission's May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the ''2023 Verbal Quotes Exemption'') affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the ''2020 Verbal Quotes Order'').[138] The Commission has stated that, ''to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.'' [139] Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.[140]

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the ''November 2023 Order'') [141] affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that ''the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.'' [142] The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have ''authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,'' citing Section 36 of the Exchange Act and Rule 608.[143] Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.[144]

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1A.[145] As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further detail how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation,

[137] *See supra* note 138 at 10.

[138] *See* Securities Exchange Act Release No. 90405 (November 12, 2020), 85 FR 73544 (November 18, 2020) (the ''2020 Verbal Quotes Exemption'').

[139] *See, e.g.,* Securities Exchange Act Release No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

[140] As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated June 3, 2022.

[141] *See* Securities Exchange Act Release No. 98848 (November 2, 2023), 88 FR 77128 (November 8, 2023) (the ''November 2023 Order'').

[142] *See* November 2023 Order, 88 FR 77128, 77129 n.13.

[143] *See* FAM Adopting Release, 85 FR 31322, 31335. Section 36 of the Exchange Act grants the Commission the authority to ''conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may ''exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.'' 17 CFR 242.608(e).

[144] *See* Section 12.3 of the CAT NMS Plan (''[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.'')

[145] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

implementation and maintenance of the CAT among the Participants (referred to as ''plan sponsors''), and between the Participants and Industry Members (referred to as ''members of the plan sponsors'').[146] Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (''Pre-Formation Costs'') were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of $13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately $3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of $3,196,434; consulting costs of $10,589,273; and public relations costs of $57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.[147]

(i) Request for Proposal (''RFP'')

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.[148]

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.[149] Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information (''RFI'') process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process ''to determine the best technical solution for developing a consolidated audit trail.'' FIF suggested that the Commission ''should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group.'' Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.[150]

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.[151] As the SEC noted, ''[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan.'' [152]

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.[153] As the SEC described in its approval order for the Selection Plan, ''[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor').'' [154] After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it ''believes the

[146] *See, e.g.,* Rule 613(a)(1)(vii)(D).

[147] The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. *See* Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, SEC, dated September 30, 2014. A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: *https://www.sec.gov/divisions/marketreg/rule613-info.*

[148] *See* detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D–2.

[149] For example, in its comments on proposed Rule 613, FIF suggested ''that the SROs should select the processor through a 'request for proposal.'" *See* Rule 613 Adopting Release, 77 FR 45722, 45785.

[150] *See* Rule 613 Adopting Release, 77 FR 45722, 45738–39.

[151] *See* Rule 613 Adopting Release, 77 FR 45722, 45739.

[152] *See* Securities Exchange Act Release No. 71596 (February 21, 2014), 79 FR 11152, 11152 (February 27, 2014) (''Selection Plan Approval Order'').

[153] *See supra* note 154.

[154] *See* Selection Plan Approval Order, 79 FR 11152, 11153.

[Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail.'' [155]

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the ''Selection Plan'').[156] The Commission approved the Selection Plan as filed on February 21, 2014.[157] In approving the Selection Plan, the Commission concluded that ''it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor.'' [158]

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed ''Qualified Bids,'' and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a ''reasonable approach,'' that ''the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,'' and that ''the process set forth in the Selection Plan should be permitted to continue'':

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.[159]

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.[160]

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically,

[155] *See* Selection Plan Approval Order, 79 FR 11152, 11159.

[156] *See* Securities Exchange Act Release No. 70892 (November 15, 2013), 78 FR 69910 (November 21, 2013).

[157] *See* Selection Plan Approval Order, *supra* note 154.

[158] *See* Selection Plan Approval Order, 79 FR 11152, 11160.

[159] *See* CAT NMS Plan Approval Order, 81 FR 84696, 84737.

[160] *See* Section D(11) of Appendix C of the CAT NMS Plan.

''the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.'' [161] Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.[162] The Participants filed two supplements to the request for exemptive relief.[163]

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.[164] In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.[165]

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (*e.g.,* lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).[166]

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1A.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.,* addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.[167]

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.[168] The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.[169] In reaching this conclusion, the Commission stated that ''it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.'' [170] The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.[171]

Given the Commission's recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1A.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.[172] Following the comment period, the SEC approved the Plan in November 2016.[173]

[161] *See* Securities Exchange Release No. 77265 (March 1, 2016), 81 FR 11856, 11856 (March 7, 2016) (''2016 Exemptive Order'').

[162] *See* Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, SEC, dated January 30, 2015.

[163] *See* Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, SEC, dated April 3, 2015; Letter from the SROs to Brent J. Fields, Secretary, SEC, dated September 2, 2015.

[164] *See* 2016 Exemptive Order, *supra* note 163.

[165] *See* 2016 Exemptive Order, 81 FR 11856, 11857.

[166] *See supra* note 167.

[167] *See* Securities Exchange Act Release No. 69060 (March 7, 2013), 78 FR 15771, 15772 (March 12, 2013) (''March 2013 Exemptive Order'').

[168] *See* March 2013 Exemptive Order; Securities Exchange Act Release No. 71018 (December 6, 2013), 78 FR 75669 (December 12, 2013) (''December 2013 Exemptive Order'').

[169] *See* March 2013 Exemptive Order, 78 FR 15771, 15772; December 2013 Exemptive Order, 78 FR 75669, 75670.

[170] *See* March 2013 Exemptive Order, 78 FR 15771, 15772.

[171] *See supra* note 172, at 15773.

[172] *See* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[173] *See* CAT NMS Plan Approval Order, *supra* note 8.

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of $3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT's status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of $10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of $57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1A.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of

services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (''DevOps'') tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

• *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

• *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

• *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by $8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which lead to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.[174]

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

• *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.[175] The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for ''stateless as-you-go'' and ''batch end-of-day'' reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

• *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated

[174] *See, e.g.,* Securities Exchange Act Release No. 99938 (April 10, 2024), 89 FR 26983 (April 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC, dated March 27, 2024) (proposing amendments to the CAT NMS Plan for $23 million in annual savings).

[175] *See* CAT Industry Member Reporting Scenarios v. *4.10 (Oct. 21, 2022), https://www.catnmsplan.com/sites/default/files/2022-10/10.21.22_Industry_Member_Tech_Specs_Reporting_Scenarios_v4.10_CLEAN.pdf.*

that ''[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor.'' [176] Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

• *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts (''SMEs'') dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.[177]

CAT provides various tools to help Industry Members identify and rectify errors.

• *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (*e.g.,* OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (*e.g.,* OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.[178]

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (*e.g.,* Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that ''AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios.'' [179] AWS provides the following benefits to CAT, among others:

• *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.

• *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.

• *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

• *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, ''[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires.'' [180]

• *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

• *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

• *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost

[176] *See* Letter from Janet Early, FIF, to Thesys CAT, dated March 29, 2018.

[177] *See* Letter from Christopher Bok, FIF, to Jay Clayton, Chair, SEC, dated December 11, 2018, at 4.

[178] *See* Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, SEC, dated July 18, 2016, at 92, *https://www.sec.gov/comments/4-698/4698-13.pdf.*

[179] *See, e.g.,* Lydia Leong & Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) (''Strategic Cloud Assessment Article'').

[180] *See supra* note 181.

prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of a single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, ''[t]he best practice is to focus on a single primary strategic provider.'' [181]

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (*e.g.,* organizational setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . legal costs.'' [182] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.'' [183] In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.[184] Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.[185]

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1A were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes $37,852,083 in Thesys

[181] *See supra* note 181.

[182] *See* Section 11.1(a)(i) of the CAT NMS Plan.

[183] *See* Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[184] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[185] *See* Settlement Exemptive Order, 88 FR 77128, 77129–30.

costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the $19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these $19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that ''the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,'' and that ''the process set forth in the Selection Plan should be permitted to continue.'' [186] Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.[187] At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that ''SIFMA looks forward to commencing work with the SROs and Thesys.'' [188]

As noted in the CAT Funding Model Approval Order, the Commission recognized that ''[t]he CAT NMS Plan contemplates that the costs of the CAT are to be allocated between the Participants and Industry Members.'' [189] If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . CAIS operating fees.'' [190] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.'' [191] In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. The ''CAIS Operating Costs'' for Historical CAT Costs 1 total $9,480,587, with Pre-FAM costs of $2,072,908, FAM 1 costs of $254,998, FAM 2 costs of $1,590,298, and FAM 3 costs of $5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1A, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.[192] As the SEC approved in this exemptive relief, the Participants proposed ''to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.'' [193] To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1A:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.[194]
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.

[186] *See* CAT NMS Plan Approval Order, 81 FR 84696, 84737.

[187] *See* Letter from the Participants to Brent J. Fields, Secretary, SEC, dated January 18, 2017), *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf.*

[188] *See* Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants, dated April 4, 2017 (re: Selection of Thesys as CAT Processor), *https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf.*

[189] *See* CAT Funding Model Approval Order, 91 FR 13410, 13421.

[190] *See* Section 11.1(a)(i) of the CAT NMS Plan.

[191] *See* Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[192] *See* Phased Reporting Exemptive Relief Order, 85 FR 23075, 23079–80.

[193] *See supra* note 194, at 23078–79, n.70.

[194] The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (*https://www.catnmsplan.com/specifications/im*).

• The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.[195]

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1A.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1A, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

• Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.[196]

• The full, final CAIS Technical Specifications were published on January 29, 2021.

• Updated versions of the CAIS Technical Specifications were published throughout 2021.[197]

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members' existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1A. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be used. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,[198] and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1A.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately $2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.[199]

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . public relations costs.'' [200] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.'' [201] In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1A, the average cost per year for these services was approximately $36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the ''Reporting Agreements'') is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.[202] In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants

[195] Such contact points with the industry are described in detail on the Events web page of the CAT website (*https://www.catnmsplan.com/events*).

[196] The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (*https://www.catnmsplan.com/specifications/im*).

[197] Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

[198] *See, e.g.,* CAT Q4 2023 Quarterly Progress Report (January 30, 2024), *https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf.*

[199] *See* CAT NMS Plan Approval Order, 81 FR 84696, 84917–18.

[200] *See* Section 11.1(a)(i) of the CAT NMS Plan.

[201] *See* Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[202] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.[203] Similarly, FINRA's former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.[204] In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.[205]

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of the CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment 1A was designated by a Participant as the Participant's alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . consulting . . .'' costs.[206] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . consulting'' [207] costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was $292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (*e.g.,* exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a ''reconciliation'' and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

[203] *See, e.g.,* NASDAQ Equities Rule 4626.

[204] FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA's OATS system to report trade information (*i.e.,* repeatedly over the course of a trading day for many Industry Members).

[205] *See* Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, SEC, dated December 18, 2020.

[206] *See* Section 11.1(a)(i) of the CAT NMS Plan.

[207] *See* Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (*e.g.,* fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,[208] to CAT Reporters in the trade billing details provided with their CAT invoices (''Additional Trade Details''). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.[209] By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1A does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1A, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1A to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT

[208] *See* CAT Technical Specifications for Billing Trade Details; Trade Details Schema, *https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json;* CAT Billing Scenarios, Version 1.0 (November 30, 2023), *https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf.*

[209] For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (*e.g.,* by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). *See, e.g.,* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may ''over-collect'' Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessments will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

• *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options; [210] (2) trade details schemas; [211] and (3) CAT billing scenarios.[212]

• *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.[213] The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.[214] 485 participants and 394 participants attended the two webinars, respectively.

• *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.[215]

• *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 31 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.[216]

• *Substantial Past Experience with CAT Billing Processes.* To date, CAT LLC, via FCAT, has billed Industry Members for Historical CAT Assessment 1 and certain Prospective CAT Fees. Industry Members will be billed for Historical CAT Assessment 1A via the same processes established for Historical CAT Assessment 1 and the Prospective CAT Fees. Accordingly, Industry Members have substantial experience with the CAT billing processes.

• *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.[217] For example, the Help Desk assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Notice to Industry Members

In keeping with past practice, CAT LLC provided notice of the proposed Historical CAT Assessment 1A via CAT Fee Alert on April 1, 2026,[218] one month prior to the effective date of Historical CAT Assessment 1A on May 1, 2026. Such notice provides Industry Members with sufficient time to address any technological or other requirements necessary for implementing Historical CAT Assessment 1A.

FINRA has filed the proposed rule change for immediate effectiveness.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[219] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[220] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act,[221] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate. Section 15A(b)(2) of the Act also require that FINRA be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[222]

FINRA believes that this proposed rule change is consistent with the Act because it implements provisions of the Plan and is designed to assist FINRA in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary

[210] *See* CAT Technical Specifications for Billing Trade Details, Version 1.0 r1, December 8, 2023, *https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Techical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf.*

[211] *See* Trade Details Schema, *https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json.*

[212] *See* CAT Billing Scenarios, Version 1.0 (November 30, 2023), *https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf.*

[213] *See* CAT Billing Webinar, Part 1 (September 28, 2023), *https://www.catnmsplan.com/events/part-1-cat-billing-webinar.*

[214] *See* CAT Billing Webinar, Part 2 (November 7, 2023), *https://www.catnmsplan.com/events/part-2-cat-billing-webinar.*

[215] *See* CAT Alert 2023–02 (October 12, 2023), *https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf.*

[216] *See* CAT Billing FAQs, Section V of CAT FAQs, *https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number.*

[217] The CAT NMS Plan requires that the Plan Processor ''staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise.'' Section 6.10(c)(vi) of the CAT NMS Plan. *See also* Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

[218] *See* CAT Fee Alert 2026–1 (April 1, 2026), *https://www.catnmsplan.com/sites/default/files/2026-04/04.01.26-CAT-Fee-Alert-2026-1.pdf.*

[219] 15 U.S.C. 78*o*–3(b)(6).

[220] 15 U.S.C. 78*o*–3(b)(5).

[221] 15 U.S.C. 78*o*–3(b)(9).

[222] *See* 15 U.S.C. 78*o*–3(b)(2).

and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [223] To the extent that this proposed rule change implements the Plan and applies specific requirements to Industry Members, FINRA believes that this proposed rule change furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

FINRA also believes that the proposed fees paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. FINRA has already incurred development and implementation costs and the proposed Historical CAT Assessment 1A fees, therefore, would allow FINRA to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1A fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes. The proposed fees would not cover FINRA services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. Thus, FINRA believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, FINRA has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. FINRA believes that this proposed rule change is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist FINRA and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [224] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[225] As this proposed rule change implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, FINRA believes that this proposed rule change furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1A Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.[226] In each respect, as discussed above, Historical CAT Assessment 1A is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan and, therefore, is reasonable and consistent with the Exchange Act. Calculation of the fee rate for Historical CAT Assessment 1A requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1A, and the projection of the executed equivalent share volume for Historical Recovery Period 1A. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, FINRA has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.'' As discussed below, FINRA believes that the amounts set forth in this filing for each of these cost categories is ''reasonable and appropriate.'' Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.[227] CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the

[223] *See* CAT NMS Plan Approval Order, 81 FR 84696, 84697.

[224] *See supra* note 225.

[225] *See* CAT Funding Model Approval Order, 91 FR 13410, 13481.

[226] *See supra* note 227.

[227] *See* Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[228] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [229] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[230] Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.[231]

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[232]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.[233] CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[234] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[235] The services performed by FCAT for each period and the costs related to such services are described above.[236]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.[237] CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.[238] The services performed by Kingland for each period and the costs for each period are described above.[239]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change

[228] For a discussion of the amount and type of cloud hosting services fees, *see* Items II.A.1(2)(B)(i)(a)(I), II.A.1(2)(B)(i)(b)(I), II.A.1(2)(B)(i)(c)(I) and II.A.1(2)(B)(i)(d)(I) above.

[229] *See* Appendix D–4 of the CAT NMS Plan at n.262.

[230] *See* CAT NMS Plan Approval Order, 81 FR 84696, 84801.

[231] *See* Items II.A.1(2)(B)(i)(a)(I), II.A.1(2)(B)(i)(b)(I), II.A.1(2)(B)(i)(c)(I) and II.A.1(2)(B)(i)(d)(I) above.

[232] *See* Securities Exchange Act Release. No. 97151 (March 15, 2023), 88 FR 17086, 17117 (March 21, 2023) (describing key cost discipline mechanisms for the CAT).

[233] *See* Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[234] *See* Item II.A.1(2)(B)(i)(a)(II) above.

[235] *See* Items II.A.1(2)(B)(i)(a)(II), II.A.1(2)(B)(i)(b)(II), II.A.1(2)(B)(i)(c)(II) and II.A.1(2)(B)(i)(d)(II) above.

[236] *See supra* note 237.

[237] *See* Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[238] *See* Items II.A.1(2)(B)(i)(a)(III), II.A.1(2)(B)(i)(b)(III), II.A.1(2)(B)(i)(c)(III) and II.A.1(2)(B)(i)(d)(III) above.

[239] *See supra* note 240.

request fees as a part of Historical CAT Assessments.[240] CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs is described above.[241] As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.[242] Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.[243] CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.[244] With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.[245] In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.[246]

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.[247] CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.[248]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.[249] CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees [250] and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.[251] CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.[252] CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.[253] Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.[254]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.[255] CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance

[240] *See* Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[241] *See* Items II.A.1(2)(B)(i)(a)(IV), II.A.1(2)(B)(i)(b)(IV), II.A.1(2)(B)(i)(c)(IV) and II.A.1(2)(B)(i)(d)(IV) above.

[242] *See* Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[243] *See* Items II.A.1(2)(B)(i)(a)(V), II.A.1(2)(B)(i)(b)(V), II.A.1(2)(B)(i)(c)(V) and II.A.1(2)(B)(i)(d)(V) above.

[244] *See supra* note 245.

[245] *See* Item II.A.1(2)(B)(i)(a)(V) above.

[246] *See* Item II.A.1(2)(B)(i)(a)(II) above.

[247] *See* Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

[248] *See* Items II.A.1(2)(B)(i)(a)(VI), II.A.1(2)(B)(i)(b)(VI), II.A.1(2)(B)(i)(c)(VI) and II.A.1(2)(B)(i)(d)(VI) above.

[249] *See* Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

[250] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' *See* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

[251] CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. *See, e.g.,* CTA Plan and CQ Plan.

[252] *See* Item II.A.1(2)(B)(i)(a)(VII) above.

[253] *See* Items II.A.1(2)(B)(i)(a)(VII), II.A.1(2)(B)(i)(b)(VII), II.A.1(2)(B)(i)(c)(VII) and II.A.1(2)(B)(i)(d)(VII) above.

[254] *See supra* note 255.

[255] *See* Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

against security breaches.'' [256] In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.[257] Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[258]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.[259] CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.[260] The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.[261] Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.[262]

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.[263] Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.[264] Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.[265]

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.[266]

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.[267]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.[268] CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.[269] By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.[270] Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.[271] As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1A

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1A and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1A appropriately weighs the need for a reasonable fee rate for Historical CAT Assessment 1A that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1A would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.[272]

[256] *See* Section 4.1.5 of Appendix D of the CAT NMS Plan.

[257] *See* Items II.A.1(2)(B)(i)(a)(VIII), II.A.1(2)(B)(i)(b)(VIII), II.A.1(2)(B)(i)(c)(VIII) and II.A.1(2)(B)(i)(d)(VIII) above.

[258] *See supra* note 259.

[259] *See* Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

[260] *See* Item II.A.1(2)(B)(i)(a)(IX) above.

[261] *See* Items II.A.1(2)(B)(i)(a)(IX), II.A.1(2)(B)(i)(b)(IX), II.A.1(2)(B)(i)(c)(IX) and II.A.1(2)(B)(i)(d)(IX) above.

[262] *See supra* note 263.

[263] *See* Item II.A.1(2)(B)(i)(a)(IX) above.

[264] *See* Items II.A.1(2)(B)(i)(a)(IX), II.A.1(2)(B)(i)(b)(IX), II.A.1(2)(B)(i)(c)(IX) and II.A.1(2)(B)(i)(d)(IX) above.

[265] *See supra* note 266.

[266] *See* Item II.A.1(2)(B)(i)(a)(IX) above.

[267] *See supra* note 268.

[268] *See* Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

[269] *See* Item II.A.1(2)(B)(i)(a)(X) above.

[270] *See* Items II.A.1(2)(B)(i)(a)(X), II.A.1(2)(B)(i)(b)(X), II.A.1(2)(B)(i)(c)(X) and II.A.1(2)(B)(i)(d)(X) above.

[271] *See supra* note 272.

[272] As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. *See* CAT

Continued

In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total cost for Historical CAT Assessment 1A was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1A

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1A by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.4) and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1A is projected to be 11,961,875,098,720.98 executed equivalent shares.[273]

(E) Actual Fee Rate for Historical CAT Assessment 1A

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, and describe the relevant number of decimal places for the fee rate.[274] Accordingly, proposed paragraph (a)(1)(B)(ii) of Rule 6897 would set forth a fee rate of $0.000002 per executed equivalent share. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

FINRA believes that imposing Historical CAT Assessment 1A with a fee rate of $0.000002 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with the remaining Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, FINRA believes that the level of the fee rate is reasonable in that it is calculated in accordance with the SEC approved CAT Funding Model. Historical CAT Assessment 1A is significantly lower than fees assessed pursuant to Section 31 (*e.g.,* $0.00007 per share to $0.00072 per share),[275] and, as a result, the magnitude of Historical CAT Assessment 1A is small, and therefore will mitigate any potential adverse economic effects or inefficiencies. Furthermore, the reasonable fee rate for Historical CAT Assessment 1A further supports CAT LLC's decision to seek to recover the costs described herein.

(3) Historical CAT Assessment 1A Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1A provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members, in accordance with the SEC approved CAT Funding Model. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.[276] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is appropriate.'' [277] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1A provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1A complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1A would be charged to CEBBs and CEBSs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A—Historical CAT Costs 1 (including Excluded Costs) and the exclusion of costs previously invoiced via Historical CAT Assessment 1, the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1A that is reasonable as it is consistent with the SEC approved CAT Funding Model and is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1A Is Not Unfairly Discriminatory

Historical CAT Assessment 1A is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1A complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A and the resulting fee rate for Historical CAT Assessment 1A is reasonable, consistent with the SEC approved CAT Funding Model. Therefore, Historical CAT Assessment 1A does not impose an unfairly discriminatory fee on Industry Members.

FINRA believes the proposed fees established pursuant to the CAT

Funding Model Approval Order, 91 FR 13410, 13469.

[273] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by two.

[274] *See* CAT Funding Model Approval Order, 91 FR 13410, 13445 n.677.

[275] *See* CAT Funding Model Approval Order, 91 FR 13410, 13469.

[276] *See* Section 11.3(b) of the CAT NMS Plan.

[277] *See* CAT Funding Model Approval Order, 91 FR 13410, 13412.

Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and with specificity in Rule 6897. FINRA also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share and are consistent with the SEC-approved Funding Model. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Industry Members to reasonably predict their payment obligations for budgeting purposes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(9) of the Act [278] requires that FINRA's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. FINRA notes that Historical CAT Assessment 1A implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1A on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[279] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1A is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A is reasonable and the resulting fee rate for Historical CAT Assessment 1A calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1A would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange 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) of the Act [280] and paragraph (f)(2) of Rule 19b–4 thereunder.[281] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–FINRA–2026–011 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–FINRA–2026–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–FINRA–2026–011 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[282]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09854 Filed 5–15–26; 8:45 am]

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[278] 15 U.S.C. 78*o*–3(b)(9).

[279] *See* CAT Funding Model Approval Order, 91 FR 13410, 13479–81.

[280] 15 U.S.C. 78s(b)(3)(A).

[281] 17 CFR 240.19b–4(f)(2).

[282] 17 CFR 200.30–3(a)(12).

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Part III

## Securities and Exchange Commission

Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105469; File No. SR–24X–2026–14]**

## Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

May 13, 2026.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2026, 24X National Exchange LLC (''24X'' or the ''Exchange'') 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 the Substance of the Proposed Rule Change

The Exchange proposes to establish fees for Industry Members [3] related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') incurred prior to January 1, 2022 that were not previously invoiced via Historical CAT Assessment 1. Industry Members were previously invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1. Historical CAT Assessment 1 is no longer in effect. Historical CAT Assessment 1A is being established to collect the remaining $38,964,855.34 of Historical CAT Costs 1. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or ''the Company'') [4] and referred to as Historical CAT Assessment 1A, and would be described in a new Rule 4.18 of the Exchange's rulebook entitled ''Consolidated Audit Trail Funding Fees.'' The fee rate for Historical CAT Assessment 1A will be $0.000002 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1A in June 2026 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in May 2026. The proposed rule change is available on the Exchange's website at *https://equities.24exchange.com/regulation* and at the principal office of the Exchange.

### 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

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[5] On November 15, 2016, the Commission approved the CAT NMS Plan.[6] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[7] On September 5, 2025, CAT LLC proposed a revised funding model to fund the CAT (''CAT Funding Model'').[8] On March 16, 2026, the Commission approved the CAT Funding Model, after concluding that the model satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[9]

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (''Historical CAT Assessment'' fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (''Prospective CAT Costs'' fees).[10]

Under the CAT Funding Model, ''[t]he Operating Committee will establish one or more fees (each a 'Historical CAT Assessment') to be payable by Industry Members with regard to CAT costs previously paid by the Participants ('Past CAT Costs').'' [11] In establishing a Historical CAT Assessment, the Operating Committee will determine a ''Historical Recovery Period'' and calculate a ''Historical Fee Rate'' for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* 24X Rule 4.5(u). *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* 24X Rule 4.5.

[4] The term ''CAT LLC'' may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

[5] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (''Rule 613 Adopting Release'').

[6] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

[7] Section 11.1(b) of the CAT NMS Plan.

[8] Securities Exchange Act Rel. No. 103960 (Sept. 12, 2025), 90 FR 44910 (Sept. 17, 2025).

[9] Securities Exchange Act Rel. No. 105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 29, 2026) (''CAT Funding Model Approval Order''). This CAT Funding Model replaced the prior funding model that was approved by the Commission on September 6, 2023. Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023).

[10] Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1A related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

[11] Section 11.3(b) of the CAT NMS Plan.

calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.[12]

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.[13] In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) Historical CAT Assessment 1A to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [14] The Plan further states that ''Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.'' [15] Accordingly, the purpose of this filing is to (i) establish 24X Rule 4.18 entitled ''Consolidated Audit Trail Funding Fees''; and (ii) implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1A, in accordance with the CAT NMS Plan.[16]

Other Participants in the CAT previously filed a fee filing to implement Historical CAT Assessment 1.[17] Based on the fee filing for Historical CAT Assessment 1, Historical CAT Assessment 1 was expected to be in effect from the first invoice in November 2024 until $212,039,879.34 (two-thirds of Historical CAT Costs 1) was invoiced to CAT Executing Brokers collectively.[18] However, Historical CAT Assessment 1 ceased before the entire amount was invoiced.[19] The last invoice for Historical CAT Assessment 1 was provided on December 2025, after only $173,075,024 of the total $212,039,879.34 had been invoiced to Industry Members.[20] Accordingly, $38,964,855.34 of Historical CAT Costs 1 has not been invoiced. Historical CAT Assessment 1A would seek to recover this outstanding amount of Historical CAT Costs 1 that has not been invoiced.

(1) CAT Executing Brokers

Historical CAT Assessment 1A will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.[21] The CAT NMS Plan defines a ''CAT Executing Broker'' to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.[22]

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) [23]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 12.*n*.8/ 13.*n*.8 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order on this side of the trade.<br>Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction.<br>This must be provided if orderID is provided ... | C |

[12] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is appropriate.'' CAT Funding Model Approval Order at 13450.

[13] Section 11.3(b)(ii) of the CAT NMS Plan.

[14] Section 11.1(b) of the CAT NMS Plan.

[15] Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

[16] Note that there may be one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan.

[17] *See, e.g.,* Securities Exchange Act Release No. 100947 (Sept. 5, 2024), 89 FR 74580 (Sept, 12, 2024) (SR–MEMX–2024–34).

[18] *See* MEMX LLC Rule 4.17(a)(1)(C).

[19] In response to the Eleventh Circuit's decision vacating the prior CAT NMS Plan funding model, the last invoices for Historical CAT Assessment 1 were sent in December 2025 based on November 2025 transactions. *See American Securities Association* v. *SEC,* No. 23–13396 (11th Cir. July 25, 2025).

[20] CAT Fee Alert 2025–4 (Nov. 25, 2025).

[21] In its approval order for the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was appropriate. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 13413.

[22] Section 1.1 of the CAT NMS Plan. In its approval order for the CAT Funding Model, the Commission ''recognize[d] that Industry Members may pass-through CAT fees for customer executed volume.'' *See* CAT Funding Model Approval Order at 13424.

[23] *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.2.0–r2 (Feb. 24, 2026), *https://www.catnmsplan.com/sites/default/files/2026-02/02.24.2026-CAT_Reporting_Technical_Specifications_for_Participants_4.2.0-r2.pdf* (''CAT Reporting Technical Specifications for Plan Participants'').

OPTION TRADE (OT) [24]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 16.*n*.13/17.*n*.13 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order. | R |

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) [25]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 26 ..... | reportingExecutingMpid ..... | Member Alias ..... | MPID of the executing party ..... | R |
| 28 ..... | contraExecutingMpid ..... | Member Alias ..... | MPID of the contra-side executing party ..... | C |

(2) Calculation of Fee Rate for Historical CAT Assessment 1A

The Operating Committee determined the fee rate to be used in calculating Historical CAT Assessment 1A based on the Historical CAT Costs for Historical CAT Assessment 1A and the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1A (''Historical Recovery Period 1A''), as discussed in detail below. Based on this calculation, the Operating Committee has determined that the fee rate for Historical CAT Assessment 1A would be $0.000002, as discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.[26]

(B) Historical CAT Costs

The CAT NMS Plan states that ''[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.'' [27] Historical CAT Assessment 1, the original Historical CAT Assessment, was implemented to recover $212,039,879.34 of Historical CAT Costs 1 from CEBBs and CEBSs collectively.[28] As described in other Participants' fee filings for Historical CAT Assessment 1, Historical CAT Costs 1 of $212,039,879.34 includes Past CAT Costs of $401,312,909 minus certain Excluded Costs of $83,253,090. As described in other Participants' filings for Historical CAT Assessment 1, Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), plus the Excluded Costs of $83,253,090. Accordingly, CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), and CEBSs collectively will be responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), for a total of $212,039,879.34. CEBBs and CEBSs collectively have been invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1. Accordingly, Historical CAT Assessment 1A would charge CEBBs and CEBSs collectively for the remaining $38,964,855.34 of Historical CAT Costs 1 that was not invoiced to CEBBs and CEBSs via Historical CAT Assessment 1. Historical CAT Assessment 1A will be designed to recover the remaining $38,964,855.34 of Historical CAT Costs 1 from CEBBs and CEBSs collectively, with CEBBs collectively responsible for $19,482,427.67 and CEBSs collectively responsible for $19,482,427.67.

(i) Historical CAT Costs 1

[24] *See* Table 52, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

[25] *See* Table 62, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

[26] Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that ''in the Commission's view, the use of executed equivalent share volume as the basis for determining and allocating CAT costs during the two-year interim period is appropriate and consistent with the funding principles of the CAT NMS Plan.'' CAT Funding Model Approval Order at 13427.

[27] Section 11.3(b)(i)(C) of the CAT NMS Plan.

[28] *See* Securities Exchange Act Release No. 100947 (Sept. 5, 2024), 89 FR 74580 (Sept, 12, 2024) (SR–MEMX–2024–34).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (''Excluded Costs''). The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing ''a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.'' [29] Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT. These Historical CAT Costs 1 are the same as described in other Participants' fee filings for Historical CAT Assessment 1.[30]

(a) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (''Pre-FAM Period'') and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of $124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($41,430,243.33) and CEBSs paying one-third ($41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) ** |
|---|---|
| Capitalized Developed Technology Costs * | $51,847,150 |
| *Technology Costs* | 33,568,579 |
| Cloud Hosting Services | 10,268,840 |
| Operating Fees | 21,085,485 |
| CAIS Operating Fees | 2,072,908 |
| Change Request Fees | 141,346 |
| Legal | 19,674,463 |
| Consulting | 17,013,414 |
| Insurance | 880,419 |
| Professional and administration | 1,082,036 |
| Public relations | 224,669 |
| Total Operating Expenses | 124,290,730 |

* The non-cash amortization of these capitalized developed technology costs of $2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.[31]

** The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with ''an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available.'' The audit is available on the CAT website.

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(I) Technology Costs—Cloud Hosting Services

The $10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS''), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS,

[29] Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

[30] *See, e.g.,* Securities Exchange Act Release No. 100947 (Sept. 5, 2024), 89 FR 74580 (Sept, 12, 2024) (SR–MEMX–2024–34).

[31] With respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

LLC [32] and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as ''CAT LLC''),[33] and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.[34]

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [35] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [36] However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,[37] Phase 2a and Phase 2b Industry Member Data [38] (including certain linkages), as well as SIP Data,[39] reference data and other types of Other Data.[40] The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.[41]

| | Date range: 3/29/19 to 4/12/20 * | Date range: 4/13/20 to 6/21/20 ** |
|---|---|---|
| Average Daily Volume in Billions: | | |
| Participant—Equities | 5 | 5 |
| Participant—Options | 80 | 981 |
| Industry Member—Equities | ..... | 3 |
| Industry Member—Options | ..... | 0.04 |
| SIP—Options & Equities | 64 | 70 |
| Average Total Daily Volume | 149 | 166 |
| Cumulative Total Events for the Period | 3,890 | 4,990 |
| Total Compute Hours for the Period | *** N/A | 5,663,247 |
| Storage Footprint at End of Period (Petabytes) | 30.57 | 47.96 |

* The Participant Equities in RSA format.
** Start of Industry Member reporting on 4/13/2020.
*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(II) Technology Costs—Operating Fees

The $21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders [42] for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

[32] CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

[33] On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. *See* Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

[34] For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

[35] Appendix D–4 of the CAT NMS Plan at n.262.

[36] Appendix D–5 of the CAT NMS Plan.

[37] *See* Section 6.3(d) of the CAT NMS Plan.

[38] *See* Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) (''Phased Reporting Exemptive Relief Order'') for a description of Phase 2a and Phase 2b Industry Member Data.

[39] *See* Section 6.5(a)(ii) of the CAT NMS Plan.

[40] *See* Appendix C–109 of the CAT NMS Plan.

[41] Note that the volume data described in this table does not include CAIS data.

[42] The term ''Bidder'' is defined in Section 1.1 of the CAT NMS Plan.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.[43]

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.[44] On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated (''Exegy''), a market data provider; [45]
- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated testing for Phase 2a and 2b reporting for Industry Members;
- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;
- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;
- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; [46] and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

The $2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System (''CAIS''). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation (''Kingland''). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC was required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.[47] Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers (''LTID'') earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.[48]

(IV) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the

[43] Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf.*

[44] *Id.*

[45] The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(a)(IX).

[46] The CAT website is *https://www.catnmsplan.com.*

[47] For a discussion of the CCID Alternative, *see* Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

[48] Phased Reporting Exemptive Relief Order at 23079–80.

proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of $141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.[49]

(V) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of $51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

*Initial Plan Processor: Thesys CAT, LLC.* The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.[50] The Participants utilized a request for proposal (''RFP'') to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC (''Thesys CAT''), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

*Successor Plan Processor: FCAT.* The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee for an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(VI) Legal Costs

The legal costs of $19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Pillsbury Winthrop Shaw Pittman LLP (''Pillsbury''), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

*Law Firm: WilmerHale.* Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;

[49] Note that CAT LLC also has incurred costs related to specific Industry Members (*e.g.,* reprocessing costs related to Industry Member reporting errors).

[50] Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf.*

• Analyzed legal matters related to the Development Advisory Group (''DAG'');
• Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
• Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
• Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
• Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
• Provided assistance with compliance with Regulation SCI;
• Assisted with clock synchronization study;
• Provided assistance with respect to the establishment of CAT security;
• Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
• Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
• Provided advice regarding CAT policies and procedures;
• Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
• Provided interpretations of and related to the CAT NMS Plan;
• Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
• Assisted with third-party vendor agreements.

*Law Firm: Pillsbury.* The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the ''Reporter Agreement''). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(VII) Consulting Costs

The consulting costs of $17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:
• Established and implemented program operations for the CAT project, including the program management office and workstream design;
• Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
• Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
• Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
• Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS

Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(IX) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[51] The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were $1,082,036 for the Pre-FAM Period.

*Financial Advisory Firm: Anchin Accountants & Advisors (''Anchin'').* CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Accounting Firm: Grant Thornton LLP (''Grant Thornton'').* In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

*Market Data Provider: Exegy.* The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS

[51] Section 9.2 of the CAT NMS Plan.

Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.[52] In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

*Security Assessment: RSM US LLP (''RSM'').* The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(X) Public Relations Costs

The public relations costs of $224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

*Public Relations Firm: Peppercomm, Inc. (''Peppercomm'').* The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

*Public Relations Firm: Sloane & Company (''Sloane'').* CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

*Public Relations Firm: Peak Strategies.* CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(b) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones (''FAM Period 1''),[53] which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of $6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($2,125,781) and CEBSs paying one-third ($2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT costs for FAM Period 1 ** |
|---|---|
| Capitalized Developed Technology Costs * | $1,684,870 |
| *Technology Costs:* | 3,996,800 |
| Cloud Hosting Services | 2,642,122 |
| Operating Fees | 1,099,680 |
| CAIS Operating Fees | 254,998 |
| Change Request Fees | - |
| Legal | 481,687 |
| Consulting | 137,209 |

[52] *See* Section 6.5(a)(ii) of the CAT NMS Plan.

[53] Section 11.6(a)(i)(A) of the CAT NMS Plan.

| Operating expense | Historical CAT costs for FAM Period 1 ** |
|---|---|
| Insurance | |
| Professional and administration | 69,077 |
| Public relations | 7,700 |
| Total Operating Expenses | 6,377,343 |

* The non-cash amortization of these capitalized developed technology costs of $362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.[54]

** The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.[55] CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the $2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.[56]

| | Date range: 6/22/20–7/31/20 |
|---|---|
| Average Daily Volume in Billions: | |
| Participant—Equities | 6 |
| Participant—Options | 103 |
| Industry Member—Equities | 7 |
| Industry Member—Options | 0.31 |
| SIP—Options & Equities | 74 |
| Average Total Daily Volume | 185 |
| Cumulative Total Events for the Period | 5,190 |
| Total Compute Hours for the Period | 2,612,082 |
| Storage Footprint at End of Period (Petabytes) | 57.47 |

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the $1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

[54] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[55] *See* definition of ''Initial Industry Member Core Equity and Options Reporting'' in Section 1.1 of the CAT NMS Plan.

[56] Note that the volume data described in this table does not include CAIS data.

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the $254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(IV) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of $1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(VI) Legal Costs

The legal costs of $481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(VII) Consulting Costs

The consulting costs of $137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(IX) Professional and Administration Costs

*Financial Advisory Firm: Anchin.* The professional and administration costs of $69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(X) Public Relations Costs

The public relations costs of $7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(c) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones (''FAM Period 2''),[57] which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of $42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($14,325,493) and CEBSs paying one-third ($14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT costs for FAM Period 2** |
|---|---|
| Capitalized Developed Technology Costs* | $6,761,094 |
| *Technology Costs* | 31,460,033 |
| Cloud Hosting Services | 20,709,212 |
| Operating Fees | 9,108,700 |
| CAIS Operating Fees | 1,590,298 |
| Change Request Fees | 51,823 |
| Legal | 2,766,644 |
| Consulting | 532,146 |
| Insurance | 976,098 |
| Professional and administration | 438,523 |
| Public relations | 41,940 |
| Total Operating Expenses | 42,976,478 |

*The non-cash amortization of these capitalized developed technology costs of $1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.[58]

**The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section

[57] Section 11.6(a)(i)(B) of the CAT NMS Plan.

[58] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.[59]

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the $20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.[60]

| | Date range: 8/1/20–12/31/20 |
|---|---|
| Average Daily Volume in Billions: | |
| Participant—Equities | 6 |
| Participant—Options | 116 |
| Industry Member—Equities | 11 |
| Industry Member—Options | 0.98 |
| SIP—Options & Equities | 80 |
| Average Total Daily Volume | 282 |
| Cumulative Total Events for the Period | 2,170 |
| Total Compute Hours for the Period | 15,660,392 |
| Storage Footprint at End of Period (Petabytes) | 114.59 |

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the $9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the $1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

[59] *See* definition of ''Full Implementation of Core Equity Reporting Requirements'' in Section 1.1 of the CAT NMS Plan.

[60] Note that the volume data described in this table does not include CAIS data.

(IV) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of $51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of $6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(VI) Legal Costs

The legal costs of $2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (*e.g.,* with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(VII) Consulting Costs

The consulting costs of $532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(IX) Professional and Administration Costs

The professional and administration costs of $438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

*Financial Advisory Firm: Anchin.* CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;

• Provided cash management and treasury functions;
• Facilitated bill payments;
• Provided monthly bookkeeping;
• Reviewed vendor invoices and documentation in support of cash disbursements;
• Provided accounting research and consultations on various accounting, financial reporting and tax matters;
• Addressed not-for-profit tax and accounting considerations;
• Prepared tax returns;
• Addressed various accounting, financial reporting and operating inquiries from the Participants;
• Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
• Supported compliance with the CAT NMS Plan;
• Worked with and provided support to the Operating Committee and various CAT working groups;
• Prepared monthly, quarterly and annual financial statements;
• Supported the annual financial statement audit by an independent auditor; and
• Reviewed historical costs from inception.

*Accounting Firm: Grant Thornton.* CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(X) Public Relations Costs

The public relations costs of $41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(d) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones (''FAM Period 3''),[61] which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of $144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($48,138,423) and CEBSs paying one-third ($48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT costs for FAM Period 3 ** |
|---|---|
| Capitalized Developed Technology Costs * | $10,763,372 |
| *Technology Costs* | 123,639,402 |
| Cloud Hosting Services | 94,574,759 |
| Operating Fees | 23,106,091 |
| CAIS Operating Fees | 5,562,383 |
| Change Request Fees | 396,169 |
| Legal | 6,333,248 |
| Consulting | 1,408,209 |
| Insurance | 1,582,714 |
| Professional and administration | 595,923 |
| Public relations | 92,400 |
| Total Operating Expenses | 144,415,268 |

* The non-cash amortization of these capitalized developed technology costs of $5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.[62]
** The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard to the CAT: (a) reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and

[61] Section 11.6(a)(i)(C) of the CAT NMS Plan.

[62] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.[63]

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 3 Period. Accordingly, the $94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.[64]

| | Date range: 1/1/21 to 4/25/21 | Date range: 4/26/21 to 12/31/21 * |
|---|---|---|
| Average Daily Volume in Billions: | | |
| Participant—Equities | 9 | 9 |
| Participant—Options | 135 | 136 |
| Industry Member—Equities | 20 | 19 |
| Industry Member—Options | 2 | 2 |
| SIP—Options & Equities | 129 | 137 |
| Average Total Daily Volume | 297 | 304 |
| Cumulative Total Events for the Period | 7,480 | 5,310 |
| Total Compute Hours for the Period | 15,860,304 | 33,487,318 |
| Storage Footprint at End of Period (Petabytes) | 180.22 | 284.62 |

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the $23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and

[63] *See* definition of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' in Section 1.1 of the CAT NMS Plan.

[64] Note that the volume data described in this table does not include CAIS data.

implementation of CAIS during FAM Period 3. Accordingly, the $5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(IV) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of $396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of $10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(VI) Legal Costs

The legal costs of $6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP (''Covington'') during FAM Period 3.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,[65] and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.[66]

*Law Firm: Covington.* CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.[67] CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the

[65] Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

[66] Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

[67] *See* Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the ''2020 Orders'').

2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.[68]

(VII) Consulting Costs

The consulting costs of $1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(IX) Professional and Administration Costs

The professional and administration costs of $595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

*Financial Advisory Firm: Anchin.* CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Faciliated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Accounting Firm: Grant Thornton.* CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(X) Public Relations Costs

The public relations costs of $92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(e) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (''Excluded Costs''): (1) $14,749,362 of costs related to the termination of the relationship with the Initial Plan

[68] As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

Processor; (2) $48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) $19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total $83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.[69]

(I) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include $14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these $14,749,362 in costs.

(II) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of $48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these $48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Excluded costs for November 15, 2017–November 15, 2018 * |
|---|---|
| Capitalized Developed Technology Costs | $37,852,083 |
| *Technology Costs:* | |
| Cloud Hosting Services | |
| Operating Fees | |
| CAIS Operating Fees | |
| Change Request Fees | |
| Legal | 6,143,278 |
| Consulting | 4,452,106 |
| Insurance | |
| Professional and administration | 340,145 |
| Public relations | 87,325 |
| Total Operating Expenses | 48,874,937 |

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(a) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(b) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of $37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(c) Legal Costs

The legal costs of $6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT, including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing

[69] In approving the CAT Funding Model, the Commission states that ''the proposed exclusion of the excluded costs from Past CAT Costs is appropriate in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.'' CAT Funding Model Approval Order at 13450.

interpretative and implementation issues.

(d) Consulting Costs

The consulting costs of $4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (*e.g.,* Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(e) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(f) Professional and Administration Costs

The professional and administration costs of $340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

*Financial Advisory Firm: Anchin.* From the commencement of its engagement in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Market Data Provider: Exegy.* From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

*Security Assessment: RSM.* From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(g) Public Relations Costs

The public relations costs of $87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagment in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan).

(III) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the $19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,[70] which was the date by which Participants were required to begin reporting to the CAT.[71] As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes $37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the $19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these $19,628,791 in costs.

(ii) Previously Invoiced Costs for Historical CAT Costs 1

CEBBs and CEBSs collectively have been invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1, where $86,537,512 was invoiced collectively to CEBBs and $86,537,512 was invoiced collectively to CEBSs. Accordingly, Historical CAT Assessment 1A would seek to recover the remaining $38,964,855.34 of Historical CAT Costs 1 collectively from CEBBs and CEBSs, where CEBBs collectively will be responsible for $19,482,427.67, and CEBSs collectively will be responsible for $19,482,427.67.

(C) Historical Recovery Period 1A

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to

[70] As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. *See* Section 3(a)(10)(E) below.

[71] The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. *See* Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

describe the reasons for its length.[72] The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.[73] The Operating Committee has determined to establish a Historical Recovery Period 1A of 24 months for Historical CAT Assessment 1A.

The Operating Committee determined that the length of Historical Recovery Period 1A appropriately weighs the need for a reasonable Historical Fee Rate 1A that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1A would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.[74] In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1A were less than the total costs for 2022 and 2023,[75] and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.[76]

The length of the Historical Recovery Period 1A and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.[77]

(D) Projected Total Executed Equivalent Share Volume

The calculation of the fee rate for Historical CAT Assessment 1A also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1A. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [78] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[79]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1A by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.4), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1A is projected to be 11,961,875,098,720.98 executed equivalent shares.[80]

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1A and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.[81]

(E) Fee Rate for Historical CAT Assessment 1A

The fee rate for Historical CAT Assessment 1A would be calculated by dividing the total amount of costs to be recovered by Historical CAT Assessment 1A by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1A, and dividing by 2. Specifically, the fee rate for Historical CAT Assessment 1A would be calculated by dividing $38,964,855.34 by 11,961,875,098,720.98, and then dividing by 2, which equals $0.00000162871017371542 per executed equivalent shares. Rounding this to six decimal places results in a fee rate of $0.000002 per executed equivalent share.[82] This fee rate is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.[83]

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1A as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

> Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.[84]

The CAT NMS Plan further states that ''Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs.'' [85]

[72] Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[73] Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that ''[i]n the Commission's view, it is appropriate for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years.'' CAT Funding Model Approval Order at 13451.

[74] For example, as the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. CAT Funding Model at 13469.

[75] The total CAT costs for 2022 were approximately $186 million and the total CAT costs for 2023 were approximately $233 million.

[76] Note that the proposed 24-month recovery period also recognizes the prohibition on the collection of Historical CAT Assessments after March 31, 2028 as set forth in Section 11.3(f) of the CAT NMS Plan.

[77] Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

[78] Section 11.3(b)(i)(E) of the CAT NMS Plan.

[79] CAT Funding Model Approval Order at 13452.

[80] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by two.

[81] Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

[82] As the SEC noted in approving the CAT Funding Model, the fee filing would provide the exact fee per executed equivalent share and describe the relevant number of decimal places for the fee rate. CAT Funding Model Approval Order at 13445, n.677. The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

[83] Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

[84] Section 11.3(b)(ii) of the CAT NMS Plan.

[85] *Id.* In approving the CAT Funding Model, the Commission stated that the proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs is appropriate. The Historical CAT Assessment will still be divided into thirds, as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 13453.

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1A on a monthly basis for the period in which Historical CAT Assessment 1A is in effect.[86] A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[87] Proposed paragraph (a)(2)(A) of 24X Rule 4.18 would state that each CAT Executing Broker would receive its first invoice in June 2026, and ''would receive an invoice each month thereafter in which Historical CAT Assessment 1A is in effect.'' Proposed paragraph (a)(2)(B) of 24X Rule 4.18 would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis.'' In addition, proposed paragraph (b)(1) of 24X Rule 4.18 would state that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(5) Actual Recovery Period for Historical CAT Assessment 1A

The CAT NMS Plan states that, ''[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected.'' [88] Accordingly, Historical CAT Assessment 1A will remain in effect until the remaining $38,964,855.34 of Historical CAT Costs 1 have been collected.[89] The actual recovery period for Historical CAT Assessment 1A may be shorter or longer than Historical Recovery Period 1A depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1A is in effect and subject to any time limitation in the CAT NMS Plan.[90]

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1A, a new Rule 4.18 would be added to the Exchange's rulebook, called ''Consolidated Audit Trail Funding Fees,'' and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1A

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.[91]

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(2) to 24X Rule 4.18. Proposed paragraph (a)(2) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1A in June 2026, which shall set forth the Historical CAT Assessment 1A fees calculated based on transactions in May 2026, and shall receive an invoice for Historical CAT Assessment 1A for each month thereafter in which Historical CAT Assessment 1A is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000002 per executed equivalent share.

(C) Historical CAT Assessment 1A will remain in effect until $38,964,855.34 is collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1A will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1A in accordance with paragraph (b).

Proposed paragraph (a)(2)(B) of 24X Rule 4.18 would set forth the fee rate of $0.000002 per executed equivalent share for Historical CAT Assessment 1A, which is calculated as discussed above.

The proposed language in paragraph (a)(2)(B) of 24X Rule 4.18 would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1A. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1A in June 2026 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in May 2026. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in proposed paragraph (b)(2) of 24X Rule 4.18.

Proposed paragraph (a)(2)(A) of 24X Rule 4.18 also would describe the monthly cadence of the invoices for Historical CAT Assessment 1A. Specifically, after the first invoices are provided to CAT Executing Brokers in June 2026, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1A is in effect.

Proposed paragraph (a)(2)(B) of 24X Rule 4.18 would describe the invoices for Historical CAT Assessment 1A. Proposed paragraph (a)(2)(B) of 24X Rule 4.18 would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis.'' Proposed paragraph (a)(2)(B) of 24X Rule 4.18 also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1A. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000002 per executed equivalent share.''

Furthermore, proposed paragraph (a)(2)(C) of 24X Rule 4.18 would describe how long Historical CAT Assessment 1A would remain in effect. It would state that ''Historical CAT Assessment 1A will remain in effect until $38,964,855.34 is collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.'' This proposed paragraph would further state that ''Consolidated Audit Trail, LLC will

[86] *See* Section 11.3(b)(iii)(A) of the CAT NMS Plan.

[87] *See* proposed paragraph (a)(2)(B) of 24X Rule 4.18.

[88] Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

[89] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, it is appropriate for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected.'' CAT Funding Model Approval Order at 13452.

[90] Section 11.3(f) of the CAT NMS Plan would prohibit the billing of Historical CAT Assessments after March 31, 2028.

[91] Section 11.3(b)(iii)(A) of the CAT NMS Plan.

provide notice when Historical CAT Assessment 1A will no longer be in effect.''

Historical CAT Assessment 1A will be assessed for all transactions executed in each month through the end of the month in which $38,964,855.34 is assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1A is no longer in effect. Since Historical CAT Assessment 1A is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1A may collect more than $38,964,855.34. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1A is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(2)(D) of 24X Rule 4.18 sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1A. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1A in accordance with paragraph (b).''

(B) Manner of Payment

The Exchange also proposes to add paragraph (b)(1) to 24X Rule 4.18 to describe the manner of payment of Industry Member CAT fees. Proposed paragraph (b)(1) states that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.'' The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[92] The Plan Processor has established a billing system for CAT fees.[93] Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1A in accordance with such system.

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

> Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[94]

Accordingly, the Exchange also proposes to add this requirement to 24X Rule 4.18. Specifically, proposed paragraph (b)(2) of 24X Rule 4.18 states:

> Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1A.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that

> Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[95]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.[96] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [97] Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1A is in effect as well as the total amount invoiced for Historical CAT Assessment 1A for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1A. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1A, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1A is likely to be in place.

(8) Billing Implementation

To date, CAT LLC, via FCAT, has billed Industry Members for Historical CAT Assessment 1 and certain Prospective CAT Fees. Industry Members will be billed for Historical CAT Assessment 1A via the same processes established for Historical CAT Assessment 1 and the Prospective CAT Fees. Accordingly, Industry Members have substantial experience with the CAT billing processes.

(9) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.'' [98] The CAT NMS Plan further states that ''in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the

[92] Section 11.4 of the CAT NMS Plan.

[93] The billing process and system are described in CAT Alert 2023–02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

[94] Section 11.4 of the CAT NMS Plan.

[95] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

[96] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.'' CAT Funding Model Approval Order at 13454.

[97] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 13454.

[98] Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.'' [99] As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1A—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1A relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1A seeks to recover costs that are related to ''all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved'' [100] (''Post-Amendment Expenses'') incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines ''Initial Industry Member Core Equity and Options Reporting'' as:

> The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.[101] As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,[102] Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equites transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.[103]

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 ''is consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Equities 2a file submission and data integrity validations.' '' [104] The Phase 2a Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF''); (3) electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;
- Firm Designated IDs (''FDIDs''), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;
- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;
- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system;
- Manual and Electronic Capture Time for Manual Order Events;
- Special handling instructions for the original receipt or origination of an order during Phase 2a; and
- When routing an order, whether the order was routed as an intermarket sweep order (''ISO'').

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.[105]

The Quarterly Progress Report for the third quarter of 2020 states that ''Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)'' was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of ''equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information'' was completed on June 22, 2020.

[99] Section 11.6(b) of the CAT NMS Plan.

[100] Section 11.6 of the CAT NMS Plan.

[101] The Quarterly Progress Reports are available at *https://www.catnmsplan.com/implementation-plan*.

[102] *See* Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

[103] *See* Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

[104] Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (''FAM Adopting Release'').

[105] Phased Reporting Exemptive Relief Order at 23076–78.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is ''consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Options 2b file submission and data integrity validations.' '' [106] The Phase 2b Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.[107]

The Quarterly Progress Report for the third quarter of 2020 states that ''Interim Step: Production Go-Live for Options 2b file submission and data integrity validations'' was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of ''options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information'' was completed on July 20, 2020.

As discussed above, the remaining Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are $6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($2,125,781) and CEBSs paying one-third ($2,125,781) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1A seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines ''Full Implementation of Core Equity Reporting'' as:

> the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2020,[108] Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order's lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.[109] In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- ''Production Go-Live for Equities 2a Intrafirm Linkage validations'' was completed on 7/27/2020; [110]
- ''Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)'' was completed on October 26, 2020; and
- ''Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)'' was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve

[106] FAM Adopting Release at 31330, n.98.

[107] Phased Reporting Exemptive Relief Order at 23078.

[108] Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

[109] For a description of the requirements of Phases 2a, *see* Phased Reporting Exemptive Relief Order.

[110] Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.[111] As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.[112]

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.[113]

As discussed above, the remaining Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are $42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($14,325,492.70) and CEBSs paying one-third ($14,325,492.70) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1A seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' as:

> the point at which: (a) reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2021,[114] Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,[115] FINRA retired OATS effective September 1, 2021.[116] Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that ''Phase 2c Industry Member Data'' is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time;

[111] At the time of this FAM, Section 6.10(c)(i)(A) of the CAT NMS Plan required the Plan Processor to ''provide Participants and the SEC with access to all CAT Data stored in the Central Repository'' via an ''online targeted query tool,'' and Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan described the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will ''deliver large sets of data that can then be used in internal surveillance or market analysis applications.''

[112] *See* Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

[113] Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (''Settlement Exemptive Order'').

[114] Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[115] *Id.*

[116] Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

(13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[117]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an ''interdealer quotation system,'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[118]

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition is reportable in Phase 2d for options.[119]

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).[120]

The Quarterly Progress Report for the fourth quarter of 2021 states that ''Phase 2a was fully implemented as of October 26, 2020;'' ''Phase 2b was fully implemented as of January 4, 2021;'' ''Phase 2c was implemented as of April 26, 2021;'' and ''Phase 2d was fully implemented as of December 13, 2021.'' [121] The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- ''Production Go-Live for Equities 2c reporting requirements (Large Industry Members)'' was completed on April 26, 2021;
- ''LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)'' was completed on April 26, 2021;
- ''FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2d reporting requirements (Large Industry Members)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)'' was completed on December 13, 2021; and
- ''LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)'' was completed on December 13, 2021.[122]

The third prong of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was

[117] Phase Reporting Exemptive Relief Order at 23078–79.

[118] *Id.* at 23079.

[119] *Id.*

[120] *Id.* at 23079–80.

[121] *See* Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[122] *See* Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.[123]

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to ''develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository.'' The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.[124]

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.[125]

As discussed above, the remaining Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are $144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain two-thirds, with CEBBs paying one-third ($48,138,422.70) and CEBSs paying one-third ($48,138,422.70) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (''FAMs'') for Periods 1 through 3.[126] As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (''RFQs'') that are not immediately actionable (''NIA Electronic RFQ Responses'') affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered ''orders'' reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are ''orders,'' as the definition of ''order'' is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members', not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that ''Industry Members must determine whether trading interest falls within the definition of an 'order' for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an 'order'' as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.'' [127]

Only ''orders'' as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are ''orders'' reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).[128] Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an ''order'' reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

> As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.[129]

On May 20, 2024, the Commission granted CAT LLC's request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered ''orders'' reportable pursuant to Rule 613(j)(8).[130] The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that ''[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included

[123] *See* Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[124] *See* Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[125] Settlement Exemptive Order at 77129 n.13.

[126] In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

[127] *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

[128] *See, e.g.,* Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

[129] *Id.*

[130] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.'' [131]

When the Commission proposed the FAMs, the Participants expressed concern that, ''by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission's proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.'' [132] The Participants further warned that ''Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,'' but that, ''[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.'' [133] CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission's May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the ''2023 Verbal Quotes Exemption'') affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the ''2020 Verbal Quotes Order'').[134] The Commission has stated that, ''to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.'' [135] Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.[136]

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the ''November 2023 Order'') affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that ''the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.'' [137] The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have ''authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,'' citing Section 36 of the Exchange Act and Rule 608.[138] Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.[139]

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1A.[140] As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further detail how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable

[131] *Id.* at n.11.

[132] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

[133] *Id.* at 10.

[134] Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the ''2020 Verbal Quotes Exemption'').

[135] *See, e.g.,* Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

[136] As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

[137] *Id.* at 77129 n.12.

[138] FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to ''conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may ''exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.'' 17 CFR 242.608(e).

[139] Section 12.3 of the CAT NMS Plan (''[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.'')

[140] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as ''plan sponsors''), and between the Participants and Industry Members (referred to as ''members of the plan sponsors'').[141] Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

> [i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (''Pre-Formation Costs'') were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of $13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately $3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of $3,196,434; consulting costs of $10,589,273; and public relations costs of $57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.[142]

(i) Request for Proposal (''RFP'')

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.[143]

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.[144] Specifically, the Commission explained:

> In this regard, several commenters suggested that the Commission undergo a RFP or request for information (''RFI'') process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process ''to determine the best technical solution for developing a consolidated audit trail.'' FIF suggested that the Commission ''should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group.'' Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.[145]

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.[146] As the SEC noted, ''[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan.'' [147]

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.[148] As the SEC described in its approval order for the Selection Plan, ''[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit

[141] *See, e.g.,* Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

[142] The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. *See* Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: *https://www.sec.gov/divisions/marketreg/rule613-info.*

[143] *See* detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D–2.

[144] For example, in its comments on proposed Rule 613, FIF suggested ''that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

[145] Rule 613 Adopting Release at 45738–39.

[146] Rule 613 Adopting Release at 45739.

[147] Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) (''Selection Plan Approval Order'').

[148] *Id.*

trail ('Plan Processor').'' [149] After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it ''believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail.'' [150]

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the ''Selection Plan'').[151] The Commission approved the Selection Plan as filed on February 21, 2014.[152] In approving the Selection Plan, the Commission concluded that ''it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor.'' [153]

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed ''Qualified Bids,'' and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a ''reasonable approach,'' that ''the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,'' and that ''the process set forth in the Selection Plan should be permitted to continue'':

> In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.[154]

(iii) Engagement with Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.[155]

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, ''the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective

[149] *Id.* at 11153

[150] *Id.* at 11159.

[151] *See* Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

[152] *See* Selection Plan Approval Order.

[153] Selection Plan Approval Order at 11160.

[154] *See* CAT NMS Plan Approval Order at 84737.

[155] *See* Section D(11) of Appendix C of the CAT NMS Plan.

approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.'' [156] Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.[157] The Participants filed two supplements to the request for exemptive relief.[158]

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.[159] In granting the exemptive relief, the Commission stated:

> [T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.[160]

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

> Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (*e.g.,* lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).[161]

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1A.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.,* addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

> The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.[162]

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.[163] The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.[164] In reaching this conclusion, the Commission stated that ''it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.'' [165] The SEC also noted the following:

> This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.[166]

Given the Commission's recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1A.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.[167] Following the comment period, the SEC approved the Plan in November 2016.[168]

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of $3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in

[156] Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (''2016 Exemptive Order'').

[157] Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

[158] *See* Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

[159] *See* 2016 Exemptive Order.

[160] *Id.* at 11857.

[161] *Id.*

[162] Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013),78 FR 15771, 15772 (Mar. 12, 2013) (''March 2013 Exemptive Order'').

[163] *See* March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (''December 2013 Exemptive Order'').

[164] March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

[165] March 2013 Exemptive Order at 15772.

[166] *Id.* at 15773.

[167] *See* Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

[168] *See* CAT NMS Plan Approval Order.

detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT's status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of $10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of $57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1A.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (''DevOps'') tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.
- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume

handled by AWS now far exceeds the original volume estimates for the CAT.

• *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

• *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by $8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which lead to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.[169]

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

• *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.[170] The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for ''stateless as-you-go'' and ''batch end-of-day'' reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

• *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that ''[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor.'' [171] Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

• *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

> To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create

[169] *See, e.g.,* Securities Exchange Act Rel. No. 99938 (Apr.10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for $23 million in annual savings).

[170] *See* CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

[171] Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts (''SMEs'') dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.[172]

CAT provides various tools to help Industry Members identify and rectify errors.

• *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (*e.g.,* OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs. Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (*e.g.,* OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.[173]

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (*e.g.,* Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that ''AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios.'' [174] AWS provides the following benefits to CAT, among others:

• *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.

• *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.

• *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

• *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, ''[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires.'' [175]

• *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

• *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

• *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of a single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, ''[t]he best practice is to focus on a single primary strategic provider.'' [176]

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (*e.g.,* organizational

[172] Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission at 4 (Dec. 11, 2018).

[173] Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), *https://www.sec.gov/comments/4-698/4698-13.pdf.*

[174] *See, e.g.,* Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) (''Strategic Cloud Assessment Article'').

[175] Strategic Cloud Assessment Article.

[176] *Id.*

setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . legal costs.'' [177] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.'' [178] In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.[179] Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

> The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.[180]

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1A were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes $37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the $19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these $19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

[177] Section 11.1(a)(i) of the CAT NMS Plan.

[178] Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[179] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[180] Settlement Exemptive Order at 77129–30.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that ''the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,'' and that ''the process set forth in the Selection Plan should be permitted to continue.'' [181] Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.[182] At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that ''SIFMA looks forward to commencing work with the SROs and Thesys.'' [183]

As noted in the CAT Funding Model Approval Order, the Commission recognized that ''[t]he CAT NMS Plan contemplates that the costs of the CAT are to be allocated between the Participants and Industry Members.'' [184] If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . CAIS operating fees.'' [185] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.'' [186] In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. The ''CAIS Operating Costs'' for Historical CAT Costs 1 total $9,480,587, with Pre-FAM costs of $2,072,908, FAM 1 costs of $254,998, FAM 2 costs of $1,590,298, and FAM 3 costs of $5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1A, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.[187] As the SEC approved in this exemptive relief, the Participants proposed ''to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.'' [188] To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1A:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.[189]
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.[190]

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1A.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1A, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.[191]

[181] CAT NMS Plan Approval Order at 84737.

[182] Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf*.

[183] Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), *https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf*.

[184] CAT Funding Model Approval Order at 13421.

[185] Section 11.1(a)(i) of the CAT NMS Plan.

[186] Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[187] *See* Phased Reporting Exemptive Relief Order at 23079–80.

[188] *Id.* at 23078–79, n.70.

[189] The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (*https://www.catnmsplan.com/specifications/im*).

[190] Such contact points with the industry are described in detail on the Events web page of the CAT website (*https://www.catnmsplan.com/events*).

[191] The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the

Continued

• The full, final CAIS Technical Specifications were published on January 29, 2021.

• Updated versions of the CAIS Technical Specifications were published throughout 2021.[192]

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members' existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1A. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be used. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,[193] and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1A.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately $2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.[194]

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . public relations costs.'' [195] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.'' [196] In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1A, the average cost per year for these services was approximately $36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the ''Reporting Agreements'') is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.[197] In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.[198] Similarly, FINRA's former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.[199] In addition, such a

CAT website (*https://www.catnmsplan.com/specifications/im*).

[192] Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

[193] *See, e.g.,* CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (*https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf*).

[194] CAT NMS Plan Approval Order at 84917–18.

[195] Section 11.1(a)(i) of the CAT NMS Plan.

[196] Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[197] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[198] *See, e.g.,* NASDAQ Equities Rule 4626.

[199] FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge

provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.[200]

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of the CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment 1A was designated by a Participant as the Participant's alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . consulting . . . '' costs.[201] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . consulting'' [202] costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was $292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (*e.g.,* exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a ''reconciliation'' and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (*e.g.,* fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-

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the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA's OATS system to report trade information (*i.e.,* repeatedly over the course of a trading day for many Industry Members).

[200] *See* Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

[201] Section 11.1(a)(i) of the CAT NMS Plan.

[202] Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,[203] to CAT Reporters in the trade billing details provided with their CAT invoices (''Additional Trade Details''). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.[204] By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1A does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1A, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1A to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.[205] However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessments will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

• *Technical Specifications and Scenarios.* CAT LLC has provided

[203] *See* CAT Technical Specifications for Billing Trade Details; Trade Details Schema (*https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json*); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (*https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf*).

[204] For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (*e.g.,* by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). *See, e.g.,* Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may ''over-collect'' Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

[205] ''FINRA charges a Regulatory Transaction Fee ('RTF') to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years.'' Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15. 2023) (*https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category*).

detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options; [206] (2) trade details schemas; [207] and (3) CAT billing scenarios.[208]

• *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.[209] The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.[210] 485 participants and 394 participants attended the two webinars, respectively.

• *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.[211]

• *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 31 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.[212]

• *Substantial Past Experience with CAT Billing Processes.* To date, CAT LLC, via FCAT, has billed Industry Members for Historical CAT Assessment 1 and certain Prospective CAT Fees. Industry Members will be billed for Historical CAT Assessment 1A via the same processes established for Historical CAT Assessment 1 and the Prospective CAT Fees. Accordingly, Industry Members have substantial experience with the CAT billing processes.

• *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.[213] For example, the Help Desk assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Notice to Industry Members

In keeping with past practice, CAT LLC provided notice of the proposed Historical CAT Assessment 1A via CAT Fee Alert on April 1, 2026,[214] one month prior to the effective date of Historical CAT Assessment 1A on May 1, 2026. Such notice provides Industry Members with sufficient time to address any technological or other requirements necessary for implementing Historical CAT Assessment 1A.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[215] which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[216] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[217] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[218] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [219] To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

[206] CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8. 2023) (*https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Techical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf*).

[207] Trade Details Schema (*https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json*).

[208] CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (*https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf*).

[209] CAT Billing Webinar, Part 1 (Sept. 28, 2023) (*https://www.catnmsplan.com/events/part-1-cat-billing-webinar*).

[210] CAT Billing Webinar, Part 2 (Nov. 7, 2023) (*https://www.catnmsplan.com/events/part-2-cat-billing-webinar*).

[211] *See* CAT Alert 2023–02 (Oct. 12, 2023) (*https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf*).

[212] *See* CAT Billing FAQs, Section V of CAT FAQs (*https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number*).

[213] The CAT NMS Plan requires that the Plan Processor ''staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise.'' Section 6.10(c)(vi) of the CAT NMS Plan. *See also* Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

[214] CAT Fee Alert 2026–1 (Apr. 1, 2026) (*https://www.catnmsplan.com/sites/default/files/2026-04/04.01.26-CAT-Fee-Alert-2026-1.pdf*).

[215] 15 U.S.C. 78f(b)(6).

[216] 15 U.S.C. 78f(b)(4).

[217] 15 U.S.C. 78f(b)(8).

[218] *See* Section 6(b)(1) of the Exchange Act.

[219] CAT NMS Plan Approval Order at 84697.

The Exchange believes that the proposed fees paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1A fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1A fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1A fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [220] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[221] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1A Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.[222] In each respect, as discussed above, Historical CAT Assessment 1A is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1A is reasonable and consistent with the Exchange Act. Calculation of the fee rate for Historical CAT Assessment 1A requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1A, and the projection of the executed equivalent share volume for Historical Recovery Period 1A. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

> a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.'' As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is ''reasonable and appropriate.'' Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.[223] CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting

[220] CAT NMS Plan Approval Order at 84696.

[221] CAT Funding Model Approval Order at 13481.

[222] *Id.*

[223] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[224] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [225] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[226] Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.[227]

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[228]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.[229] CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[230] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[231] The services performed by FCAT for each period and the costs related to such services are described above.[232]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments. [233] CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.[234] The services performed by Kingland for each period and the costs for each period are described above.[235]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate

[224] For a discussion of the amount and type of cloud hosting services fees, *see* Sections 3(a)(2)(B)(i)(a)(I), 3(a)(2)(B)(i)(b)(I), 3(a)(2)(B)(i)(c)(I) and 3(a)(2)(B)(i)(d)(I) above.

[225] Appendix D–4 of the CAT NMS Plan at n.262.

[226] CAT NMS Plan Approval Order at 84801.

[227] *See* Sections 3(a)(2)(B)(i)(a)(I), 3(a)(2)(B)(i)(b)(I), 3(a)(2)(B)(i)(c)(I) and 3(a)(2)(B)(i)(d)(I) above.

[228] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[229] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[230] *See* Section 3(a)(2)(B)(i)(a)(II) above.

[231] *See* Sections 3(a)(2)(B)(i)(a)(II), 3(a)(2)(B)(i)(b)(II), 3(a)(2)(B)(i)(c)(II) and 3(a)(2)(B)(i)(d)(II) above.

[232] *Id.*

[233] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[234] *See* Sections 3(a)(2)(B)(i)(a)(III), 3(a)(2)(B)(i)(b)(III), 3(a)(2)(B)(i)(c)(III) and 3(a)(2)(B)(i)(d)(III) above.

[235] *Id.*

to recover costs related to change request fees as a part of Historical CAT Assessments.[236] CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs is described above.[237] As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.[238] Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.[239] CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.[240] With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.[241] In addition, as described above, CAT LLC determined that is was appropriate to enter into an agreement with FCAT as the successor Plan Processor.[242]

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.[243] CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.[244]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.[245] CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees [246] and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.[247] CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.[248] CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.[249] Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.[250]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.[251] CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance

[236] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[237] *See* Sections 3(a)(2)(B)(i)(a)(IV), 3(a)(2)(B)(i)(b)(IV), 3(a)(2)(B)(i)(c)(IV) and 3(a)(2)(B)(i)(d)(IV) above.

[238] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[239] *See* Sections 3(a)(2)(B)(i)(a)(V), 3(a)(2)(B)(i)(b)(V), 3(a)(2)(B)(i)(c)(V) and 3(a)(2)(B)(i)(d)(V) above.

[240] *Id.*

[241] *See* Section 3(a)(2)(B)(i)(a)(V) above.

[242] *See* Section 3(a)(2)(B)(i)(a)(II) above.

[243] Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

[244] *See* Sections 3(a)(2)(B)(i)(a)(VI), 3(a)(2)(B)(i)(b)(VI), 3(a)(2)(B)(i)(c)(VI) and 3(a)(2)(B)(i)(d)(VI) above.

[245] Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

[246] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

[247] CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. *See, e.g.,* CTA Plan and CQ Plan.

[248] *See* Section 3(a)(2)(B)(i)(a)(VII) above.

[249] *See* Sections 3(a)(2)(B)(i)(a)(VII), 3(a)(2)(B)(i)(b)(VII), 3(a)(2)(B)(i)(c)(VII) and 3(a)(2)(B)(i)(d)(VII) above.

[250] *Id.*

[251] Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

against security breaches.'' [252] In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.[253] Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[254]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.[255] CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.[256] The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.[257] Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.[258]

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.[259] Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.[260] Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.[261]

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.[262]

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.[263]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.[264] CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.[265] By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.[266] Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.[267] As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1A

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1A and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1A appropriately weighs the need for a reasonable fee rate for Historical CAT Assessment 1A that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1A would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.[268]

[252] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[253] *See* Sections 3(a)(2)(B)(i)(a)(VIII), 3(a)(2)(B)(i)(b)(VIII), 3(a)(2)(B)(i)(c)(VIII) and 3(a)(2)(B)(i)(d)(VIII) above.

[254] *Id.*

[255] Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

[256] *See* Section 3(a)(2)(B)(i)(a)(IX) above.

[257] *See* Sections 3(a)(2)(B)(i)(a)(IX), 3(a)(2)(B)(i)(b)(IX), 3(a)(2)(B)(i)(c)(IX) and 3(a)(2)(B)(i)(d)(IX) above.

[258] *Id.*

[259] *See* Section 3(a)(2)(B)(i)(a)(IX) above.

[260] *See* Sections 3(a)(2)(B)(i)(a)(IX), 3(a)(2)(B)(i)(b)(IX), 3(a)(2)(B)(i)(c)(IX) and 3(a)(2)(B)(i)(d)(IX) above.

[261] *Id.*

[262] *See* Section 3(a)(2)(B)(i)(a)(IX) above.

[263] *Id.*

[264] Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

[265] *See* Section 3(a)(2)(B)(i)(a)(X) above.

[266] *See* Sections 3(a)(2)(B)(i)(a)(X), 3(a)(2)(B)(i)(b)(X), 3(a)(2)(B)(i)(c)(X) and 3(a)(2)(B)(i)(d)(X) above.

[267] *Id.*

[268] As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from

Continued

In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total cost for Historical CAT Assessment 1A was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1A

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1A by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.4) and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1A is projected to be 11,961,875,098,720.98 executed equivalent shares.[269]

(E) Actual Fee Rate for Historical CAT Assessment 1A

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, and describe the relevant number of decimal places for the fee rate.[270] Accordingly, proposed paragraph (a)(2)(B) of 24X Rule 4.18 would set forth a fee rate of $0.000002 per executed equivalent share. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1A with a fee rate of $0.000002 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with the remaining Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1A is significantly lower than fees assessed pursuant to Section 31 (*e.g.,* $0.00007 per share to $0.00072 per share),[271] and, as a result, the magnitude of Historical CAT Assessment 1A is small, and therefore will mitigate any potential adverse economic effects or inefficiencies. Furthermore, the reasonable fee rate for Historical CAT Assessment 1A further supports CAT LLC's decision to seek to recover the costs described herein.

(3) Historical CAT Assessment 1A Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1A provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.[272] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is appropriate.'' [273] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1A provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1A complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1A would be charged to CEBBs and CEBSs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A—Historical CAT Costs 1 (including Excluded Costs) and the exclusion of costs previously invoiced via Historical CAT Assessment 1, the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1A that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1A Is Not Unfairly Discriminatory

Historical CAT Assessment 1A is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1A complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A and the resulting fee rate for Historical CAT Assessment 1A is reasonable. Therefore, Historical CAT Assessment 1A does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the Exchange's rules. The Exchange also believes that the proposed fees are reasonable because they would provide

$0.00007 per share to $0.00072 per share. CAT Funding Model Approval Order at 13469.

[269] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by two.

[270] CAT Funding Model Approval Order at 13445, n.677.

[271] *Id.* at 13469.

[272] *See* Section 11.3(b) of the CAT NMS Plan.

[273] CAT Funding Model Approval Order at 13412.

ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Act [274] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1A implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1A on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[275] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1A is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A is reasonable and the resulting fee rate for Historical CAT Assessment 1A calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1A would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [276] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder,[277] because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [278] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–24X–2026–14 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–24X–2026–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–24X–2026–14 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[279]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09853 Filed 5–15–26; 8:45 am]

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[274] 15 U.S.C. 78f(b)(8).

[275] CAT Funding Model Approval Order at 13479–13481.

[276] 15 U.S.C. 78s(b)(3)(A).

[277] 17 CFR 240.19b–4(f)(2).

[278] 15 U.S.C. 78s(b)(2)(B).

[279] 17 CFR 200.30–3(a)(12).

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Part IV

## Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–105472; File No. SR–MRX–2026–19]**

## Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

May 13, 2026.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2026, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') 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 the Substance of the Proposed Rule Change

The Exchange proposes to establish fees for Industry Members [3] related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') incurred prior to January 1, 2022 that were not previously invoiced via Historical CAT Assessment 1. Industry Members were previously invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1. Historical CAT Assessment 1 is no longer in effect. Historical CAT Assessment 1A is being established to collect the remaining $38,964,855.34 of Historical CAT Costs 1. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or ''the Company'') [4] and referred to as Historical CAT Assessment 1A, and would be described in a section of the Exchange's fee schedule entitled ''Consolidated Audit Trail Funding Fees.'' The fee rate for Historical CAT Assessment 1A will be $0.000002 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1A in June 2026 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in May 2026.[5]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rulefilings,* and at the principal office of the Exchange.

### 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

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[6] On November 15, 2016, the Commission approved the CAT NMS Plan.[7] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[8] On September 5, 2025, CAT LLC proposed a revised funding model to fund the CAT (''CAT Funding Model'').[9] On March 16, 2026, the Commission approved the CAT Funding Model, after concluding that the model satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[10]

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (''Historical CAT Assessment'' fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (''Prospective CAT Costs'' fees).[11]

Under the CAT Funding Model, ''[t]he Operating Committee will establish one or more fees (each a 'Historical CAT Assessment') to be payable by Industry Members with regard to CAT costs previously paid by the Participants ('Past CAT Costs').'' [12] In establishing a Historical CAT Assessment, the Operating Committee will determine a ''Historical Recovery Period'' and calculate a ''Historical Fee Rate'' for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* Rule General 7, Section 1. *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule.

[4] The term ''CAT LLC'' may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

[5] On April 27, 2026, SR–MRX–2026–17 was filed. On April 28, 2026, SR–MRX–2026–17 was withdrawn and this rule change was filed.

[6] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (''Rule 613 Adopting Release'').

[7] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

[8] Section 11.1(b) of the CAT NMS Plan.

[9] Securities Exchange Act Rel. No. 103960 (Sept. 12, 2025), 90 FR 44910 (Sept. 17, 2025).

[10] Securities Exchange Act Rel. No. 105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 29, 2026) (''CAT Funding Model Approval Order''). This CAT Funding Model replaced the prior funding model that was approved by the Commission on September 6, 2023. Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023).

[11] Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1A related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

[12] Section 11.3(b) of the CAT NMS Plan.

in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.[13]

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.[14] In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) Historical CAT Assessment 1A to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [15] The Plan further states that ''Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.'' [16] Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1A, in accordance with the CAT NMS Plan.[17]

The Exchange, along with the other Participants in the CAT, previously filed a fee filing to implement Historical CAT Assessment 1.[18] Based on the fee filing for Historical CAT Assessment 1, Historical CAT Assessment 1 was expected to be in effect from the first invoice in November 2024 until $212,039,879.34 (two-thirds of Historical CAT Costs 1) was invoiced to CAT Executing Brokers collectively.[19] However, Historical CAT Assessment 1 ceased before the entire amount was invoiced.[20] The last invoice for Historical CAT Assessment 1 was provided on December 2025, after only $173,075,024 of the total $212,039,879.34 had been invoiced to Industry Members.[21] Accordingly, $38,964,855.34 of Historical CAT Costs 1 has not been invoiced. Historical CAT Assessment 1A would seek to recover this outstanding amount of Historical CAT Costs 1 that has not been invoiced.

(1) CAT Executing Brokers

Historical CAT Assessment 1A will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.[22] The CAT NMS Plan defines a ''CAT Executing Broker'' to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.[23]

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) [24]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 12.*n*.8/13.*n*.8 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order on this side of the trade.<br>Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction.<br>This must be provided if orderID is provided. | C |

[13] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is appropriate.'' CAT Funding Model Approval Order at 13450.

[14] Section 11.3(b)(ii) of the CAT NMS Plan.

[15] Section 11.1(b) of the CAT NMS Plan.

[16] Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

[17] Note that there may be one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan.

[18] *See* Securities Exchange Act Rel. No. 100949 (Sep. 5, 2024), 89 FR 74380 (Sep. 12, 2024) (''Historical CAT Assessment 1 Filing'').

[19] *See* Rule General 7A(a)(1).

[20] In response to the Eleventh Circuit's decision vacating the prior CAT NMS Plan funding model, the last invoices for Historical CAT Assessment 1 were sent in December 2025 based on November 2025 transactions. *See American Securities Association* v. *SEC,* No. 23–13396 (11th Cir. July 25, 2025).

[21] CAT Fee Alert 2025–4 (Nov. 25, 2025).

[22] In its approval order for the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was appropriate. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 13413.

[23] Section 1.1 of the CAT NMS Plan. In its approval order for the CAT Funding Model, the Commission ''recognize[d] that Industry Members may pass-through CAT fees for customer executed volume.'' *See* CAT Funding Model Approval Order at 13424.

[24] *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.2.0-r2 (Feb. 24, 2026), *https://www.catnmsplan.com/sites/default/files/2026-02/02.24.2026-CAT_Reporting_Technical_Specifications_for_Participants_4.2.0-r2.pdf* (''CAT Reporting Technical Specifications for Plan Participants'').

OPTION TRADE (OT) [25]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 16.*n*.13/17.*n*.13 ..... | member ..... | Member Alias ..... | The identifier for the member firm that is responsible for the order. | R |

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) [26]

| No. | Field name | Data type | Description | Include key |
|---|---|---|---|---|
| 26 ..... | reportingExecutingMpid ..... | Member Alias ..... | MPID of the executing party ..... | R |
| 28 ..... | contraExecutingMpid ..... | Member Alias ..... | MPID of the contra-side executing party ..... | C |

(2) Calculation of Fee Rate for Historical CAT Assessment 1A

The Operating Committee determined the fee rate to be used in calculating Historical CAT Assessment 1A based on the Historical CAT Costs for Historical CAT Assessment 1A and the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1A (''Historical Recovery Period 1A''), as discussed in detail below. Based on this calculation, the Operating Committee has determined that the fee rate for Historical CAT Assessment 1A would be $0.000002, as discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.[27]

(B) Historical CAT Costs

The CAT NMS Plan states that ''[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.'' [28] Historical CAT Assessment 1, the original Historical CAT Assessment, was implemented to recover $212,039,879.34 of Historical CAT Costs 1 from CEBBs and CEBSs collectively.[29] As described in the fee filings for Historical CAT Assessment 1, Historical CAT Costs 1 of $212,039,879.34 includes Past CAT Costs of $401,312,909 minus certain Excluded Costs of $83,253,090. As described in the filing for Historical CAT Assessment 1, Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), plus the Excluded Costs of $83,253,090. Accordingly, CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), and CEBSs collectively will be responsible for one-third of Historical CAT Costs 1 (which is $106,019,939.67), for a total of $212,039,879.34. CEBBs and CEBSs collectively have been invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1. Accordingly, Historical CAT Assessment 1A would charge CEBBs and CEBSs collectively for the remaining $38,964,855.34 of Historical CAT Costs 1 that was not invoiced to CEBBs and CEBSs via Historical CAT Assessment 1. Historical CAT Assessment 1A will be designed to recover the remaining $38,964,855.34 of Historical CAT Costs 1 from CEBBs and CEBSs collectively, with CEBBs collectively responsible for $19,482,427.67 and CEBSs collectively responsible for $19,482,427.67.

(i) Historical CAT Costs 1

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (''Excluded Costs''). The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing ''a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.'' [30] Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT. These Historical

[25] *See* Table 52, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

[26] *See* Table 62, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

[27] Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that ''in the Commission's view, the use of executed equivalent share volume as the basis for determining and allocating CAT costs during the two-year interim period is appropriate and consistent with the funding principles of the CAT NMS Plan.'' CAT Funding Model Approval Order at 13427.

[28] Section 11.3(b)(i)(C) of the CAT NMS Plan.

[29] *See* Historical CAT Assessment 1 Filing, *supra* note 17.

[30] Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

CAT Costs 1 are the same as described in the fee filing for Historical CAT Assessment 1.[31]

(a) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (''Pre-FAM Period'') and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of $124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($41,430,243.33) and CEBSs paying one-third ($41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) ** |
|---|---|
| Capitalized Developed Technology Costs * | $51,847,150 |
| *Technology Costs* | 33,568,579 |
| Cloud Hosting Services | 10,268,840 |
| Operating Fees | 21,085,485 |
| CAIS Operating Fees | 2,072,908 |
| Change Request Fees | 141,346 |
| Legal | 19,674,463 |
| Consulting | 17,013,414 |
| Insurance | 880,419 |
| Professional and administration | 1,082,036 |
| Public relations | 224,669 |
| Total Operating Expenses | 124,290,730 |

* The non-cash amortization of these capitalized developed technology costs of $2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.[32]

** The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with ''an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available.'' The audit is available on the CAT website.

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(I) Technology Costs—Cloud Hosting Services

The $10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS''), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC[33] and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as ''CAT LLC''),[34] and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.[35]

[31] *See* Historical CAT Assessment 1 Filing, *supra* note 17.

[32] With respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[33] CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

[34] On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. *See* Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

[35] For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [36] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [37] However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,[38] Phase 2a and Phase 2b Industry Member Data [39] (including certain linkages), as well as SIP Data,[40] reference data and other types of Other Data.[41] The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.[42]

| | Date range: 3/29/19 to 4/12/20 * | Date range: 4/13/20 to 6/21/20 ** |
|---|---|---|
| Average Daily Volume in Billions: | | |
| Participant—Equities | 5 | 5 |
| Participant—Options | 80 | 981 |
| Industry Member—Equities | | 3 |
| Industry Member—Options | | 0.04 |
| SIP—Options & Equities | 64 | 70 |
| Average Total Daily Volume | 149 | 166 |
| Cumulative Total Events for the Period | 3,890 | 4,990 |
| Total Compute Hours for the Period | N/A [43] | 5,663,247 |
| Storage Footprint at End of Period (Petabytes) | 30.57 | 47.96 |

* The Participant Equities in RSA format.
** Start of Industry Member reporting on 4/13/2020.

(II) Technology Costs—Operating Fees

The $21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders [44] for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.[45]

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.[46] On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services

[36] Appendix D–4 of the CAT NMS Plan at n.262.

[37] Appendix D–5 of the CAT NMS Plan.

[38] *See* Section 6.3(d) of the CAT NMS Plan.

[39] *See* Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) (''Phased Reporting Exemptive Relief Order'') for a description of Phase 2a and Phase 2b Industry Member Data.

[40] *See* Section 6.5(a)(ii) of the CAT NMS Plan.

[41] *See* Appendix C–109 of the CAT NMS Plan.

[42] Note that the volume data described in this table does not include CAIS data.

[43] Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

[44] The term ''Bidder'' is defined in Section 1.1 of the CAT NMS Plan.

[45] Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf.*

[46] *Id.*

required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated (''Exegy''), a market data provider; [47]
- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated testing for Phase 2a and 2b reporting for Industry Members;
- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;
- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;
- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; [48] and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

The $2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System (''CAIS''). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation (''Kingland''). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC was required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.[49] Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers (''LTID'') earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.[50]

(IV) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of $141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.[51]

(V) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of $51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

*Initial Plan Processor: Thesys CAT, LLC.* The capitalized developed technology costs related to the Initial

[47] The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(a)(IX).

[48] The CAT website is *https://www.catnmsplan.com.*

[49] For a discussion of the CCID Alternative, *see* Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

[50] Phased Reporting Exemptive Relief Order at 23079–80.

[51] Note that CAT LLC also has incurred costs related to specific Industry Members (*e.g.,* reprocessing costs related to Industry Member reporting errors).

Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.[52] The Participants utilized a request for proposal (''RFP'') to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC (''Thesys CAT''), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

*Successor Plan Processor: FCAT.* The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee for an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(VI) Legal Costs

The legal costs of $19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Pillsbury Winthrop Shaw Pittman LLP (''Pillsbury''), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

*Law Firm: WilmerHale.* Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group (''DAG'');
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

[52] Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf.*

• Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
• Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
• Provided assistance with compliance with Regulation SCI;
• Assisted with clock synchronization study;
• Provided assistance with respect to the establishment of CAT security;
• Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
• Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
• Provided advice regarding CAT policies and procedures;
• Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
• Provided interpretations of and related to the CAT NMS Plan;
• Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
• Assisted with third-party vendor agreements.

*Law Firm: Pillsbury.* The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the ''Reporter Agreement''). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(VII) Consulting Costs

The consulting costs of $17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

• Established and implemented program operations for the CAT project, including the program management office and workstream design;
• Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
• Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
• Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
• Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
• Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
• Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked

questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(IX) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[53] The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were $1,082,036 for the Pre-FAM Period.

*Financial Advisory Firm: Anchin Accountants & Advisors (''Anchin'').* CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Accounting Firm: Grant Thornton LLP (''Grant Thornton'').* In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

*Market Data Provider: Exegy.* The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.[54] In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by

[53] Section 9.2 of the CAT NMS Plan.

[54] *See* Section 6.5(a)(ii) of the CAT NMS Plan.

CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

*Security Assessment: RSM US LLP (''RSM'').* The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(X) Public Relations Costs

The public relations costs of $224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

*Public Relations Firm: Peppercomm, Inc. (''Peppercomm'').* The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

*Public Relations Firm: Sloane & Company (''Sloane'').* CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

*Public Relations Firm: Peak Strategies.* CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(b) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones (''FAM Period 1''),[55] which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of $6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($2,125,781) and CEBSs paying one-third ($2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT Costs for FAM Period 1 ** |
|---|---|
| Capitalized Developed Technology Costs * | $1,684,870 |
| *Technology Costs* | 3,996,800 |
| Cloud Hosting Services | 2,642,122 |
| Operating Fees | 1,099,680 |
| CAIS Operating Fees | 254,998 |
| Change Request Fees | |
| Legal | 481,687 |
| Consulting | 137,209 |
| Insurance | |
| Professional and administration | 69,077 |
| Public relations | 7,700 |
| Total Operating Expenses | 6,377,343 |

* The non-cash amortization of these capitalized developed technology costs of $362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.[56]

** The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

[55] Section 11.6(a)(i)(A) of the CAT NMS Plan.

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.[57] CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the $2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.[58]

| | Date range: 6/22/20–7/31/20 |
|---|---|
| Average Daily Volume in Billions: | |
| Participant—Equities | 6 |
| Participant—Options | 103 |
| Industry Member—Equities | 7 |
| Industry Member—Options | 0.31 |
| SIP—Options & Equities | 74 |
| Average Total Daily Volume | 185 |
| Cumulative Total Events for the Period | 5,190 |
| Total Compute Hours for the Period | 2,612,082 |
| Storage Footprint at End of Period (Petabytes) | 57.47 |

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the $1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the $254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to

[56] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[57] *See* definition of ''Initial Industry Member Core Equity and Options Reporting'' in Section 1.1 of the CAT NMS Plan.

[58] Note that the volume data described in this table does not include CAIS data.

the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(IV) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of $1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(VI) Legal Costs

The legal costs of $481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(VII) Consulting Costs

The consulting costs of $137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(IX) Professional and Administration Costs

*Financial Advisory Firm: Anchin.* The professional and administration costs of $69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;

• Worked with and provided support to the Operating Committee and various CAT working groups; and

• Prepared monthly and quarterly financial statements.

(X) Public Relations Costs

The public relations costs of $7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(c) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones (''FAM Period 2''),[59] which covers the period from August 1, 2020—December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of $42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($14,325,493) and CEBSs paying one-third ($14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT costs for FAM Period 2 ** |
|---|---|
| Capitalized Developed Technology Costs * | $6,761,094 |
| *Technology Costs* | 31,460,033 |
| Cloud Hosting Services | 20,709,212 |
| Operating Fees | 9,108,700 |
| CAIS Operating Fees | 1,590,298 |
| Change Request Fees | 51,823 |
| Legal | 2,766,644 |
| Consulting | 532,146 |
| Insurance | 976,098 |
| Professional and administration | 438,523 |
| Public relations | 41,940 |
| Total Operating Expenses | 42,976,478 |

* The non-cash amortization of these capitalized developed technology costs of $1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.[60]

** The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.[61]

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the $20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

[59] Section 11.6(a)(i)(B) of the CAT NMS Plan.

[60] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[61] *See* definition of ''Full Implementation of Core Equity Reporting Requirements'' in Section 1.1 of the CAT NMS Plan.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.[62]

| | Date range: 8/1/20–12/31/20 |
|---|---|
| Average Daily Volume in Billions: | |
| Participant—Equities | 6 |
| Participant—Options | 116 |
| Industry Member—Equities | 11 |
| Industry Member—Options | 0.98 |
| SIP—Options & Equities | 80 |
| Average Total Daily Volume | 282 |
| Cumulative Total Events for the Period | 2,170 |
| Total Compute Hours for the Period | 15,660,392 |
| Storage Footprint at End of Period (Petabytes) | 114.59 |

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the $9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the $1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(IV) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of $51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of $6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

[62] Note that the volume data described in this table does not include CAIS data.

(VI) Legal Costs

The legal costs of $2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (*e.g.,* with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(VII) Consulting Costs

The consulting costs of $532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(IX) Professional and Administration Costs

The professional and administration costs of $438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

*Financial Advisory Firm: Anchin.* CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

*Accounting Firm: Grant Thornton.* CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role

and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(X) Public Relations Costs

The public relations costs of $41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(d) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones (''FAM Period 3''),[63] which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of $144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) ($48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($48,138,423) and CEBSs paying one-third ($48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Historical CAT costs for FAM Period 3* |
|---|---|
| Capitalized Developed Technology Costs* | $10,763,372 |
| *Technology Costs* | 123,639,402 |
| Cloud Hosting Services | 94,574,759 |
| Operating Fees | 23,106,091 |
| CAIS Operating Fees | 5,562,383 |
| Change Request Fees | 396,169 |
| Legal | 6,333,248 |
| Consulting | 1,408,209 |
| Insurance | 1,582,714 |
| Professional and administration | 595,923 |
| Public relations | 92,400 |
| Total Operating Expenses | 144,415,268 |

*The non-cash amortization of these capitalized developed technology costs of $5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.[64]

**The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard to the CAT:

(a) reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.[65]

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(I) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array

[63] Section 11.6(a)(i)(C) of the CAT NMS Plan.

[64] As discussed above, with respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

[65] *See* definition of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' in Section 1.1 of the CAT NMS Plan.

of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 3 Period. Accordingly, the $94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.[66]

| | Date range: 1/1/21 to 4/25/21 | Date range: 4/26/21 to 12/31/21 * |
|---|---|---|
| Average Daily Volume in Billions: | | |
| Participant—Equities | 9 | 9 |
| Participant—Options | 135 | 136 |
| Industry Member—Equities | 20 | 19 |
| Industry Member—Options | 2 | 2 |
| SIP—Options & Equities | 129 | 137 |
| Average Total Daily Volume | 297 | 304 |
| Cumulative Total Events for the Period | 7,480 | 5,310 |
| Total Compute Hours for the Period | 15,860,304 | 33,487,318 |
| Storage Footprint at End of Period (Petabytes) | 180.22 | 284.62 |

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(II) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the $23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(III) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the $5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(IV) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of $396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

[66] Note that the volume data described in this table does not include CAIS data.

(V) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of $10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(VI) Legal Costs

The legal costs of $6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP (''Covington'') during FAM Period 3.

*Law Firm: WilmerHale.* CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

*Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,[67] and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.[68]

*Law Firm: Covington.* CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.[69] CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.[70]

(VII) Consulting Costs

The consulting costs of $1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates

[67] Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

[68] Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

[69] *See* Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the ''2020 Orders'').

[70] As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(VIII) Insurance

The insurance costs of $1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(IX) Professional and Administration Costs

The professional and administration costs of $595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

*Financial Advisory Firm: Anchin.* CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Faciliated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Accounting Firm: Grant Thornton.* CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(X) Public Relations Costs

The public relations costs of $92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(e) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (''Excluded Costs''): (1) $14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) $48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) $19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total $83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.[71]

(I) Costs related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include $14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial

[71] In approving the CAT Funding Model, the Commission states that ''the proposed exclusion of the excluded costs from Past CAT Costs is appropriate in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.'' CAT Funding Model Approval Order at 13450.

Plan Processor. The Participants would remain responsible for 100% of these $14,749,362 in costs.

(II) Costs Incurred Drom November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of $48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these $48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

| Operating expense | Excluded costs for November 15, 2017–November 15, 2018 * |
|---|---|
| Capitalized Developed Technology Costs | $37,852,083 |
| *Technology Costs:*. | |
| Cloud Hosting Services | ..... |
| Operating Fees | ..... |
| CAIS Operating Fees | ..... |
| Change Request Fees | ..... |
| Legal | 6,143,278 |
| Consulting | 4,452,106 |
| Insurance | ..... |
| Professional and administration | 340,145 |
| Public relations | 87,325 |
| Total Operating Expenses | 48,874,937 |

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(a) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(b) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of $37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(c) Legal Costs

The legal costs of $6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT, including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(d) Consulting Costs

The consulting costs of $4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (*e.g.,* Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(e) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(f) Professional and Administration Costs

The professional and administration costs of $340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

*Financial Advisory Firm: Anchin.* From the commencement of its engagement in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

*Market Data Provider: Exegy.* From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

*Security Assessment: RSM.* From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(g) Public Relations Costs

The public relations costs of $87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagment in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan).

(III) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the $19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,[72] which was the date by which Participants were required to begin reporting to the CAT.[73] As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes $37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the $19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these $19,628,791 in costs.

[72] As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. *See* Section 3(a)(10)(E) below.

[73] The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. *See* Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

(ii) Previously Invoiced Costs for Historical CAT Costs 1

CEBBs and CEBSs collectively have been invoiced for $173,075,024 of the $212,039,879.34 of Historical CAT Costs 1 via Historical CAT Assessment 1, where $86,537,512 was invoiced collectively to CEBBs and $86,537,512 was invoiced collectively to CEBSs. Accordingly, Historical CAT Assessment 1A would seek to recover the remaining $38,964,855.34 of Historical CAT Costs 1 collectively from CEBBs and CEBSs, where CEBBs collectively will be responsible for $19,482,427.67, and CEBSs collectively will be responsible for $19,482,427.67.

(C) Historical Recovery Period 1A

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.[74] The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.[75] The Operating Committee has determined to establish a Historical Recovery Period 1A of 24 months for Historical CAT Assessment 1A.

The Operating Committee determined that the length of Historical Recovery Period 1A appropriately weighs the need for a reasonable Historical Fee Rate 1A that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1A would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.[76] In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1A were less than the total costs for 2022 and 2023,[77]

[74] Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[75] Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that ''[i]n the Commission's view, it is appropriate for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years.'' CAT Funding Model Approval Order at 13451.

[76] For example, as the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. CAT Funding Model at 13469.

[77] The total CAT costs for 2022 were approximately $186 million and the total CAT costs for 2023 were approximately $233 million.

and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.[78]

The length of the Historical Recovery Period 1A and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.[79]

(D) Projected Total Executed Equivalent Share Volume

The calculation of the fee rate for Historical CAT Assessment 1A also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1A. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [80] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[81]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1A by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.4), and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1A is projected to be 11,961,875,098,720.98 executed equivalent shares.[82]

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1A and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.[83]

(E) Fee Rate for Historical CAT Assessment 1A

The fee rate for Historical CAT Assessment 1A would be calculated by dividing the total amount of costs to be recovered by Historical CAT Assessment 1A by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1A, and dividing by 2. Specifically, the fee rate for Historical CAT Assessment 1A would be calculated by dividing $38,964,855.34 by 11,961,875,098,720.98, and then dividing by 2, which equals $0.00000162871017371542 per executed equivalent shares. Rounding this to six decimal places results in a fee rate of $0.000002 per executed equivalent share.[84] This fee rate is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.[85]

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1A as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.[86]

The CAT NMS Plan further states that ''Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs.'' [87]

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1A on a monthly basis for the period in which Historical CAT Assessment 1A is in effect.[88] A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[89] Proposed paragraph (a)(2)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in June 2026, and ''would receive an invoice each month thereafter in which Historical CAT Assessment 1A is in effect.'' Proposed paragraph (a)(2)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis.'' In addition, paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(5) Actual Recovery Period for Historical CAT Assessment 1A

The CAT NMS Plan states that, ''[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected.'' [90] Accordingly,

[78] Note that the proposed 24-month recovery period also recognizes the prohibition on the collection of Historical CAT Assessments after March 31, 2028 as set forth in Section 11.3(f) of the CAT NMS Plan.

[79] Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

[80] Section 11.3(b)(i)(E) of the CAT NMS Plan.

[81] CAT Funding Model Approval Order at 13452.

[82] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by two.

[83] Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

[84] As the SEC noted in approving the CAT Funding Model, the fee filing would provide the exact fee per executed equivalent share and describe the relevant number of decimal places for the fee rate. CAT Funding Model Approval Order at 13445, n.677. The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

[85] Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

[86] Section 11.3(b)(ii) of the CAT NMS Plan.

[87] *Id.* In approving the CAT Funding Model, the Commission stated that the proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs is appropriate. The Historical CAT Assessment will still be divided into thirds, as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 13453.

[88] *See* Section 11.3(b)(iii)(A) of the CAT NMS Plan.

[89] *See* proposed paragraph (a)(2)(B) of the fee schedule.

[90] Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

Historical CAT Assessment 1A will remain in effect until the remaining $38,964,855.34 of Historical CAT Costs 1 have been collected.[91] The actual recovery period for Historical CAT Assessment 1A may be shorter or longer than Historical Recovery Period 1A depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1A is in effect and subject to any time limitation in the CAT NMS Plan.[92]

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1A, a new section would be added to the Exchange's fee schedule for ''Consolidated Audit Trail Funding Fees'', and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1A

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.[93]

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(2) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(2) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1A in June 2026, which shall set forth the Historical CAT Assessment 1A fees calculated based on transactions in May 2026, and shall receive an invoice for Historical CAT Assessment 1A for each month thereafter in which Historical CAT Assessment 1A is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000002 per executed equivalent share.

(C) Historical CAT Assessment 1A will remain in effect until $38,964,855.34 is collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1A will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1A in accordance with paragraph (b).

Proposed paragraph (a)(2)(B) of the fee schedule would set forth the fee rate of $0.000002 per executed equivalent share for Historical CAT Assessment 1A, which is calculated as discussed above.

The proposed language in paragraph (a)(2)(B) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1A. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1A in June 2026 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in May 2026. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(2)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1A. Specifically, after the first invoices are provided to CAT Executing Brokers in June 2026, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1A is in effect.

Proposed paragraph (a)(2)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1A. Proposed paragraph (a)(2)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1A on a monthly basis.'' Proposed paragraph (a)(2)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1A. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000002 per executed equivalent share.''

Furthermore, proposed paragraph (a)(2)(C) of the fee schedule would describe how long Historical CAT Assessment 1A would remain in effect. It would state that ''Historical CAT Assessment 1A will remain in effect until $38,964,855.34 is collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.'' This proposed paragraph would further state that ''Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1A will no longer be in effect.''

Historical CAT Assessment 1A will be assessed for all transactions executed in each month through the end of the month in which $38,964,855.34 is assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1A is no longer in effect. Since Historical CAT Assessment 1A is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1A may collect more than $38,964,855.34. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1A is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(2)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1A. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1A in accordance with paragraph (b).''

(B) Manner of Payment

Paragraph (b)(1) of the ''Consolidated Audit Trail Funding Fees'' section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.'' The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[94] The Plan

[91] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, it is appropriate for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected.'' CAT Funding Model Approval Order at 13452.

[92] Section 11.3(f) of the CAT NMS Plan would prohibit the billing of Historical CAT Assessments after March 31, 2028.

[93] Section 11.3(b)(iii)(A) of the CAT NMS Plan.

[94] Section 11.4 of the CAT NMS Plan.

Processor has established a billing system for CAT fees.[95] Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1A in accordance with such system.

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[96]

Accordingly, the Exchange previously has added this requirement to the Exchange's fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1A.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[97]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.[98] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [99] Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1A is in effect as well as the total amount invoiced for Historical CAT Assessment 1A for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1A. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1A, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1A is likely to be in place.

(8) Billing Implementation

To date, CAT LLC, via FCAT, has billed Industry Members for Historical CAT Assessment 1 and certain Prospective CAT Fees. Industry Members will be billed for Historical CAT Assessment 1A via the same processes established for Historical CAT Assessment 1 and the Prospective CAT Fees. Accordingly, Industry Members have substantial experience with the CAT billing processes.

(9) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.'' [100] The CAT NMS Plan further states that ''in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.'' [101] As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1A—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1A relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1A seeks to recover costs that are related to ''all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved'' [102] (''Post-Amendment Expenses'') incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and

[95] The billing process and system are described in CAT Alert 2023–02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

[96] Section 11.4 of the CAT NMS Plan.

[97] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

[98] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.'' CAT Funding Model Approval Order at 13454.

[99] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 13454.

[100] Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

[101] Section 11.6(b) of the CAT NMS Plan.

[102] Section 11.6 of the CAT NMS Plan.

Options Reporting. Section 1.1 of the CAT NMS Plan defines ''Initial Industry Member Core Equity and Options Reporting'' as:

> The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.[103] As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,[104] Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equites transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.[105]

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 ''is consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Equities 2a file submission and data integrity validations.' '' [106] The Phase 2a Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF''); (3) electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;
- Firm Designated IDs (''FDIDs''), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;
- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;
- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system;
- Manual and Electronic Capture Time for Manual Order Events;
- Special handling instructions for the original receipt or origination of an order during Phase 2a; and
- When routing an order, whether the order was routed as an intermarket sweep order (''ISO'').

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.[107]

The Quarterly Progress Report for the third quarter of 2020 states that ''Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)'' was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of ''equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information'' was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is ''consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Options 2b file submission and data integrity validations.' '' [108] The Phase 2b Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders

[103] The Quarterly Progress Reports are available at *https://www.catnmsplan.com/implementation-plan.*

[104] *See* Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

[105] *See* Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

[106] Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (''FAM Adopting Release'').

[107] Phased Reporting Exemptive Relief Order at 23076–78.

[108] FAM Adopting Release at 31330, n.98.

and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.[109]

The Quarterly Progress Report for the third quarter of 2020 states that ''Interim Step: Production Go-Live for Options 2b file submission and data integrity validations'' was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of ''options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information'' was completed on July 20, 2020.

As discussed above, the remaining Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are $6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($2,125,781) and CEBSs paying one-third ($2,125,781) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1A seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines ''Full Implementation of Core Equity Reporting'' as:

> the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2020,[110] Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order's lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.[111] In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- ''Production Go-Live for Equities 2a Intrafirm Linkage validations'' was completed on 7/27/2020;[112]
- ''Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)'' was completed on October 26, 2020; and
- ''Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)'' was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.[113] As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.[114]

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.[115]

As discussed above, the remaining Historical CAT Costs 1 to be recovered

[109] Phased Reporting Exemptive Relief Order at 23078.

[110] Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

[111] For a description of the requirements of Phases 2a, *see* Phased Reporting Exemptive Relief Order.

[112] Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

[113] At the time of this FAM, Section 6.10(c)(i)(A) of the CAT NMS Plan required the Plan Processor to ''provide Participants and the SEC with access to all CAT Data stored in the Central Repository'' via an ''online targeted query tool,'' and Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan described the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will ''deliver large sets of data that can then be used in internal surveillance or market analysis applications.''

[114] *See* Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

[115] Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (''Settlement Exemptive Order'').

via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are $42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($14,325,492.70) and CEBSs paying one-third ($14,325,492.70) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1A seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' as:

the point at which: (a) reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2021,[116] Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,[117] FINRA retired OATS effective September 1, 2021.[118] Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that ''Phase 2c Industry Member Data'' is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[119]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an ''interdealer quotation system,'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an

[116] Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[117] *Id.*

[118] Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

[119] Phase Reporting Exemptive Relief Order at 23078–79.

Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[120]

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition is reportable in Phase 2d for options.[121]

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).[122]

The Quarterly Progress Report for the fourth quarter of 2021 states that ''Phase 2a was fully implemented as of October 26, 2020;'' ''Phase 2b was fully implemented as of January 4, 2021;'' ''Phase 2c was implemented as of April 26, 2021;'' and ''Phase 2d was fully implemented as of December 13, 2021.'' [123] The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- ''Production Go-Live for Equities 2c reporting requirements (Large Industry Members)'' was completed on April 26, 2021;
- ''LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)'' was completed on April 26, 2021;
- ''FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2d reporting requirements (Large Industry Members)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)'' was completed on December 13, 2021;
- ''LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)'' was completed on December 13, 2021; and
- ''LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)'' was completed on December 13, 2021.[124]

The third prong of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.[125]

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to ''develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository.'' The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.[126]

[120] *Id.* at 23079.

[121] *Id.*

[122] *Id.* at 23079–80.

[123] *See* Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[124] *See* Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[125] *See* Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[126] *See* Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July

Continued

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.[127]

As discussed above, the remaining Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1A would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are $144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain two-thirds, with CEBBs paying one-third ($48,138,422.70) and CEBSs paying one-third ($48,138,422.70) through Historical CAT Assessment 1 and Historical CAT Assessment 1A.

(D) Additional Considerations related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (''FAMs'') for Periods 1 through 3.[128] As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (''RFQs'') that are not immediately actionable (''NIA Electronic RFQ Responses'') affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered ''orders'' reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are ''orders,'' as the definition of ''order'' is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members', not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that ''Industry Members must determine whether trading interest falls within the definition of an 'order' for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an 'order'' as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.'' [129]

Only ''orders'' as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are ''orders'' reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).[130] Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an ''order'' reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

> As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.[131]

On May 20, 2024, the Commission granted CAT LLC's request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered ''orders'' reportable pursuant to Rule 613(j)(8).[132] The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that ''[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.'' [133]

When the Commission proposed the FAMs, the Participants expressed concern that, ''by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission's proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.'' [134] The Participants further warned that ''Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,'' but that, ''[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.'' [135] CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially

27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

[127] Settlement Exemptive Order at 77129 n.13.

[128] In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

[129] *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

[130] *See, e.g.,* Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

[131] *Id.*

[132] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

[133] *Id.* at n.11.

[134] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

[135] *Id.* at 10.

for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission's May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the ''2023 Verbal Quotes Exemption'') affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the ''2020 Verbal Quotes Order'').[136] The Commission has stated that, ''to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.'' [137] Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.[138]

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the ''November 2023 Order'') affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that ''the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.'' [139] The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have ''authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,'' citing Section 36 of the Exchange Act and Rule 608.[140] Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.[141]

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1A.[142] As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further detail how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as ''plan sponsors''), and between the Participants and Industry Members (referred to as ''members of the plan sponsors'').[143] Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by

[136] Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the ''2020 Verbal Quotes Exemption'').

[137] *See, e.g.,* Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

[138] As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

[139] *Id.* at 77129 n.12.

[140] FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to ''conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may ''exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.'' 17 CFR 242.608(e).

[141] Section 12.3 of the CAT NMS Plan (''[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.'')

[142] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[143] *See, e.g.,* Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (''Pre-Formation Costs'') were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of $13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately $3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of $3,196,434; consulting costs of $10,589,273; and public relations costs of $57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.[144]

(i) Request for Proposal (''RFP'')

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.[145]

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.[146] Specifically, the Commission explained:

> In this regard, several commenters suggested that the Commission undergo a RFP or request for information (''RFI'') process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process ''to determine the best technical solution for developing a consolidated audit trail.'' FIF suggested that the Commission ''should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group.'' Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.[147]

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.[148] As the SEC noted, ''[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan.'' [149]

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.[150] As the SEC described in its approval order for the Selection Plan, ''[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor').'' [151] After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it ''believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail.'' [152]

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan

[144] The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. *See* Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: *https://www.sec.gov/divisions/marketreg/rule613-info.*

[145] *See* detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D–2.

[146] For example, in its comments on proposed Rule 613, FIF suggested ''that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

[147] Rule 613 Adopting Release at 45738–39.

[148] Rule 613 Adopting Release at 45739.

[149] Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) (''Selection Plan Approval Order'').

[150] *Id.*

[151] *Id.* at 11153

[152] *Id.* at 11159.

processor (the ''Selection Plan'').[153] The Commission approved the Selection Plan as filed on February 21, 2014.[154] In approving the Selection Plan, the Commission concluded that ''it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor.'' [155]

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed ''Qualified Bids,'' and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a ''reasonable approach,'' that ''the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,'' and that ''the process set forth in the Selection Plan should be permitted to continue'':

> In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.[156]

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.[157]

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, ''the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.'' [158] Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.[159] The Participants filed two supplements to the request for exemptive relief.[160]

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.[161] In granting the exemptive relief, the Commission stated:

> [T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and

[153] *See* Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

[154] *See* Selection Plan Approval Order.

[155] Selection Plan Approval Order at 11160.

[156] *See* CAT NMS Plan Approval Order at 84737.

[157] *See* Section D(11) of Appendix C of the CAT NMS Plan.

[158] Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (''2016 Exemptive Order'').

[159] Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

[160] *See* Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

[161] *See* 2016 Exemptive Order.

cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.[162]

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

> Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (*e.g.,* lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).[163]

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1A.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.,* addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

> The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.[164]

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.[165] The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.[166] In reaching this conclusion, the Commission stated that ''it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.'' [167] The SEC also noted the following:

> This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.[168]

Given the Commission's recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1A.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.[169] Following the comment period, the SEC approved the Plan in November 2016.[170]

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of $3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT's status as a tax-exempt organization; and

[162] *Id.* at 11857.

[163] *Id.*

[164] Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013),78 FR 15771, 15772 (Mar. 12, 2013) (''March 2013 Exemptive Order'').

[165] *See* March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (''December 2013 Exemptive Order'').

[166] March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

[167] March 2013 Exemptive Order at 15772.

[168] *Id.* at 15773.

[169] *See* Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

[170] *See* CAT NMS Plan Approval Order.

• Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of $10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

• Established and implemented program operations for the CAT project, including the program management office and workstream design;

• Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;

• Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;

• Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.,* Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;

• Provided support for updating the SEC on the progress of the development of the CAT;

• Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and

• Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of $57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1A.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

• *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (''DevOps'') tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

• *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

• *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

• *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by $8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which lead to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.[171]

(b) CAT Was Designed to Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.[172] The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for ''stateless as-you-go'' and ''batch end-of-day'' reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.
- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that ''[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor.'' [173] Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.
- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

> To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts (''SMEs'') dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.[174]

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

> FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (*e.g.,* OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.
>
> Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT

[171] *See, e.g.,* Securities Exchange Act Rel. No. 99938 (Apr.10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for $23 million in annual savings).

[172] *See* CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

[173] Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

[174] Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission at 4 (Dec. 11, 2018).

Reporter to accurately translate their current (*e.g.,* OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.[175]

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (*e.g.,* Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that ''AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios.'' [176] AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, ''[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires.'' [177]
- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.
- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.
- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of a single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, ''[t]he best practice is to focus on a single primary strategic provider.'' [178]

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (*e.g.,* organizational setup, identify management, accounts, environments, DevOps tooling likes release management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission

[175] Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), *https://www.sec.gov/comments/4-698/4698-13.pdf.*

[176] *See, e.g.,* Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) (''Strategic Cloud Assessment Article'').

[177] Strategic Cloud Assessment Article.

[178] *Id.*

recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . legal costs.'' [179] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.'' [180] In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.[181] Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

> The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.[182]

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1A were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes $37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the $19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these $19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that ''the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,'' and that ''the process set forth in the Selection Plan should be permitted to continue.'' [183] Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.[184] At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that ''SIFMA looks forward to commencing work with the SROs and Thesys.'' [185]

As noted in the CAT Funding Model Approval Order, the Commission

[179] Section 11.1(a)(i) of the CAT NMS Plan.

[180] Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[181] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[182] Settlement Exemptive Order at 77129–30.

[183] CAT NMS Plan Approval Order at 84737.

[184] Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), *https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf.*

[185] Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), *https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf.*

recognized that ''[t]he CAT NMS Plan contemplates that the costs of the CAT are to be allocated between the Participants and Industry Members.'' [186] If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . CAIS operating fees.'' [187] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.'' [188] In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. The ''CAIS Operating Costs'' for Historical CAT Costs 1 total $9,480,587, with Pre-FAM costs of $2,072,908, FAM 1 costs of $254,998, FAM 2 costs of $1,590,298, and FAM 3 costs of $5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1A, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.[189] As the SEC approved in this exemptive relief, the Participants proposed ''to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.'' [190] To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1A:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.[191]
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.[192]

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1A.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1A, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.[193]
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.[194]

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members' existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1A. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be used. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis

[186] CAT Funding Model Approval Order at 13421.

[187] Section 11.1(a)(i) of the CAT NMS Plan.

[188] Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[189] *See* Phased Reporting Exemptive Relief Order at 23079–80.

[190] *Id.* at 23078–79, n.70.

[191] The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (*https://www.catnmsplan.com/specifications/im*).

[192] Such contact points with the industry are described in detail on the Events web page of the CAT website (*https://www.catnmsplan.com/events*).

[193] The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (*https://www.catnmsplan.com/specifications/im*).

[194] Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,[195] and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1A.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately $2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.[196]

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . public relations costs.'' [197] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.'' [198] In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1A, the average cost per year for these services was approximately $36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the ''Reporting Agreements'') is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.[199] In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1A.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.[200] Similarly, FINRA's former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.[201] In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.[202]

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of the CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment 1A was designated by a Participant as the Participant's alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission

[195] *See, e.g.,* CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (*https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf*).

[196] CAT NMS Plan Approval Order at 84917–18.

[197] Section 11.1(a)(i) of the CAT NMS Plan.

[198] Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[199] *See* Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[200] *See, e.g.,* NASDAQ Equities Rule 4626.

[201] FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA's OATS system to report trade information (*i.e.,* repeatedly over the course of a trading day for many Industry Members).

[202] *See* Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that ''the reasonably budgeted CAT costs shall include . . . consulting . . . '' costs.[203] In addition, the CAT NMS Plan also requires Participants to include in their fee filings ''a brief description of the amount and type of the Historical CAT Costs, including . . . consulting'' [204] costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was $292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (*e.g.,* exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers. As discussed further below, CAT LLC only considers the first type of process to be a ''reconciliation'' and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (*e.g.,* fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,[205] to CAT Reporters in the trade billing details provided with their CAT invoices (''Additional Trade Details''). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.[206] By providing

[203] Section 11.1(a)(i) of the CAT NMS Plan.

[204] Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

[205] *See* CAT Technical Specifications for Billing Trade Details; Trade Details Schema (*https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json*); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (*https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf*).

[206] For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their

Continued

Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1A does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1A, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1A to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.[207] However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessments will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options; [208] (2) trade details schemas; [209] and (3) CAT billing scenarios.[210]
- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.[211] The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact

discretion as to whether and the manner and extent to which they pass on those fees (*e.g.,* by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). *See, e.g.,* Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may ''over-collect'' Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

[207] ''FINRA charges a Regulatory Transaction Fee ('RTF') to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years.'' Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15. 2023) (*https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category*).

[208] CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8. 2023) (*https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Techical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf*).

[209] Trade Details Schema (*https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json*).

[210] CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (*https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf*).

[211] CAT Billing Webinar, Part 1 (Sept. 28, 2023) (*https://www.catnmsplan.com/events/part-1-cat-billing-webinar*).

Management System.[212] 485 participants and 394 participants attended the two webinars, respectively.

• *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.[213]

• *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 31 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.[214]

• *Substantial Past Experience with CAT Billing Processes.* To date, CAT LLC, via FCAT, has billed Industry Members for Historical CAT Assessment 1 and certain Prospective CAT Fees. Industry Members will be billed for Historical CAT Assessment 1A via the same processes established for Historical CAT Assessment 1 and the Prospective CAT Fees. Accordingly, Industry Members have substantial experience with the CAT billing processes.

• *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.[215] For example, the Help Desk assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Notice to Industry Members

In keeping with past practice, CAT LLC provided notice of the proposed Historical CAT Assessment 1A via CAT Fee Alert on April 1, 2026,[216] one month prior to the effective date of Historical CAT Assessment 1A on May 1, 2026. Such notice provides Industry Members with sufficient time to address any technological or other requirements necessary for implementing Historical CAT Assessment 1A.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [217], which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[218] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act ,[219] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[220] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [221] To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1A fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1A fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1A fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

[212] CAT Billing Webinar, Part 2 (Nov. 7, 2023) (*https://www.catnmsplan.com/events/part-2-cat-billing-webinar*).

[213] *See* CAT Alert 2023–02 (Oct. 12, 2023) (*https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf*).

[214] *See* CAT Billing FAQs, Section V of CAT FAQs (*https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number*).

[215] The CAT NMS Plan requires that the Plan Processor ''staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise.'' Section 6.10(c)(vi) of the CAT NMS Plan. *See also* Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

[216] CAT Fee Alert 2026–1 (Apr. 1, 2026) (*https://www.catnmsplan.com/sites/default/files/2026-04/04.01.26-CAT-Fee-Alert-2026-1.pdf*).

[217] 15 U.S.C. 78f(b)(6).

[218] 15 U.S.C. 78f(b)(4).

[219] 15 U.S.C. 78f(b)(8).

[220] *See* Section 6(b)(1) of the Exchange Act.

[221] CAT NMS Plan Approval Order at 84697.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [222] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[223] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1A Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.[224] In each respect, as discussed above, Historical CAT Assessment 1A is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1A is reasonable and consistent with the Exchange Act. Calculation of the fee rate for Historical CAT Assessment 1A requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1A, and the projection of the executed equivalent share volume for Historical Recovery Period 1A. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

> a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.'' As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is ''reasonable and appropriate.'' Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.[225] CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[226] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records

[222] CAT NMS Plan Approval Order at 84696.

[223] CAT Funding Model Approval Order at 13481.

[224] *Id.*

[225] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[226] For a discussion of the amount and type of cloud hosting services fees, *see* Sections 3(a)(2)(B)(i)(a)(I), 3(a)(2)(B)(i)(b)(I), 3(a)(2)(B)(i)(c)(I) and 3(a)(2)(B)(i)(d)(I) above.

per day [227] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[228] Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.[229]

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[230]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.[231] CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[232] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[233] The services performed by FCAT for each period and the costs related to such services are described above.[234]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.[235] CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.[236] The services performed by Kingland for each period and the costs for each period are described above.[237]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.[238] CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs is described above.[239] As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of

[227] Appendix D–4 of the CAT NMS Plan at n.262.

[228] CAT NMS Plan Approval Order at 84801.

[229] *See* Sections 3(a)(2)(B)(i)(a)(I), 3(a)(2)(B)(i)(b)(I), 3(a)(2)(B)(i)(c)(I) and 3(a)(2)(B)(i)(d)(I) above.

[230] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[231] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[232] *See* Section 3(a)(2)(B)(i)(a)(II) above.

[233] *See* Sections 3(a)(2)(B)(i)(a)(II), 3(a)(2)(B)(i)(b)(II), 3(a)(2)(B)(i)(c)(II) and 3(a)(2)(B)(i)(d)(II) above.

[234] *Id.*

[235] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[236] *See* Sections 3(a)(2)(B)(i)(a)(III), 3(a)(2)(B)(i)(b)(III), 3(a)(2)(B)(i)(c)(III) and 3(a)(2)(B)(i)(d)(III) above.

[237] *Id.*

[238] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[239] *See* Sections 3(a)(2)(B)(i)(a)(IV), 3(a)(2)(B)(i)(b)(IV), 3(a)(2)(B)(i)(c)(IV) and 3(a)(2)(B)(i)(d)(IV) above.

Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.[240] Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.[241] CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.[242] With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.[243] In addition, as described above, CAT LLC determined that is was appropriate to enter into an agreement with FCAT as the successor Plan Processor.[244]

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.[245] CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.[246]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.[247] CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees [248] and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.[249] CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.[250] CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.[251] Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.[252]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.[253] CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [254] In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.[255] Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[256]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.[257] CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as

[240] Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

[241] *See* Sections 3(a)(2)(B)(i)(a)(V), 3(a)(2)(B)(i)(b)(V), 3(a)(2)(B)(i)(c)(V) and 3(a)(2)(B)(i)(d)(V) above.

[242] *Id.*

[243] *See* Section 3(a)(2)(B)(i)(a)(V) above.

[244] *See* Section 3(a)(2)(B)(i)(a)(II) above.

[245] Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

[246] *See* Sections 3(a)(2)(B)(i)(a)(VI), 3(a)(2)(B)(i)(b)(VI), 3(a)(2)(B)(i)(c)(VI) and 3(a)(2)(B)(i)(d)(VI) above.

[247] Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

[248] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

[249] CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. *See, e.g.,* CTA Plan and CQ Plan.

[250] *See* Section 3(a)(2)(B)(i)(a)(VII) above.

[251] *See* Sections 3(a)(2)(B)(i)(a)(VII), 3(a)(2)(B)(i)(b)(VII), 3(a)(2)(B)(i)(c)(VII) and 3(a)(2)(B)(i)(d)(VII) above.

[252] *Id.*

[253] Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

[254] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[255] *See* Sections 3(a)(2)(B)(i)(a)(VIII), 3(a)(2)(B)(i)(b)(VIII), 3(a)(2)(B)(i)(c)(VIII) and 3(a)(2)(B)(i)(d)(VIII) above.

[256] *Id.*

[257] Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.[258] The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.[259] Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.[260]

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.[261] Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.[262] Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.[263]

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.[264]

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.[265]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.[266] CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.[267] By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.[268] Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.[269] As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from March 2025 through February 2026 was 5,980,937,549,360.49 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1A

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1A and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1A appropriately weighs the need for a reasonable fee rate for Historical CAT Assessment 1A that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1A would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.[270] In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total cost for Historical CAT Assessment 1A was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1A

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1A by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has increased from prior years (*e.g.,* the executed equivalent share volume for 2024 was 4,295,884,600,069.4) and the Operating Committee believes that it is reasonable to conclude that the annual executed equivalent share volume will remain at the higher level. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1A is projected to be 11,961,875,098,720.98 executed equivalent shares.[271]

[258] *See* Section 3(a)(2)(B)(i)(a)(IX) above.

[259] *See* Sections 3(a)(2)(B)(i)(a)(IX), 3(a)(2)(B)(i)(b)(IX), 3(a)(2)(B)(i)(c)(IX) and 3(a)(2)(B)(i)(d)(IX) above.

[260] *Id.*

[261] *See* Section 3(a)(2)(B)(i)(a)(IX) above.

[262] *See* Sections 3(a)(2)(B)(i)(a)(IX), 3(a)(2)(B)(i)(b)(IX), 3(a)(2)(B)(i)(c)(IX) and 3(a)(2)(B)(i)(d)(IX) above.

[263] *Id.*

[264] *See* Section 3(a)(2)(B)(i)(a)(IX) above.

[265] *Id.*

[266] Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

[267] *See* Section 3(a)(2)(B)(i)(a)(X) above.

[268] *See* Sections 3(a)(2)(B)(i)(a)(X), 3(a)(2)(B)(i)(b)(X), 3(a)(2)(B)(i)(c)(X) and 3(a)(2)(B)(i)(d)(X) above.

[269] *Id.*

[270] As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from $0.00007 per share to $0.00072 per share. CAT Funding Model Approval Order at 13469.

[271] This projection was calculated by multiplying 5,980,937,549,360.49 executed equivalent shares by two.

(E) Actual Fee Rate for Historical CAT Assessment 1A

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, and describe the relevant number of decimal places for the fee rate.[272] Accordingly, proposed paragraph (a)(2)(B) of the fee schedule would set forth a fee rate of $0.000002 per executed equivalent share. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1A with a fee rate of $0.000002 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with the remaining Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1A is significantly lower than fees assessed pursuant to Section 31 (*e.g.,* $0.00007 per share to $0.00072 per share),[273] and, as a result, the magnitude of Historical CAT Assessment 1A is small, and therefore will mitigate any potential adverse economic effects or inefficiencies. Furthermore, the reasonable fee rate for Historical CAT Assessment 1A further supports CAT LLC's decision to seek to recover the costs described herein.

(3) Historical CAT Assessment 1A Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1A provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.[274] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is appropriate.'' [275] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1A provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1A complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1A would be charged to CEBBs and CEBSs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A—Historical CAT Costs 1 (including Excluded Costs) and the exclusion of costs previously invoiced via Historical CAT Assessment 1, the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1A that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1A Is Not Unfairly Discriminatory

Historical CAT Assessment 1A is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1A complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A and the resulting fee rate for Historical CAT Assessment 1A is reasonable. Therefore, Historical CAT Assessment 1A does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Act [276] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1A implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1A on behalf of CAT LLC to implement the requirements of the CAT NMS Plan.

[272] CAT Funding Model Approval Order at 13445, n.677.

[273] *Id.* at 13469.

[274] *See* Section 11.3(b) of the CAT NMS Plan.

[275] CAT Funding Model Approval Order at 13412.

[276] 15 U.S.C. 78f(b)(8).

Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[277] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1A is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1A is reasonable and the resulting fee rate for Historical CAT Assessment 1A calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1A would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[278]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2026–19 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–MRX–2026–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–MRX–2026–19 and should be submitted on or before June 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[279]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026–09855 Filed 5–15–26; 8:45 am]

**BILLING CODE 8011–01–P**

[277] CAT Funding Model Approval Order at 13479–13481.

[278] 15 U.S.C. 78s(b)(3)(A)(ii).

[279] 17 CFR 200.30–3(a)(12).

# FEDERAL REGISTER

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Part V

## Nuclear Regulatory Commission

10 CFR Parts 30, 31, 32, et al.
Modernizing NRC Regulations for Byproduct Material Use; Proposed Rule

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30, 31, 32, 34, 39, 40, 70 and 150

**[NRC–2025–1205]**

**RIN 3150–AL49**

## Modernizing NRC Regulations for Byproduct Material Use

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for the licensing of byproduct material, some source material, and some special nuclear material. The NRC's goal in amending these regulations is to modernize the safe, effective, and efficient use of licensed material. This action would reduce the burden of the NRC's licensing process, eliminate the need for certain exemptions from existing regulations, and eliminate unnecessary requirements. The NRC is seeking public comment on this proposed rule and draft interim guidance.

**DATES:** Comments must be submitted electronically using *https://www.regulations.gov* by 11:59 p.m. eastern time on July 2, 2026.

**ADDRESSES:** Submit your comments, identified by Docket ID NRC–2025–1205, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously.

Follow the search instructions on *https://www.regulations.gov* to view public comments.

You can read a plain language description of this proposed rule at *https://www.regulations.gov/docket/NRC-2025-1205.* For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Amy McKenna, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Office of Nuclear Material Safety and Safeguards email: *amy.mckenna@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*A. Need for Regulatory Action*

On May 23, 2025, President Trump signed Executive Order (E.O.) 14300, ''Ordering the Reform of the Nuclear Regulatory Commission.'' E.O. 14300 requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents, after which it must issue notices of proposed rulemaking by February 23, 2026. Final rules and guidance to conclude the revision process must be issued no later than November 23, 2026. In accordance with E.O. 14300 the NRC identified changes across title 10 of the *Code of Federal Regulations* (10 CFR) parts 30, 31, 32, 34, 39, 40, 70, and 150. These changes would yield significant efficiencies and reduce regulatory burden for licensees, NRC, and Agreement States while upholding our shared commitment to public safety.

*B. Major Provisions*

Major provisions of this proposed rule include the following changes:

- Revised the table of radionuclide activity values used for determining decommissioning financial assurance (DFA) for sealed and unsealed radioactive materials.
- Established a new class of general licenses (GLs), called standard general licenses (SGLs), to address anti-competitive barriers.
- Streamlined requirements for the distribution of exempt byproduct material and source material.
- Established distribution pathways for microsources.
- Revised the definition of consortium to address anti-competitive barriers.
- Revised administrative requirements for industrial Radiography to reduce anti-competitive barriers and modernized the radiography regulations.
- Modernized well logging regulations.
- Streamlined requirements for Agreement State Licensees in 10 CFR part 150.

*C. Costs and Benefits*

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of this proposed rule, as well as qualitative factors to be considered in the NRC's rulemaking decision. The conclusion of the analysis is that this proposed rule and associated guidance would result in net savings to Industry, Agreement States, and the NRC of $2,987,000 using a 7-percent discount rate.

The draft regulatory analysis also considers, in a qualitative fashion, regulatory efficiency, and public confidence. This rulemaking will reduce the effort that applicants and licensees would need to expend to generate exemption requests and consider alternative means to accomplish the goals of current regulation. This rulemaking demonstrates the NRC's ability to effectively regulate applicants and licensees, including appropriate responses to statutory requirements.

The regulatory analysis is available as indicated in Section XVII, ''Availability of Documents,'' of this document.

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## I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2025–1205 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2025–1205.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Search.'' For problems

with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.
- *Public Meeting:* The NRC may conduct a public meeting to describe the proposed amendments and answer questions from the public on the proposed rule. If the NRC determines it will hold a public meeting, NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting website within 10 calendar days of the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

*B. Submitting Comments*

Comments must be submitted electronically using *https://www.regulations.gov* no later than 11:59 p.m. eastern time on July 2, 2026. Please include Docket ID NRC–2025–1205 in your comment submission.

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

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

## II. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission

On May 23, 2025, President Donald J. Trump signed E.O. 14300, ''Ordering the Reform of the Nuclear Regulatory Commission.'' Section 5, ''Reforming and Modernizing the NRC's Regulations,'' requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents as guided by the policies set forth in section 2 of the E.O. This rulemaking addresses section 5, which requires the NRC to ''undertake a review and wholesale revision of its regulations and guidance documents.''

## III. Background

Within the National Materials Program, the NRC regulates the use of byproduct material, source material, and special nuclear material in quantities not sufficient to form a critical mass for a variety of uses as authorized by Sections 53, 63, and 81 of the Atomic Energy Act of 1954, as amended (AEA) and pursuant to 10 CFR parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 70 and 150. For the purposes of this document, ''byproduct material,'' ''source material,'' and ''special nuclear material'' describe three broad categories of radioactive material regulated under the AEA: (1) radioactive material created, made radioactive, or generated as waste from nuclear processes (byproduct material); (2) naturally occurring uranium and thorium (source material); and (3) processed or enriched nuclear materials used for reactor fuel or other applications (special nuclear material). These categories are defined in NRC regulations, §§§ 30.4, 40.4, 70.4. These materials have many different uses, including use in industrial radiography, moisture-density gauges, medical applications, and well logging. Currently, the NRC has approximately 2,700 active specific licenses for the use and possession of byproduct, source, and certain quantities of special nuclear material. The applicable NRC regulations and specific license conditions establish the requirements for the safe handling, use, and storage of these materials. The NRC inspects facilities to ensure compliance with regulations and takes action when violations occur. The public also uses exempt quantities of byproduct material and source material in consumer products such as smoke detectors, static eliminators and self-luminous products.

Under Section 274b of the AEA, States can enter into Agreements with the NRC that allow States to assume, and the NRC to discontinue, regulatory authority over byproduct, source, and small quantities of special nuclear material. Known as Agreement States, these States can then regulate byproduct, source, and certain quantities of special nuclear materials that are covered in the Agreement, using their own legislation, regulations, or other legally binding provisions. The NRC enters into an Agreement if the Commission finds the State program adequate to protect public health and safety and compatible with the NRC's regulatory program. The NRC ensures that an Agreement State program remains adequate and compatible through periodic review and assessment under the Integrated Materials Performance Evaluation Program (IMPEP). There are currently 40 Agreement States, which regulate approximately 20,000 materials licensees.

In response to several recent E.O.s, including E.O. 14300, the NRC identified requirements within 10 CFR parts 30, 31, 32, 34, 39, 40, and 150 that could be revised, deleted, or modified in order to meet the E.O. objectives. The following sections provide background information on the affected parts. Section IV of this document provides discussion on the specific proposed changes for each of the affected parts.

*A. Part 30 Reducing Anti-Competitive Barriers in Consortium Definition*

The NRC is proposing to revise its definition of consortium to remove the anti-competitive barrier limitation that a positron emission tomography (PET) radionuclide production facility must be in the same geographical area as the medical use licensee to be considered a consortium. The limitation that the PET production facility had to be located in the same geographical area as the medical use licensee severely limited licensees from locating their PET radionuclide production facility in the most cost-effective location and was based primarily on the short half-life of PET radionuclides, making distant transport impracticable.

*B. Part 30 Modernizing Appendix B and Part 70 Quantities of Licensed Material Used To Assess Financial Assurance for Decommissioning*

The NRC is proposing to revise the table of radionuclide activity values used for determining decommissioning financial assurance (DFA) for sealed and unsealed radioactive materials. The proposed rule would revise the current table in appendix B, ''Quantities of Licensed Material Requiring Labeling,'' to 10 CFR part 30, ''Rules of General

Applicability to Domestic Licensing of Byproduct Material,'' by replacing its applicable values from the table in appendix C, ''Quantities of Licensed Material Requiring Labeling,'' to 10 CFR part 20, ''Standards for Protection against Radiation.'' This would add radionuclides not currently listed in appendix B to 10 CFR part 30, including radionuclides associated with industrial technologies and current and emerging medical uses. These changes would generally reduce DFA requirements for most licensees and eliminate the need for certain exemptions. In addition, the NRC would remove all radionuclides with a half-life of 120 days or less from the appendix, since these radionuclides are not considered when developing DFA, and amend the title of the table to ''Quantities of Licensed Material Used to Assess Financial Assurance for Decommissioning,'' to more accurately reflect its current use for DFA. The default values would remain at their current values. The NRC is proposing to revise § 70.25 to match the proposed changes to appendix B to part 30.

*C. Part 31 Creating New Classes of General Licenses and Modernization of Current Classes of General Licenses*

The NRC is proposing to establish a new class of general licenses (GLs), called standard general licenses (SGLs), to address anti-competitive barriers. The proposed framework would permit GLs for portable gauges, additional fixed gauges, a subset of diagnostic medical uses, additional analytical instruments, and additional in vitro testing. The SGLs would be granted by regulation, and requires submission of a registration, fee, and certification of understanding. Proposed rule language, found in §§ 31.13 through 31.18, is based on standard license conditions and essential standard commitments related to programs necessary for radiological safety and security. Conforming changes are proposed in other parts of 10 CFR parts 30 and 32 to ensure radioactive materials can be distributed to and from the standard general licensees. The SGL pathway would create a second option for licensing such that entities could select between a SGL or a specific license for certain activities. The specific license pathway for entities wishing to conduct activities in a non-standard manner or outside of the normal conditions would be preserved so as to not limit flexibility. However, licensees could select the lower regulatory burden standard general licensing pathway if they are able to conduct activities within the framework of the SGL for their specified activity.

Additionally, the NRC is proposing to amend requirements in 10 CFR part 31, ''General Domestic Licenses For Byproduct Material,'' to permit electronic transmission of registrations for § 31.5 registerable devices, harmonize holding periods with decommissioning timelines in § 30.36, align physical inventory frequencies with equivalent physical inventory limits for specific licenses, and harmonize in vitro test vial limits with labeling limits in 10 CFR part 20.

*D. Parts 32 and 40 Reducing Reporting Requirements for Consumer Products Containing Small Quantities of Radioactive Material*

The NRC is proposing to amend several regulations governing the distribution of exempt byproduct material and source material. This proposed rule would eliminate the requirements under 10 CFR part 32, ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material,'' and 10 CFR part 40, ''Domestic Licensing of Source Material,'' that require licensees to submit an annual report of transfers to the NRC. The elimination of these requirements would reduce the licensee's burden of preparing and providing records and would reduce the burden of the NRC to collect, manage, and store the reports while still remaining protective of public health and safety given that the NRC will still maintain access to the information.

*E. Part 32 Expanding Distribution Pathways for Microsources*

The NRC is proposing to amend requirements in § 32.72 to include microsources, such as radioactive microspheres, within its scope, which would allow commercial radiopharmacies to prepare and distribute these materials. The proposed rule would expand eligibility to any applicant legally authorized under applicable Federal or State law to manufacture, compound, prepare, or distribute radioactive drugs or medical devices, providing flexibility for future distribution pathways authorized by the U.S. Food and Drug Administration (FDA) or State regulatory bodies. In addition, the NRC is proposing to revise § 32.74 to clarify that it may also be used to distribute microsources and authorize distribution to any licensee authorized to use the source or device under 10 CFR part 35, ''Medical Use of Byproduct Material,'' without limitation to specific subparts. These changes would allow for smooth distribution of microsources to medical use licensees.

*F. Part 34 Reducing Anti-Competitive Barriers and Administrative Requirements for Industrial Radiography*

The NRC is proposing to amend the requirements associated with industrial radiography operations in 10 CFR part 34, ''Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations.'' These revisions to the proposed rule would address anti-competitive barriers due to overly prescriptive performance requirements for industrial radiography equipment, provide clarity regarding ambiguous language in the two-person rule, and reduce or remove administrative and obsolete requirements. These proposed changes would reduce the regulatory burden on licensees and applicants by reducing or eliminating administrative requirements for recordkeeping and notifications. Additionally, revisions to the performance requirements for industrial radiography equipment would remove the need to meet the requirements in American National Standards Institute (ANSI) N432–1980, ''Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography'' and replace them with requirements to register the device in accordance with § 32.320 of this section. These changes will ensure that radiation safety is maintained while reducing anti-competitive regulatory barriers and allowing for innovation in the design of radiography equipment.

*G. Part 39 Modernizing Well Logging Regulations*

The NRC is proposing to amend the rules associated with well logging in 10 CFR part 39, ''Licenses and Radiation Safety Requirements for Well Logging.'' These revisions to the proposed rule would remove or modify redundant and unnecessary regulations regarding the use of nuclear material in well logging operations that support the oil and gas exploration industry. The proposed rule would revise leak testing requirements to allow for the sealed source leak testing frequency in accordance with the Sealed Source and Device Registration (SSDR), extend the survey meter calibration frequency in § 39.33 from 6 months to 12 months, and eliminate unnecessary notifications. These changes would reduce the regulatory burden on licensees by reducing or eliminating administrative requirements and notifications while maintaining safety.

*H. Part 150 Modernizing Requirements for Agreement State Licensees in Part 150*

The NRC is proposing to amend the rules in 10 CFR part 150, ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274,'' to remove the requirement for Agreement State licensees using special nuclear material of low strategic significance to meet the physical protection requirements in 10 CFR part 73, ''Physical Protection of Plants and Materials.'' Forty years of operational experience has demonstrated that this material is adequately secured under the Agreement State oversight. Additionally, the NRC is proposing to amend the requirements in § 150.20 to reduce the amount of time an Agreement State licensee has to file for reciprocity before initiation of work activities in an NRC jurisdiction, eliminate the need to notify the NRC of location changes for work in offshore waters, and allow SGLs to be recognized by the NRC for the purposes of reciprocity. This action would reduce administrative burden on the applicant and the NRC while maintaining safety.

**IV. Discussion**

The NRC, as directed in E.O. 14300, Section 5, undertook a review of its regulations of the use of byproduct, source, and special nuclear material. The NRC's goal in its review was to identify in its regulations areas that could be modernized while ensuring the continued safe, effective, and efficient use of byproduct material. The NRC has identified changes which would yield significant efficiencies and reduce regulatory burden for licensees, NRC, and Agreement States while upholding our shared commitment to public safety. These actions would reduce the burden of the NRC's licensing process, eliminate the need for certain exemptions from existing regulations, and eliminate unnecessary requirements

Each section presents information on a different part impacted by the proposed rule, detailing what action the NRC is proposing and whom the action affects and how.

The NRC prepared an unofficial redline strikeout version of the proposed changes to regulatory text that is intended to help the reader identify the proposed changes. The unofficial redline strikeout version of the proposed rule is publicly available and is listed in the ''Availability of Documents'' section.

*Part 30 Reducing Anti-Competitive Barriers in Consortium Definition*

On October 1, 2007, the NRC published a final rule (72 FR 55864) to amend 10 CFR part 30 to implement provisions of the Energy Policy Act of 2005 (EPAct). The amendments included a revision to § 30.4 to add a definition for the term ''consortium.'' Under the definition in 10 CFR 30.4, a consortium was an association of medical use licensees and a PET radionuclide production facility located at an educational institution, Federal facility, or noncommercial medical facility ''in the same geographical area'' that jointly own or share the operation and maintenance costs of the facility. The rule provided regulatory relief to consortia engaged in the noncommercial production and distribution of PET radionuclides for medical use, including authorization for noncommercial transfers under § 30.32(j) without requiring a separate distribution license under § 32.72. The geographical limitation was included due to the short half-lives of PET radionuclides, such as fluorine-18 (1.8 hours) and carbon-11 (20 minutes), which require rapid production and delivery to ensure timely medical use. However, there was no safety reason provided for the limitation and it was based on the supply chain difficulties associated with short-lived radionuclides. While some changes in the medical use of byproduct material have introduced longer lived PET radionuclides into use, such as copper-64 (12.7 hours), the NRC has determined that licensees and regulators have found the phrase ''geographical area'' lacks clarity as to when consortium relief applies. In addition, requiring the PET production facility to be located in the same geographic area, when safe transfer of PET radionuclides can occur following all other applicable requirements, unnecessarily inhibits licensees' ability to establish or participate in cost-effective, collaborative PET radionuclide production arrangements.

The NRC proposes a revision to § 30.4 to change the definition for the term ''consortium.'' The definition would support the regulation of accelerator-produced radioactive materials, including PET radionuclides used in medical imaging. Under the proposed definition, a consortium would be an association of medical use licensees and a PET radionuclide production facility that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in radioactive drugs within the consortium for noncommercial distribution among its associated members for medical use. The proposed rule would remove the requirement to be in the same geographical area and would provide regulatory relief to consortia engaged in the noncommercial production and distribution of PET radionuclides for medical use, including authorization for noncommercial transfers under § 30.32(j) without requiring a separate distribution license under § 32.72.

*Part 30 Modernizing Appendix B and Part 70 Quantities of Licensed Material Used To Assess Financial Assurance for Decommissioning*

Decommissioning financial assurance is a guarantee or other financial agreement provided by a licensee to ensure that sufficient funds are available to complete decommissioning activities in a safe and timely manner. The NRC's regulations in §§ 30.35 and 70.25, ''Financial assurance and recordkeeping for decommissioning,'' provide tables of required funds that need to be saved by each licensee. These regulations rely on the values provided in appendix B to 10 CFR part 30 when determining the amount of DFA required for unsealed and sealed byproduct material and unsealed special nuclear material. As noted in §§ 30.35(a)(1) and 70.25(a)(2), a decommissioning funding plan (DFP) must be submitted when unsealed radionuclide activities exceed $1 \times 10^5$ times the applicable quantities listed in appendix B to 10 CFR part 30 and fixed amounts of DFA are required when unsealed radionuclide activities exceed $1 \times 10^3$ times the applicable quantities listed in that appendix B to part 30. Individuals with licenses authorizing the possession and use of sealed sources or plated foils at quantities $1 \times 10^{12}$ times the values in appendix B to 10 CFR part 30 must also submit DFPs and fixed amounts of DFA are required when radionuclide activities in sealed sources or plated foils exceed $1 \times 10^{10}$ times the applicable quantities listed in appendix B to part 30. The potentially affected licensees are those authorized to possess licensed materials above these limits.

Appendix B to 10 CFR part 30 includes default possession values for radionuclides not specifically listed. The default possession values are equal to the lowest values listed in appendix B to 10 CFR part 30 for specific alpha, beta, and gamma-emitting radionuclides. Use of the default values may result in licensees needing more DFA than is warranted based on the risk to public health and safety. For example, a licensee possessing more

than 0.1 millicurie (mCi) but less than 1 mCi of an unsealed non-alpha-emitting isotope, would be required under § 30.35(d) to provide $225,000 in DFA. To possess more than 1 mCi of the non-alpha-emitting isotope, a licensee would be required to provide $1,125,000 in DFA, and a DFP would be required to possess more than 10 mCi. However, if the NRC revised appendix B to 10 CFR part 30 to adopt the values in appendix C to 10 CFR part 20, the minimum possession threshold for DFA or a DFP would increase 100-fold for accelerator-produced radioactive material (NARM) isotopes germanium (Ge)-68, gold-195, and sodium-22. Therefore, the application of the current generic default possession values creates a regulatory burden by requiring licensees to provide decommissioning funding that is not commensurate with the risk of isotope-specific possession values.

In a petition for rulemaking (PRM) docketed as PRM–30–66, the Organization of Agreement States (OAS) requested that the NRC provide specific possession values for naturally occurring and NARM radionuclides that are not currently listed in appendix B to 10 CFR part 30 so that licensees using these isotopes, especially medical licensees, would not have to apply the appendix's default values to calculate decommissioning funding requirements. The OAS stated that patient health and safety are being compromised due to delays in licensing important diagnostic and therapeutic products that use radionuclides not listed in appendix B to 10 CFR part 30, and that these licensing obstacles could discourage the development of new medical and industrial applications. The OAS also suggested that, rather than issuing exemptions on a case-by-case basis, the more appropriate way to address the inconsistency in appendix B to 10 CFR part 30 is to amend the regulation to add appropriate radionuclides and their corresponding activities.

The NRC is proposing to update appendix B to 10 CFR part 30, ''Quantities of Licensed Material Requiring Labeling,'' with radionuclides and values from appendix C to 10 CFR part 20, ''Quantities of Licensed Material Requiring Labeling'' for values that are equal to or higher than the current default value in appendix B to 10 CFR part 30. This would add radionuclides not currently listed in appendix B to 10 CFR part 30, including radionuclides associated with industrial technologies and current and emerging medical uses.

The proposed revisions to the list of radionuclides in appendix B to 10 CFR part 30 would align with the NRC's regulatory authority under the EPAct. The EPAct amended the definition of byproduct material to include NARM radionuclides and provided the NRC authority over this new category of byproduct material. Germanium (Ge)-68 and gallium (Ga)-68, radionuclide generators are of particular concern to those in the medical field since Ge-68 is not listed in appendix B to 10 CFR part 30 and the default values resulted in overly conservative decommissioning financial assurance requirements. In the report, ''Germanium-68 (Ge-68) Decommissioning Funding Plan (DFP) Final Report,'' dated August 12, 2015, the Advisory Committee on the Medical Uses of Isotopes (ACMUI) concluded that the restrictive aspects of a DFP for Ge-68/Ga-68 generators that arise from the current 10 CFR part 30 regulations were preventing or deterring the use of promising Ga-68 diagnostic imaging agents for patients and recommended that the NRC address the DFP concerns relative to Ge-68/Ga-68 generators through rulemaking. The NRC has granted a limited number of exemptions for licensees that use Ge-68/Ga-68 generators under certain conditions. These exemptions were approved in advance of this rulemaking. By providing a regulatory solution through rulemaking, the NRC would create a more stable regulatory framework for applicants, licensees, and regulators. In cases where the values in appendix C to 10 CFR part 20 are lower than the values currently listed in appendix B to 10 CFR part 30, the NRC proposes maintaining the current values in appendix B to 10 CFR part 30. This means the values listed in appendix B to part 30 would align with the majority of values listed in appendix C to part 20 except for americium-241, cadmium-109, plutonium-239, uranium-233, uranium-234, uranium-235, zirconium-93, the default value for any alpha-emitting radionuclide not listed or mixtures of alpha emitters of unknown composition, and the default value for any radionuclide other than alpha emitting radionuclides not listed or mixtures of beta emitters of unknown composition which would remain at their current values.

Each of the values that would remain at their current values are a factor of 10 higher than what is listed in appendix C to 10 CFR part 20. If the values for these radionuclides were adopted from appendix C to 10 CFR part 20, then the values would decrease, and several licensees would become subject to DFA requirements. This would result in an undue burden to this population of licensees in obtaining DFA or requesting an exemption from the requirements. Since implementing DFA requirements in 1988, the NRC has not identified any instance where a licensee with these radionuclides has had insufficient DFA or any negative safety consequences because of insufficient DFA.

Because there is no safety related reason to decrease any values listed in appendix B to 10 CFR part 30, the NRC proposes maintaining status quo for the values for americium-241, cadmium-109, plutonium-239, uranium-233, uranium-234, uranium-235, zirconium-93, the default value for any alpha-emitting radionuclide not listed or mixtures of alpha emitters of unknown composition, and the default value for any radionuclide other than alpha emitting radionuclides not listed or mixtures of beta emitters of unknown composition in appendix B to 10 CFR part 30. The default values in appendix B to 10 CFR part 30 remain at their current values. These changes will either reduce or not affect the amount of DFA required for licensees, depending on the mixture of radionuclides the licensee possesses.

Finally, the NRC would remove all radionuclides with a half-life of 120 days or less from the updated appendix B to 10 CFR part 30 because these radionuclides are not considered when developing DFA. Additionally, the NRC is also proposing a revision to § 70.25(a)(2) and (b) to specify unsealed special nuclear material ''of half-life greater than 120 days.'' NRC experience shows that short-lived radionuclides do not require major decommissioning efforts, as radionuclides with half-lives of 120 days or less naturally decay to negligible levels within a few years.

This rulemaking also includes changing the title to appendix B to 10 CFR part 30 to clarify the intent and purpose of the appendix. Appendix B to 10 CFR part 30 is used solely for the purpose of calculating the required amounts of DFA. Therefore, this proposed rule would change the title of appendix B to 10 CFR part 30 from ''Quantities of Licensed Material Requiring Labeling'' to ''Quantities of Licensed Material Used to Assess Financial Assurance for Decommissioning.''

These proposed revisions address the changes requested in PRM–30–66 from the OAS requesting that the NRC conduct rulemaking to provide an expeditious solution to the DFA concerns of applicants and licensees who currently use, or plan to use, the unlisted NARM radionuclides, especially in the diagnosis and treatment of diseases.

Under current requirements, licensees may choose to submit either a DFP under § 30.35(e) or a certification that financial assurance for decommissioning has been provided in the amount prescribed by § 30.35(d). Although medical licensees generally possess smaller quantities of radioactive material than major nuclear facilities and typically use certifications under § 30.35(d), they may possess unsealed radionuclides with half-lives greater than 120 days and thus could develop facility-specific decommissioning cost estimates in accordance with § 30.35(e). While the review and approval of DFPs under § 30.35(e) could be resource intensive for both the applicant or licensee and the regulatory agency, some licensees might find the submission of a DFP more cost effective than the certification of financial assurance for decommissioning using DFA values based on the default radionuclide threshold values in appendix B to 10 CFR part 30. The proposed changes to radionuclide values in appendix B to 10 CFR part 30 would decrease, or maintain, the amount required for decommissioning financial assurance for an individual NRC 10 CFR part 30 licensee. After evaluating the impact of the proposed provisions on their decommissioning financial assurance mechanism, a licensee may be required to make revisions that lead to additional costs. However, the NRC expects that most 10 CFR part 30 licensees would benefit from these changes. This was demonstrated both by the petition that initiated the rulemaking and by the public responses to the draft regulatory basis supporting a rulemaking on decommissioning financial assurance for sealed and unsealed radioactive materials (87 FR 25157).

NRC licensees under subpart H of 10 CFR part 70, as required by § 70.25(b) must submit DFPs. The changes to appendix B to 10 CFR part 30 would not impact 10 CFR part 70 licensees, as their possession quantities exceed the threshold identified in § 70.25(d).

Under the proposed rule all affected licensees would be required to review the updated appendix B to 10 CFR part 30 to determine whether changes are needed. Licensees that no longer require DFA or a DFP or could decrease their DFA, could do so voluntarily at their discretion after the effective date of the rule. Licensees would need to request NRC approval when making any changes to their DFAs or DFPs. For licensees where no change is required, the NRC would verify compliance during triannual reviews and as part of routine inspection activities.

*Part 31 Creating New Classes of General Licenses and Modernization of Current Classes of General Licenses*

A. Standard General Licenses (SGL)

Consistent with its authority under the AEA, the NRC may issue general or specific licenses for the use of byproduct, source, and certain quantities of special nuclear material. A specific license is issued to a named entity after the filing of an application with the Commission. Additionally, amendments to specific licenses are required when a variety of changes occur. In the case of applications and amendments, the NRC and licensee engage in back and forth communication until a licensing basis is solidified and documented in a licensing document. Specific licenses cover a wide range of activities of byproduct material and have a variety of associated risk profiles. Some activities are conducted in a standard method across the industry, while others are conducted in a non-uniform manner. The specific licenses for standard operations use consistent license authorizations and conditions, such that, these specific licenses appear almost identical across the industry with the exception of individuals named on the license and the locations authorized by the license. For example, the majority of specifically licensed portable gauge licensees operate under the same license conditions and have the same license commitments. The burden associated with applying for a specific license and maintaining a specific license is unnecessarily high for low risk, standard operations when the specific license follows the standard format.

A GL is issued by regulation and grants authority to entities conducting the activities specified in the regulation issuing the GL. Requirements for general licensees appear in the regulations and are designed to be commensurate with the specific activities covered by the GL. A GL is effective without the need for a user to file an application with the Commission or the issuance of a licensing document to a particular person. However, certain GLs may require registration with the Commission. Under 10 CFR part 31, the Commission grants GLs for certain uses of byproduct material and provides the requirements associated with these GLs. This regulatory framework has proven to be effective and a low burden for many low risk, standard activities.

The NRC is proposing to create a new class of GLs within subpart C of 10 CFR part 31 for a subset of low-risk activities that are currently specifically licensed, including fixed gauging, portable gauging, certain medical uses, certain analytical equipment uses, and certain in vitro testing uses. The impacted groups would be permitted to choose between two licensing pathways. An SGL would require submission of a registration, fee, and certification of understanding for five types of technology. The NRC is proposing that each type of technology has requirements codified in a separate regulation. For example, the NRC is proposing requirements for a Standard General License for Certain Fixed Gauging in § 31.14, a Standard General License for Portable Gauging in § 31.15, a Standard General License for Certain Medical Uses in § 31.16, a Standard General License for Certain Analytical Equipment Including Electron Capture Detectors, X-Ray Fluorescence Devices, and Ion Generators in § 31.17, and a Standard General License for Certain In Vitro Testing in § 31.18. The NRC is proposing administrative requirements, such as notifications and decommissioning, applicable to each of the SGLs in § 31.13.

The proposed rule language is based on standard license conditions and essential standard commitments related to programs necessary for radiological safety and security. The standard license conditions and essential standard commitments were derived from risk significant elements of NUREG–1556, ''Consolidated Guidance About Materials Licenses''. Elements taken from program specific NUREG–1556 Volumes and codified in the rule come from the ''Response from Applicants'' sections of NUREG–1556 and revolve around establishing programs, processes, and procedures to safely conduct licensed activities. These sections are tied to regulatory requirements in 10 CFR that are general in nature so NUREG–1556 provides methodologies to meet the general requirements for the safe conduct of licensed activities.

The proposed rule language requires, by reference, compliance with applicable regulations found in other applicable parts of 10 CFR to ensure the new general licensees comply with all applicable provisions that they are currently subject to by their specific licenses. In addition, the NRC is proposing inventory limitations in § 31.13(c) that would prohibit a single general licensee from aggregation of materials requiring implementation of requirements contained in 10 CFR part 37, materials requiring a decommissioning plan or financial assurance, and materials requiring an emergency plan. The GLs would not be

subject to any requirements beyond what is currently required to obtain a specific license. Under this proposed rule, entities would still have the flexibility to choose to obtain a specific license.

The NRC is proposing conforming changes in other parts of 10 CFR to ensure radioactive materials can be distributed to and from the new GLs. Conforming changes include: the definition of principal activities in § 30.4, addition of SGLs to § 30.6, addition of SGLs in § 30.34(h)(1), addition of SGLs to § 30.35(g), addition of SGLs to § 30.41(d)(1), addition of Standard General License for Certain Medical Uses to § 32.72(a), addition of Standard General License for Certain Medical Uses to § 32.74(a), and addition of SGLs in § 150.20.

Overall, the SGL pathway would reduce the burden on the licensee as well as the NRC while maintaining adequate safety, security, and oversight of these licensed activities. The current licensing pathway would exist as it does today, so no impact may be observed to licensees who chose to remain specifically licensed. However, licensees could select the SGL pathway if they are able to conduct activities within the framework of the SGL for their specified activity. The SGL option would have a lower application fee, lower annual fee, and would eliminate the need to submit licensing correspondence such as amendment requests. Instead of amendments, a notification process would be used for specified program changes. The SGLs would be subject to an inspection program that is equivalent to the inspection for the same specifically licensed activities. As part of the NRC's response to the ADVANCE Act of 2024, the NRC is reviewing current inspection programs including the frequency of inspection conducted under Inspection Manual Chapter 2800, ''Materials Inspection Program''.

B. Current Classes of General Licenses—10 CFR 31.5 Licensees

General licenses in § 31.5 currently authorize use of certain devices. The NRC is proposing changes to these requirements to reduce burden while maintaining protection of public health and safety.

Currently, registrations for generally licensed devices as required by § 31.5(c)(14) must be submitted to the Commission by mail. However, most entities subject to this requirement use electronic communications as their primary communication method. The NRC is proposing to amend § 31.5(c)(14) to add electronic communication methods, such as email, as permitted communication methods. Additionally, the NRC is proposing to add a mailing address that is compatible for signature required correspondence should an entity wish to send their registration as signature required.

Currently, § 31.5(c)(15) permits general licensees to hold devices for a period of no longer than 2 years. The term hold is used to describe a licensee's action of keeping a device in its possession that is no longer in use and no longer planned to be used; this is typically the period where a device is out of service prior to disposal of the device. This has shown to be constraining to business operations since entities may need to hold devices for longer than 2 years. For example, an entity may take a device out of service with the intention of disposing of it. However, it may take longer than 2 years to solicit bids for disposal, obtain a contract, and complete the disposal. The NRC is proposing to amend § 31.5(c)(15) to revise the holding period for GLs from 2 years to 36 months. Additionally, holding periods for generally licensed devices are based on decommissioning time periods for many types of specific licensees. Currently, the time period in § 30.36(d) and § 31.5(c)(15) is 2 years. However, as part of its response to E.O. 14300, the NRC is considering increasing this time period to 3 years.

Currently, § 31.5(c)(15) requires general licensees to perform quarterly physical inventory on devices that are placed on standby. The term standby is used to describe a licensee's action of keeping a device in their possession that they plan to return to service and use in the future. However, the regulatory framework for sealed sources that have fewer inherent safety features require physical inventories every 6 months. For example, sealed sources possessed by medical licensees are subject to § 35.67 which requires physical inventories of sealed sources at a semi-annual periodicity. Similarly, licensed materials in well-logging activities are subject to § 39.37 which requires physical inventories of licensed material at a semi-annual periodicity. Additionally, the majority of sealed sources possessed by specific licensees are subject to semi-annual physical inventories through license conditions based on the applicable volume of the NUREG–1556 series, ''Consolidated Guidance About Materials Licenses.'' A quarterly physical inventory is overly burdensome and restrictive in comparison to the Commission's holistic regulatory framework related to physical inventories. The NRC is proposing to amend § 31.5(c)(15) to change the physical inventory frequency from quarterly to semi-annually for devices on standby. By changing the periodicity to semi-annually, the NRC would ensure consistent requirements are imposed across various licensee populations in regard to physical inventory requirements. Specifically, the risk profile for generally licensed devices is lower than the risk profile for specifically licensed devices for which a semi-annual inventory is required for sealed sources. Since the inception of the generally licensed device program in the 1970s, the NRC has obtained sufficient operating experience to demonstrate that this population of licensees generally has adequate material control and accountability such that quarterly inventories are not necessary.

These changes would affect entities required to register devices under § 31.5. Affected entities currently include holders of certain generally licensed devices. The changes would provide flexibility to the communication methods permitted, which increase efficiency, and save entities the cost of mailing physical copies. Additionally, the changes to holding periods would provide flexibility to entities by allowing them to hold devices for a longer time period before disposal is required, should the time period for decommissioning increase. Finally, the change to physical inventories would reduce the number of times per year that an entity must conduct a physical inventory of their generally licensed devices. This would cut the time spent on physical inventories in half.

C. Current Classes of General Licenses—10 CFR 31.11 Licensees

Currently, § 31.11(a) limits the total activity per vial for in vitro clinical or laboratory testing for certain persons, including physicians. The limit for carbon-14 is 10 microcuries, the limit for hydrogen-3 is 50 microcuries, the limit for selenium-75 is 10 microcuries, and the limit for cobalt-57 is 10 microcuries. Meanwhile, 10 CFR part 20 only requires labeling for quantities that are above these activities. Specifically, 10 CFR part 20 appendix C requires labeling for carbon-14 at 100 microcuries, hydrogen-3 at 1,000 microcuries, selenium-75 at 100 microcuries, and cobalt-57 at 100 microcuries. Additionally, § 30.71 Schedule B provides exempt quantity thresholds that are higher than the GL limits. Specifically, § 30.71 Schedule B states the exempt quantity limit for carbon-14 is 100 microcuries, hydrogen-3 is 1,000 microcuries, selenium-75 is

10 microcuries, and cobalt-57 is 100 microcuries. The conflict between exempt quantities in § 30.71 Schedule B and the values in § 31.11(a) pose an unclear regulatory framework for entities working with quantities above the vial limit, but below the exempt quantity limit.

The NRC is proposing to amend § 31.11(a) to increase the prepackaged unit limit from 10 microcuries to 100 microcuries for carbon-14, from 50 microcuries to 1,000 microcuries for hydrogen-3, from 10 microcuries to 100 microcuries for selenium-75, and from 10 microcuries to 100 microcuries for cobalt-57.

The proposed change would affect entities that are currently required to obtain a specific license for in vitro testing to use prepackaged units above the current limits and instead would allow entities to handle prepackaged units with higher activity under a GL. Additionally, it would provide clarity to the licensee community since the current limits in § 31.11 for carbon-14, hydrogen-3, selenium-75, and cobalt-57 are below the exempt quantity limits in 10 CFR part 30 Schedule B or below the limits requiring labeling in 10 CFR part 20 appendix C.

Finally, physician is currently defined in §§ 30.4 and 35.2. With various rulemakings in progress to meet the requirements of E.O. 14300, divergent definitions across the byproduct material regulatory framework could emerge if the definition in 10 CFR part 35 is revised without also revising the definition in 10 CFR part 30 in parallel. The NRC is proposing conforming changes in § 30.4 to remove the definition of physician as it is already defined in 10 CFR part 35 and not used in 10 CFR part 30. This would increase regulatory clarity and ensure one single definition is present within the NRC's byproduct material regulatory framework.

*Part 32 and 40 Reducing Reporting Requirements for Consumer Products Containing Small Quantities of Radioactive Material*

In this rulemaking, the NRC is proposing to remove certain reporting requirements, while still requiring the information be maintained and available for review by the NRC, to ensure regulatory requirements are commensurate with risk and information needs. On March 24, 1983, the NRC published a final rule (48 FR 12331) to amend 10 CFR part 32. The amendments to 10 CFR part 32 included modifications to the reporting and recordkeeping requirements for licensees authorized to distribute consumer products containing small quantities of byproduct material (exempt items). Prior to this change, these regulations required licensees to submit an annual report to the NRC specifying the total quantity of byproduct material transferred to each type of consumer product and the total number of each product transferred during the reporting period. An annual report was required even if a licensee made no transfers during the reporting period. Under the rule, licensees were required to submit a report every five years, or at the time of application for renewal of the specific license, or at the time the licensee notifies the NRC that it is discontinuing distribution of these consumer products.

On October 16, 2007, the NRC published a final rule (72 FR 58473) to amend 10 CFR part 32, changing the reporting requirements back to an annual basis and to include details on what information should be included in the report. The rationale provided in the 2007 final rule was that changing back to annual reporting cycle, instead of a 5-year-cycle, would provide timely information for the NRC to fully determine the products and amount of byproduct material distributed annually which impacted the efforts of developing the NUREG–1717, ''Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials,'' and contributed to uncertainties in the results.

With respect to source material, on May 29, 2013, the NRC published a final rule (78 FR 32310) to amend 10 CFR part 40. The amendment required licensees to obtain a specific license rather than be permitted to operate under a GL. The amendment also included conditions for the initial distributor such as requirements for reporting and recordkeeping. The rule required that initial distributors of products used under an exemption in § 40.13(c) submit a report of transfer each year, following the same practice as consumer products distributed under 10 CFR part 32.

Since 2013, the NRC has not received complete or timely information regarding products and materials containing byproduct material and source material distributed for use under exemptions from licensing, despite the annual reporting frequency required under the 2007 and 2013 final rules. While the reevaluation of the reporting requirements suggested that annual reporting and additional information to be provided would improve inefficiencies in data collection, these issues have not been resolved. Licensees have not provided information clearly and consistently. There are also programmatic implementation issues in the collection, management, and storage of these reports. The intent of the information was to have readily available data to assess public exposure to radiation from these products and inform the Commission on the extent of distribution, if needed. However, this information, while useful, has been seldomly used. The NRC maintains the same access to the data by requesting information from the licensee when the need arises, instead of requesting a formal report to be submitted annually. Furthermore, the NRC has decades of data that can be used to support gaps in assessing public dose.

The NRC is proposing updating the regulations in §§ 32.12, 32.16, 32.20, 32.25(c), 32.29(c), and 32.32(c) to remove the annual reporting requirements. With this proposed change, licensees would be required to maintain the records of transfer per the record retention policy in § 30.51 and make the information available to the NRC upon request.

The elimination of the reporting requirements would reduce the licensee's burden of preparing and providing records and would reduce the burden of the NRC to collect, manage, and store the reports while still remaining protective of public health and safety given that the NRC will still maintain access to the information. This change would also be applicable to exempt products under 10 CFR part 40 and the required reporting under § 40.53(c). For exempt products under 10 CFR part 40, records would need to be maintained in accordance with § 40.61 and made available to the NRC upon request.

This proposed change would affect specific licensees who maintain a license under §§ 32.11, 32.14, 32.22, 32.26, 32.30, and 40.52 for distribution of consumer products under 10 CFR part 30 or 10 CFR part 40. Licensees would no longer have to submit an annual report to the NRC. Record retention policy would follow the regulations in §§ 30.51 and 40.61, for byproduct and source material respectively. This would allow the NRC to have access to information when needed, while at the same time reducing the burden on licenses in preparing and submitting the reports. Requesting the information when needed may introduce some burden due to unscheduled data collection, but it would be outweighed by the reduction in burden of annually preparing, submitting, and maintaining the records of the report on an annual basis.

*Part 32 Expanding Distribution Pathways for Microsources*

The NRC regulates the distribution of byproduct material for medical use under 10 CFR part 32. Specifically, § 32.72 governs the commercial distribution of radioactive drugs, while § 32.74 governs the distribution of sources and devices containing byproduct material. However, recent developments in clinical practice have highlighted the need to allow both distribution pathways to be available to microsources, which include radioactive microspheres used for intravascular brachytherapy. The proposed amendments to 10 CFR part 32 in this rulemaking would allow additional authorizations for the preparation and distribution of radioactive microspheres.

Microspheres are regulated by the FDA as medical devices and they are not considered radioactive drugs. As such, manufacturing, preparation and transfer of microsources is not addressed under § 32.72 and must be authorized under § 32.74, even though the radiation safety considerations between microsources and radioactive drugs are similar. This requirement has become a burden following the implementation of United States Pharmacopeia (USP) General Chapter <825>, which included standards for the preparation, compounding, dispensing, and repackaging for radioactive microspheres similar to radiopharmaceuticals.

The USP sets quality, purity, strength, and identity standards for medicines, food ingredients, and dietary supplements used in the United States. USP standards are enforceable by the FDA and State Boards of Pharmacy. As such, USP standards are widely adopted in healthcare and pharmaceutical practice. USP <825> requires that sterile radioactive microspheres be prepared in International Organization of Standardization (ISO) Class 5 environments if they are to be used more than one hour after puncture. To comply with these requirements and accommodate patient-specific treatment schedules, medical use licensees have increasingly relied on commercial radiopharmacies to prepare and distribute patient-ready doses of microspheres. As radiopharmacies historically focused their activities on radioactive drugs, they are licensed under § 32.72. However, the current regulatory framework does not authorize commercial radiopharmacies for preparing and distributing microspheres under § 32.72.

The proposed rule would revise § 32.72 to include microsources within its scope, which would allow commercial radiopharmacies that are licensed under this provision to prepare and distribute microspheres. In addition, the proposed rule would expand those who can use the § 32.72 pathway to any applicant who is legally authorized, under applicable Federal or State law, to manufacture, compound, prepare, or distribute radioactive drugs or medical devices to allow flexibility for future pathways allowed by states or the FDA to distribute radioactive drugs and medical devices safely.

The NRC is also proposing to revise § 32.74 to provide provisions specific to microsources, including microspheres. The revised language ensures clarity that licensees can use either § 32.72 or § 32.74 to distribute microsources. The amendments to § 32.74 also clarify that the regulation allows distribution to any licensee authorized to use the source or device under 10 CFR part 35 and does not limit distribution to specific types of medical facilities listed under specific subparts to avoid unnecessary limitations. A conforming change to § 30.32 would be made based on the changes in the structure of § 32.72.

These changes are intended to reduce regulatory burden and improve clarity for regulators and, radiopharmacy licensees, medical device manufacturing licensees, and medical licensees. By allowing both §§ 32.72 and 32.74 to serve as licensing pathways for the distribution of microsources, the NRC is allowing licensees to select the most appropriate regulatory framework based on their business model and operational needs. This flexibility supports compliance with USP <825>, enables timely access to microspheres for patient care, and maintains public health and safety.

*Part 34 Reducing Anti-Competitive Barriers and Administrative Requirements for Industrial Radiography*

The NRC's regulations in 10 CFR part 34 establish the specific requirements for industrial radiography. The proposed changes to 10 CFR part 34 in this rulemaking aim to provide greater flexibly in the use of codes and standards, clarify the two-person rule; and update prescriptive administrative requirements to allow for a more performance-based approach, while continuing to ensure the protection of public health and safety.

Current NRC regulations in § 34.20(a)(1) require that radiographic equipment meet the standards in ANSI N432–1980, ''Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography.'' ANSI N432 was incorporated into NRC regulations on January 10, 1990 (55 FR 843) because manufacturers of radiography equipment were not all consistently using ANSI N432, nor were they uniformly or fully implementing the performance criteria intended to improve radiation safety for workers. However, ANSI N432 has been superseded by ANSI N43.9–1991, ''For Gamma Radiography—Specifications for Design and Testing of Apparatus.'' Additionally, other applicable industry standards have also been developed. Pursuant to the SSDR program in § 32.210, radiographic exposure devices, source assemblies, and sealed sources are evaluated using accepted industry standards to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. The NRC is removing requirements that incorporate specific standards to stay current with the industry as these standards may become obsolete or superseded. The proposed rule would remove the prescriptive and outdated reference to ANSI N432–1980 and instead require that radiography devices, source assemblies, and sealed sources be evaluated and registered in the SSDR. Additionally, since § 34.20 also discusses associated equipment that is not evaluated under the SSDR, the proposed rule would also require that this equipment meets the manufacturers' specifications and instructions. Manufacturer specifications include design elements and criteria necessary for the safe function of the associated equipment. This change will conform § 34.20 with § 32.210 while continuing to ensure that radiography licensees use and maintain the radiography device, sealed source, and associated equipment in accordance with the industry standards and manufacturer requirements it was designed to meet. The removal of the incorporation by reference of an industry standard will also prevent this requirement from becoming superseded and needing to be revised in the future. Further § 34.20(a)(2) will remain to provide a pathway for licensees to use alternative standards on a case-by-case basis. Finally, NRC is proposing a conforming change to § 34.3 to define SSDR for 10 CFR part 34. These changes will ensure that radiation safety is maintained while reducing anti-competitive regulatory barriers and allowing for innovation in the design of radiography equipment.

On May 28, 1997, the NRC issued § 34.41(a) ''Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations,'' commonly called ''the two-person rule,'' which requires a second qualified individual (radiographer or radiographer's assistant) to be present during industrial radiography operations at temporary jobsites (TJS) (62 FR 28948). The purpose of the second individual is to provide immediate assistance when required and to prevent unauthorized entry into the restricted area.

Prior to 2021, the NRC had consistently interpreted § 34.41(a) to require both the radiographer and the second qualified individual to maintain direct observation when radiographic operations are being conducted at a TJS. Through operating experience, this interpretation was found to be unnecessary to protect public health and safety, and on June 1, 2021, the NRC reinterpreted the requirement (86 FR 29173).

Since 2021, NRC has interpreted § 34.41(a) such that the requirements contained in the sentence, ''[t]he additional qualified individual shall observe the operation and be capable of providing immediate assistance to prevent unauthorized entry'' are met if the second qualified individual is in sufficiently close proximity to the operation and sufficiently aware of the ongoing activities to be able to provide assistance or take charge when necessary and to prevent unauthorized entry. The second individual may perform other tasks nearby so long as they are cognizant of the site-specific circumstances when radiographic operations are in progress. In 2021, the NRC also determined that this interpretation makes § 34.41(a) consistent with the requirement in § 34.51 that at least one of the two individuals present at a TJS must ''maintain direct observation of the operation,'' the NRC discontinued planned rulemaking after determining that the reinterpretation resolved the issues raised in PRM–34–6 which requested that 10 CFR part 34 clarify requirements related to the responsibilities of the second individual required to be present during radiographic operations.

The proposed rule would combine the requirements in § 34.51 into § 34.41(a) to create a single, concise requirement regarding the availability and surveillance responsibilities of the qualified individuals performing industrial radiography at TJSs. This change seeks to eliminate ambiguity, allowing for technological innovation in the implementation of the requirement, all while maintaining the integrity of the performance requirements. Combining § 34.41 and § 34.51 into a single simplified requirement enhances regulatory clarity by plainly aligning the requirement with the reinterpretation from 2021.

Part 34 of 10 CFR currently contains obsolete and overly prescriptive administrative requirements dating from its last significant revision in 1997 (62 FR 28948). Many of these requirements are not consistent with the NRC's modern and performance-based approach to oversight. For example, the operational history of § 34.101(c), which requires notification when work activities at a TJS exceed 180 days, is unnecessary because the information is collected during routine inspections and does not provide value to the NRC's performance based oversight program. The proposed rule would also reduce administrative burden on licensees by reducing the record keeping requirements in § 34.89(b) to remove duplicative records and by eliminating the notification requirement in § 34.101(c) which required licensees to notify the appropriate NRC Regional Office prior to exceeding 180 days at a TJS in a calendar year. The notification requirement can be eliminated because it can be reviewed through the routine inspection program.

The proposed rule would align leak testing requirements in § 34.27(c) with the SSDR. The sealed source leak testing frequency in the SSDR is based on the specifications of the sealed source specific to the design of the device for which it is used. This proposed change could reduce administrative burden on radiography licensees while ensuring that radiation safety is maintained and the leak testing frequency used is specific to the source model.

The proposed changes would further streamline 10 CFR part 34 by removing the obsolete legacy requirements related to previous rules that are no longer applicable and that were put in place to allow legacy incorporation for certain requirements in §§ 34.13(b)(2), 34.27(e), 34.41(d), 34.43(a)(2),(h), and (i).

The proposed revisions to 10 CFR part 34 would affect industrial radiographic license holders. The changes would reduce the administrative burden on license holders and the changes to streamline and clarify which would enable greater comprehension of the rule and increased compliance. Additionally, the changes to § 34.20 would allow greater flexibility to industrial radiography equipment manufacturers by removing the overly prescriptive performance design criteria that the equipment must currently meet.

*Part 39 Modernizing Well Logging Regulations*

The NRC is proposing to streamline 10 CFR part 39 to by amending requirements related to instrument calibration intervals (§ 39.33(c)(1)), leakage testing for each sealed source (§ 39.35(c)(1)) and certain notification requirements.

Current NRC regulations in § 39.33(c)(1) require that the licensee shall have each radiation survey instrument calibrated at intervals not to exceed 6 months and after instrument servicing. The proposed rule would extend this frequency from 6 months to 12 months to be consistent with other regulations regarding the calibration of survey instruments found in 10 CFR parts 35 and 36. It is necessary that well logging licensees use equipment that has been calibrated to ensure accuracy of radiation emitted and associated radiation detection practices, however, this should be consistent with other regulations. This would ensure that radiation safety is maintained while decreasing administrative and financial burden on the licensee.

The NRC regulations in § 39.35(c)(1) require that each sealed source (except an energy compensation source (ECS)) must be tested for leakage at intervals not to exceed six months. However, other parts of this chapter allow for leak tests to be conducted at frequency outlined in the SSDR, which may list periods longer than six months. The proposed rule would align the leak testing provisions in other parts of NRC regulations and would be consistent with the intervals approved by the NRC or an Agreement State on the SSDR. It is necessary that well logging licensees ensure sealed sources are not leaking; however, this should be consistent with the source design specifications of the SSDR. This would ensure that radiation safety is maintained, and the leak testing frequency used is specific to the source model while reducing administrative and financial burden on the licensee.

Current NRC regulations in § 39.77(c)(1) require that the licensee shall notify the appropriate NRC Regional Office by telephone of the circumstances that resulted in the inability to retrieve the source and obtain NRC approval to implement abandonment procedures. These procedures are reviewed and approved by the NRC during the licensing process. The proposed rule would reduce administrative burden on applicants and licensees by eliminating

the notification requirement in § 39.77(c)(1). The notification requirement can be eliminated because it is not needed for the licensee to implement operating and emergency procedures for abandonment that have already been approved by the NRC during the licensing process. The NRC's approval is for the licensee to implement the procedures that were approved during licensing, which is unnecessary, because the NRC's approval at the time of notification does not change the previously approved procedures. The removal of § 39.77(c)(1) would eliminate the notification and duplicative approval process for implementing abandonment procedures.

*Part 150 Modernizing Requirements for Agreement State Licensees in Part 150*

The proposed changes 10 CFR part 150 concern (1) regulation of special nuclear material of low strategic significance (SNM–LSS), and (2) reciprocity, which allows the NRC to recognize Agreement State licenses in certain circumstances, and vice versa.

First, consistent with Section 274 of the AEA, Agreement States may assume regulatory authority over SNM in quantities not sufficient to form a critical mass, including SNM–LSS. SNM–LSS includes gram quantities of plutonium or uranium-233 or uranium-235, or certain combinations of the three. These materials are used in research or in the manufacture of certain radiation detectors. Currently, there are 10 Agreement State licensees that possess SNM of low strategic significance (SNM–LSS). While otherwise Agreement State licensees, the NRC reserved regulation over SNM–LSS under its common defense and security authority. Thus, Agreement State licensees possessing SNM–LSS must follow § 73.67 pursuant to § 150.14.

Prior to 2023, the NRC had not exercised any oversight over Agreement State licensees for compliance with § 73.67. On March 6, 2023, a Temporary Instruction (TI) 2800/044,''Assessment of Physical Protection Requirements under § 150.14 For Agreement State Licensee Processing, Using, or Transporting Special Nuclear Material of Low Strategic Significance,'' was issued to evaluate, through inspection, whether Agreement State licensees had adequate physical protection processes and procedures in place for the possession, use, and transport of SNM–LSS consistent with the requirements of § 73.67. The NRC inspectors identified, through TI 2800/044 inspections, that Agreement State licensees in possession of SNM–LSS store the material in secure areas where other radioactive materials are stored. Considering the low safety and security significance of SNM–LSS and the results of TI 2800/044 inspections, the NRC determined that security requirements in § 20.1801 ''Security of stored material'' and § 20.1802 ''Control of material not in storage'' are adequate to secure SNM–LSS.

The current regulatory approach for SNM–LSS Agreement State licensees means that these licensees are subject to oversight by both the NRC and their Agreement State regulator (NRC currently oversees physical protection of SNM–LSS and the Agreement State oversees control of radiation hazards associated with the SNM to ensure adequate protection of public health and safety). In addition, the NRC does not have a pathway to recover inspection costs from these Agreement State licensees and the additional cost for these inspections is shouldered by NRC licensees.

The proposed rule would delete § 150.14, which requires Agreement State licensees that possess SNM–LSS to meet the physical protection requirements in § 73.67. The deletion of § 150.14 would affect Agreement State licensees possessing SNM–LSS by removing the requirement to implement the physical protection requirements in § 73.67. Under this change, the NRC would no longer have oversight of SNM–LSS in Agreement States and the Agreement States would continue to maintain oversight of the security of this material under their current programs based on security requirements found in 10 CFR part 20. There would also be a minimal resource savings for the NRC by no longer having regulatory oversight of this requirement.

The proposed rule also addresses reciprocity, which is the NRC's recognition of Agreement State licenses for work performed in areas of NRC jurisdiction, without the licensee having to obtain a specific license from the NRC. Under reciprocity, the NRC grants a GL to Agreement State licensees for work in NRC jurisdiction for periods not exceeding 180 days in a calendar year (except for activities performed in offshore waters which does not have a time period limit). The provisions in § 150.20 require a specific license from an Agreement State as the basis for the GL to be granted. Areas of NRC jurisdiction include non-Agreement States, areas of exclusive Federal jurisdiction, and offshore waters. The term reciprocity is also used in Agreement States to identify Agreement State recognition of an NRC license and licenses from other Agreement States for work performed in their jurisdiction. Some types of activities conducted under reciprocity include radiography, portable gauge use, well logging, leak testing, and calibration.

Activities conducted by Agreement State licensees in an NRC jurisdiction must meet the GL provisions of § 150.20, ''Recognition of Agreement State Licenses.'' Pursuant to this provision, prior to engaging in licensed activities an agreement state licensee must provide an NRC Form 241 ''Report of Proposed Activities in Non-Agreement States,'' a copy of its Agreement State specific license, and the appropriate fee as prescribed in § 170.31. Currently, Agreement State licensees provide these materials at least 3 days before engaging in an activity for the first time in a calendar year. Additionally, Agreement State licensees must file an amended NRC Form 241 to request approval for changes in work locations, radioactive materials, or work activities different from the initial request. Work performed under reciprocity is limited to 180 days in any calendar year, except for offshore activities, which are authorized for an unlimited period in the year. The NRC has published guidance in NUREG–1556, Volume 19, ''Guidance for Agreement State Licensees About NRC Form 241 ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters.''

Between 2020 and 2024, the NRC annually processed on average 180 initial reciprocity filings and 1,386 amended reciprocity filings. Most initial reciprocity requests create a significant workload on NRC regional staff to review and approve the requests within the three-day time window. The majority of, if not all, reciprocity initial applications are approved. Additionally, there is an administrative burden on the licensee to ensure timely filing for initial reciprocity and ensure that amended forms are filed when required (*i.e.,* changes in work location, radioactive material, or different work activities).

The information collected on NRC Form 241 provides the NRC an opportunity for oversight including the conduct of inspections. The NRC conducts approximately 21 of these inspections each year. Each year, NRC staff processes hundreds of reciprocity amendments related to offshore work, mostly for changes in location. Due to logistical challenges and expense required to perform inspections offshore, the NRC has not performed

any inspection of offshore work in several years.

The NRC is proposing to revise § 150.20(b)(1) to reduce the notification time for submitting an initial reciprocity filling from three days before engaging in an activity to the day of the activity. The revision would also delete § 150.20(b)(1)(i)–(iii), which currently allows for submittals with less than three days for emergent reasons, as it would be superfluous. The proposed revisions to § 150.20(b)(1) would allow licensees greater flexibility in scheduling licensed activities that require reciprocity with minimal impact on public health and safety. This change would affect Agreement State licensees performing work in areas of exclusive Federal jurisdiction by reducing the administrative burden to file for reciprocity prior to conducting work activities. Specifically, for reciprocity submitted less than three days prior to engaging in the initial work activities, Agreement State licensees would no longer be required to provide additional justification regarding the emergent nature of the work.

For amended reciprocity filings pursuant to § 150.20(b)(2), the proposed revisions would remove the requirement that Agreement State licensees engaging in activities offshore amend the NRC Form 241 for changes in work locations. This proposed change would affect Agreement State licensees working in offshore waters by significantly decreasing the number of amended NRC Form 241s submitted. Correspondingly, this change would also lessen the administrative burden on NRC staff by reducing the number of NRC Form 241s that are required to be processed.

Finally, to allow SGLs from Agreement States to be recognized by the NRC for the purposes of reciprocity, the proposed rule would revise §§ 150.20(a)(1), 150.20(a)(2), 150.20(b), 150.20(b)(1), and 150.20(b)(5) to include SGLs from Agreement States in addition to specific licenses throughout the requirement. These changes would allow Agreement State licensees, that have been granted an SGL, to work in NRC jurisdiction for up to 180 days without obtaining a specific license or SGL from the NRC. This would ensure that SGLs are not precluded from the ability to use the provisions of § 150.20 which would ensure parity between businesses conducting similar licensed activities but operating under a standard general licensees or specific license.

## V. Specific Requests for Comments

The NRC is seeking feedback from the public on the proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

- The NRC is seeking comments on how many persons that currently possess a specific license for portable gauge activities, fixed gauge activities, limited medical uses, analytical equipment uses, and in vitro testing would transition to a SGL that is described in the changes to 10 CFR part 31 subpart C. The NRC is also seeking comments on the costs and the benefits of the new SGL. Please provide a basis for your response.
- The NRC is seeking comments on possible impacts to small entities. The regulations in § 2.810, ''NRC size standards,'' provide specific size standards to determine whether a licensee qualifies as a small entity in its regulatory programs.
- As part of the wholesale review of regulations the NRC reviewed all reporting and notification requirements that reside within 10 CFR parts 30–39. The NRC is proposing changes to some of these requirements as part of this rulemaking. During the review, the NRC considered revising notification and reporting requirements in § 30.50(b)(2) to exclude the reporting for certain circumstances that fixed gauge licensees may encounter. This requirement currently requires a 24-hour notification and a 30-day written report for a variety of incidents including when a fixed gauge shutter is found to be inoperable and stuck in the open position. During the review, the NRC considered whether the reporting of fixed gauges with stuck shutters in the open position, when the open position is the normal operating mode, and the stuck position has been found by the licensee to pose no radiation hazard to workers, the public, or the environment was necessary. The NRC considered exploring whether it could issue a generic communication to exclude these events by reinterpreting what is meant in § 30.50(b)(2)(ii) by ''the equipment is required to be available and operable when it is disabled or fails to function.'' Alternatively, the NRC considered revising § 30.50 to provide the exclusion for these circumstances related to fixed gauges. Ultimately, the NRC determined that the impacts to the wide range of circumstances that are reported under § 30.50 warrants further review to ensure all consequences are understood. The NRC is seeking comments on whether inoperable fixed gauges that operate with open shutters but have shutters stuck in the open position, that pose no radiation hazard, warrant reporting and notification to the NRC. If reporting and notifications are warranted, the NRC is seeking comments on the appropriate timeline and content of the reports and notifications. Additionally, the NRC is seeking comments on what criteria, related to fixed gauges with stuck shutters, should be included to determine whether a hazard to the workers, the public, or the environment exists as a result of the stuck shutter. Please provide a basis for your response. Finally, the NRC is seeking comments on all event reporting and notification requirements in 10 CFR parts 30–34, 39, 40, and 150 related to the burden, content, and required timeframe associated with each report or notification. Please provide a basis for your response.

## VI. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, in accordance with section 605(b), the NRC is not preparing a regulatory flexibility certification analysis. This proposed rule would affect a small number of ''small entities'' as defined by the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810), but it would not be a significant impact.

Any small entity subject to this regulation that determines, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this opinion in a comment that indicates—

(a) The licensee's size and how the proposed regulation would impose a significant economic burden on the licensee as compared to the economic burden on a larger licensee;

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue or the detriments that would be avoided if the proposed regulations were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

(e) How the proposed regulation, as modified, would still adequately protect public health and safety.

Comments should be submitted as indicated under the **ADDRESSES** caption.

## VII. Regulatory Analysis

*A. Introduction*

The NRC has prepared a draft regulatory analysis on this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC has preliminarily determined that the proposed action in this rule is expected to reduce regulatory burden and generate cost savings for licensees, the NRC and the Agreement States, when compared to the no-action alternative. The NRC requests public comment on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

*B. Identification and Preliminary Analysis of Alternative Approaches*

The NRC identified two alternatives for this action: (1) no action (*i.e.,* maintaining the status quo regulatory baseline), and (2) the proposed rulemaking to revise language for the licensing of byproduct material.

The assessment of total costs and benefits discussed previously leads the NRC to the conclusion that the proposed rule, if implemented, would result in quantifiable net cost savings for industry, the NRC and Agreement States. In addition, the NRC concludes that the rule provides nonquantified benefits of regulatory clarity and improved consistency in the regulatory program. The proposed rule is also responsive to stakeholder feedback and aligns with E.O. 14300.

## VIII. Backfitting and Issue Finality

The NRC has determined that this proposed rule would not constitute backfitting as that term is defined in the NRC's backfitting provisions in §§ 50.109, 70.76, 72.62, and 76.76, all titled ''Backfitting,'' or affect the issue finality of an approval issued under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The proposed amendments would not include any provisions that would impose new or modified requirements on existing licensees, applicants, or certificate holders that are within the scope of a backfitting or issue finality provision. The proposed changes would not inextricably affect activities of licensees that are within the scope of the backfitting or issue finality provisions. Additionally, 10 CFR part 70 licensees within the scope of § 70.76 would not be impacted by this proposed rule. Each of these licensees is already required to submit a site-specific financial assurance plan because their authorized possession limits already exceed the proposed table values. For these reasons, the proposed rule would not meet the definition of ''backfitting'' under § 50.109, § 70.76, § 72.62, or § 76.76, or affect the issue finality of an approval issued under 10 CFR part 52.

This proposed rule also includes the draft guidance documents described in section XIV, ''Availability of Guidance,'' These documents if finalized, would not constitute backfitting as defined in § 50.109, § 70.76, § 72.62, or § 76.76 or affect the issue finality of any approval issued under 10 CFR part 52 because the guidance would not inextricably affect activities of licensees that are within the scope of the backfitting or issue finality provisions. The guidance would not impose new or modified requirements on existing licensees, applicants, or certificate holders that are within the scope of a backfitting or issue finality provision.

## IX. Cumulative Effects of Regulation

The NRC seeks to minimize potential negative consequences resulting from the cumulative effects of regulation (CER). The NRC believes that the de-regulatory impacts of this rulemaking activity are unlikely to cause implementation challenges for stakeholders. In addition, during the pendency of this rulemaking, the NRC is deprioritizing issuance of regulatory actions that might influence the implementation date for the new rule requirements (*e.g.,* orders, generic communications, license amendment requests, and inspection findings of a generic nature).

To fully understand any potential CER implications that could result from this rulemaking, the NRC is asking the following questions. Response to these questions is voluntary and any input will be considered during development of the final rule.

1. The NRC is proposing an effective date that will be 30 days after the date of publication of a final rule. Does this provide sufficient time to implement the proposed requirements? Please provide a rationale for your response.

2. Are there unintended consequences related to this rulemaking and how should they be addressed? Please provide a rationale for your response.

3. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that supports this proposed rule.

## X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## XI. Environmental Assessment

*A. Introduction*

The NRC has prepared this environmental assessment (EA) of the proposed rule amending regulations for byproduct, source, and special nuclear material use to determine the significance of the environmental effects of the proposed agency action in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) and the NRC's NEPA implementing regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' As explained below, the NRC has preliminarily determined that the proposed agency action to modernize the NRC regulations for byproduct, source, and special nuclear material use would have no significant effect on the quality of the human environment.

*B. Environmental Impacts of the Proposed Action*

The proposed action would amend multiple NRC regulations in 10 CFR parts 30, 31, 32, 34, 39, 40, 70, and 150 regarding licensed material use. Conforming changes would also be made to guidance consistent with the changes to regulations. Table B–1 lists the sections of the regulations that would be updated and the affected guidance documents.

TABLE B–1 REGULATION UNDER THE PROPOSED MODERNIZING NRC REGULATIONS FOR BYPRODUCT MATERIAL USE

| Rulemaking | Regulations | Guidance |
|---|---|---|
| Modernizing NRC Regulations for Byproduct Material Use. | 30.4, 30.6, 30.32, 30.34, 30.35, 30.41, Appendix B to Part 30, 31.5, 31.11, 31.13 (new), 31.14 (new), 31.15 (new), 31.16 (new), 31.17 (new), 31.18 (new), 32.12, 32.16, 32.20, 32.25, 32.29, 32.32, 32.72, 32.74, 34.3, 34.13, 34.20, 34.23, 34.27, 34.33, 34.41, 34.43, 34.51, 34.89, 34.101, 39.33, 39.35, 39.77, 40.53, 70.25, 150.14, 150.20 | Interim Staff Guidance. |

Conforming changes are administrative actions with no physical environmental effect and provide for the appropriate administrative and regulatory framework for byproduct material use under 10 CFR. An example would be adding a reference to a newly created subsection in an existing regulation. Most of the amendments to NRC regulations in the proposed rule occur within the affected regulation. The proposed rule includes conforming changes to NRC regulations in 10 CFR parts 30, 32, and 34.

B.1 Rule Amendments Addressed Under Categorical Exclusion

The NRC has determined that some of the changes to the regulations identified in this proposed rule meet the criteria for categorical exclusion under § 51.22, ''Categorical Exclusions.'' Categorical exclusions provide a mechanism to identify Federal actions that normally do not have a significant environmental effect on the human environment and for which neither an EA nor environmental impact statement is normally required. This ensures that resources are not expended on the environmental analysis of proposed actions that do not present the potential for significant environmental effects. Rule amendments with applicable categorical exclusions are presented in Table B–2 below and no further NEPA analysis is required.

These proposed rule amendments belong to categories of actions which the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions do not individually or cumulatively have a significant effect on the human environment. In reviewing list of regulations in Table B–1, the NRC staff have determined that several of the rule amendments under consideration are actions eligible for categorical exclusion under § 51.22(a)(1) or § 51.22(a)(3). The following rulemaking actions meet the criterion for categorical exclusion under § 51.22(a)(1) or § 51.22(a)(3):

TABLE B–2 RULE AMENDMENTS COVERED BY CATEGORICAL EXCLUSION

| Rule amendments | Categorical Exclusion | Reason |
|---|---|---|
| 30.4; 30.6; 30.32; 30.41 31.5; 31 subparts A, B, D and E. 34.3, 34.13; 34.20; 34.23; 34.27; 34.33; 34.43; 34.89; 34.101; 39.33; 39.35; 39.77. | § 51.22(a)(1) | Actions that are administrative, procedural, or solely financial in nature, including examples (iv) and (vi). Example (iv): issuance of or changes to administrative procedures or requirements. Example (vi): the proposed amendments are also corrective or of a minor or nonpolicy nature, and do not substantially modify existing regulations. |
| 30.34, 30.35; 32.12; 32.16; 32.20; 32.25; 32.29; 32.32; 40.53; 70.25. | § 51.22(a)(1) | Actions that are administrative, procedural, or solely financial in nature, including Example (ii): issuance of or changes to recordkeeping or reporting requirements. |

These proposed rule amendments clarify NRC regulations and would not change radiation protection and emergency preparedness requirements while continuing to provide reasonable assurance of adequate protection of public health and safety.

B.2 Rule Amendments Requiring Environmental Assessment

The NRC also evaluated rule amendments that have the potential to affect the human environment and determined that the proposed agency action (rulemaking) would not have a significant environmental effect. These rule amendments would clarify NRC regulations, would not change existing radiation protection and emergency preparedness requirements or overall risk, would continue to provide reasonable assurance of adequate protection of public health and safety, and would result in no new or different environmental effects. The following table presents the basis for why these proposed rule amendments would have no significant environmental effects.

TABLE B–3 BASIS FOR NO SIGNIFICANT ENVIRONMENTAL EFFECTS DETERMINATION FOR RULE AMENDMENTS NOT COVERED BY A CATEGORICAL EXCLUSION

| Rule amendments | Basis for no significant environmental effects |
|---|---|
| Part 30, Appendix B ..... | These proposed amendments would replace the current values in appendix B with applicable values from the table in appendix C, ''Quantities of Licensed Material Requiring Labeling,'' to 10 CFR part 20, ''Standards for Protection against Radiation.'' They also add radionuclides not currently listed in appendix B to 10 CFR part 30, including radionuclides associated with industrial technologies and current and emerging medical uses. The proposed changes would also remove all radionuclides with a half-life of 120 days or less from the appendix, since these radionuclides are not considered when developing decommissioning financial assurance, and amends the title of the table to ''Quantities of Licensed Material Used to Assess Financial Assurance for Decommissioning,'' to more accurately reflect its current use for financial assurance during decommissioning. These changes will either reduce or not affect the amount of DFA required for licensees, depending on the mixture of radionuclides the licensee possesses and would have no different environmental effects. Thus, this regulatory change would have no significant effect on the quality of the human environment. |
| 31.11 ..... | Amendments would allow entities to handle vials for in vitro testing with higher activity under a general license. This change would align limits for carbon-14, hydrogen-3, selenium-75, and cobalt-57 with the exempt quantity limits in 10 CFR part 30 and labelling requirements in appendix C to 10 CFR part 20. The limits in § 31.11 have not been updated since their initial issuance in 1968 and the amendments would bring § 31.11 in step with current regulatory limits in 10 CFR parts 20 and 30. Given that the amendments would align with other existing requirements in 10 CFR parts 20 and 30, the amendments would have no significantly different environmental effects than those evaluated for 10 CFR part 20, and, thus, would have no significant effect on the quality of the human environment. |
| Subpart C—Standard General Licenses: New regulations 31.13 through 31.18. | The amendments to this subpart would establish a new regulatory program and grant standard general licenses in accordance with specific conditions. Each technology would have its own standard general license requirements codified in separate regulations, including:<br>• § 31.14: Certain Fixed Gauging;<br>• § 31.15: Portable Gauging;<br>• § 31.16: Certain Medical Uses;<br>• § 31.17: Certain Analytical Equipment Including Electron Capture Detectors, X-Ray Fluorescence Devices, and Ion Generators; and<br>• § 31.18: Certain In Vitro Testing.<br>These amendments propose a new class of general licenses for some low risk standardized operations that are currently specifically licensed, and all of the specifically licensed activities are currently categorically excluded. Because the NRC previously concluded that these activities do not individually or cumulatively have a significant effect on the human environment, no additional analysis is needed. Additionally, these amendments do not authorize any activities not included in 10 CFR part 30. |
| 32.72; 32.74 ..... | The proposed amendments to § 32.72, commercial distribution of radioactive drugs for medical use under 10 CFR part 35, would be expanded to include microsources (e.g., microspheres) allowing radiopharmacies to prepare and distribute these materials. Proposed amendments would also provide flexibility for future distribution authorized by the U.S. Food and Drug Administration (FDA) or State regulatory bodies. In addition, proposed amendments to § 32.74 would clarify the distribution of sources and devices containing byproduct material. These two changes would ensure that manufacturers and commercial radiopharmacies can be licensed to distribute microsources in a manner consistent with NRC safety requirements and FDA classifications, while minimizing burden on radiopharmacy and medical use licensees. These changes are administrative and procedural and would not authorize any site-specific action on the part of the NRC or licensee. Licensees and applicants would need to request and receive separate regulatory approval before preparing and distributing microsources. Consequently, this rulemaking provides the basis for any procedure granting the license but does not, by its own operation, provide a license for preparation or distribution activities, but rather applicants must comply with the relevant NRC or Agreement State regulations before they can receive a license. Therefore, this rulemaking will not result in any physical impacts to the environment, and the NRC has determined that the action would result in no significant environmental impacts. |
| 34.41; 34.51 ..... | These proposed amendments would combine the requirements in § 34.51 with requirements in § 34.41(a), commonly called ''the two-person rule,'' ''Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations'' and eliminate § 34.51. The regulation requires a second qualified individual (radiographer or radiographer's assistant) to be present during industrial radiography operations at temporary jobsites. The revision eliminates ambiguity, allowing for technological innovation in the implementation of the requirement, all while maintaining the integrity of the performance requirements. This action does not alter any the substantive activities under § 34.41(a), and would have no significantly different environmental impacts than those evaluated for § 34.41(a), and, thus, would have no significant effect on the quality of the human environment. |

These proposed rule amendments would modernize existing NRC regulations while ensuring the continued safe, effective, and efficient use of byproduct material to provide reasonable assurance of adequate protection of public health and safety. As noted in Table B–3, these amendments either consist of administrative and procedural changes, or would have no significantly different environmental effects than those in the current regulatory framework. The table also provides rationale supporting the conclusion that these proposed rule amendments would not result in any significant environmental effects.

*C. Summary of the Environmental Impacts of the Proposed Action*

Implementation of the proposed rule would result in no physical changes to the environment, and, therefore, the NRC has determined that this proposed agency action would not have a significant effect on the quality of the human environment. Proposed rule amendments include changes that: (1) are administrative in application and matters of procedure, (2) clarify record keeping and reporting requirements, and (3) would provide an equivalent level of safety and security as current NRC regulations.

In addition, the proposed rule would not affect any threatened or endangered

species or historic properties, as no physical changes to the human environment would occur as a result of this proposed agency action. Accordingly, the NRC finds that the proposed rulemaking would have no significant environmental impact.

*D. Environmental Impacts of the Alternative to the Proposed Agency Action*

Under the no-action alternative (*i.e.,* the status quo), NRC regulations would remain unchanged. As stated in section B of this draft EA, the proposed rule would not have a significant effect on the quality of the human environment. Therefore, the no action alternative and the proposed agency action (*i.e.,* proposed rulemaking) would have the same environmental effect, although there would be costs attributable to reviewing the environmental effects of exemption and license amendment requests under the no action alternative. Licensees would continue to comply with existing NRC regulations or request regulatory relief (exemption) from the regulations. The NRC would continue to evaluate the environmental effects of exemption and license amendment requests. The averted costs (benefits) of the rulemaking would not occur. The Regulatory Analysis for the proposed rule provides information about the costs and benefits of the no action alternative and the proposed agency action (ADAMS Accession No. ML26125A393).

*E. Agencies and Persons Consulted*

The NRC developed the proposed rule and is requesting public comment on this draft EA. The agency will consider comments received on the docket as it develops the final rule and the final EA. The NRC will issue the final EA when it publishes the final rule. The proposed rule is one step in the rulemaking process.

As discussed in section B, the proposed rule provisions would not have a significant effect on the quality of the human environment. For this reason, the proposed rulemaking would not impact threatened or endangered species or critical habitat, and the NRC has determined that section 7 consultation under the Endangered Species Act of 1973, as amended, is not necessary. The proposed regulatory changes do not involve any ground disturbing activities or visual effects that would adversely affect historic properties. Therefore, the NRC has determined that consultation is not required under section 106 of the National Historic Preservation Act of 1966, as amended.

*F. Draft Finding of No Significant Environmental Impacts*

The NRC has prepared this EA to determine the environmental effects of the proposed agency action (*i.e.,* a rulemaking to update NRC regulations). Proposed rule amendments are primarily administrative or procedural in nature and thus would not have any physical environmental effect. As explained in the EA, the NRC has determined the proposed rulemaking would not change radiation protection and emergency preparedness requirements or overall risk, would continue to provide reasonable assurance of adequate protection of public health and safety, and would result in no new or different environmental effects. Therefore, the NRC concludes that the proposed regulatory changes would not have a significant effect on the quality of the human environment. Based on this conclusion, the NRC finds the proposed agency action would have no significant environmental impact. Accordingly, the NRC has determined there is no need to prepare an environmental impact statement.

Concurrent with the publication of this proposed rule, the NRC has sent a copy of the draft EA and this proposed rule to every State Liaison Officer and has requested comments.

**XII. Paperwork Reduction Act Statement**

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collections.

*Type of submission:* New.

*The title of the information collection:* Modernizing NRC Regulations for Byproduct Material Use.

*The form number if applicable:* NRC Forms 241, 313, 483, and 1003.

*How often the collection is required or requested:* Once, on occasion, and annually.

*Who will be required or asked to respond:* Applicants and licensees licensed to use byproduct, source, and special material.

*An estimate of the number of annual responses:*

10 CFR part 30: 570 (423 reporting responses + 147 recordkeepers)
10 CFR part 31: 1,449 (354 reporting responses + 1,095 recordkeepers)
10 CFR part 32: −109 (−109 reporting responses + 0 recordkeepers)
10 CFR part 34: −577 (−29 reporting responses + −548 recordkeepers)
10 CFR part 39: −8 (−8 reporting responses + 0 recordkeepers)
10 CFR part 40: −27 (−27 reporting responses + 0 recordkeepers)
NRC Form 241: −425 (−425 reporting responses + 0 recordkeepers)
NRC Form 313: −398 (−398 reporting responses + 0 recordkeepers)
NRC Form 483: 60 (60 reporting responses + 0 recordkeepers)
NRC Form 1003: 1,289 (1,289 reporting responses + 0 recordkeepers)
Total: 2,221 (1,528 reporting responses + 693 recordkeepers)

*The estimated number of annual respondents:*

10 CFR part 30: 423 respondents
10 CFR part 31: 1,095 respondents
10 CFR part 32: −109 respondents
10 CFR part 34: −548 respondents
10 CFR part 39: −2 respondents
10 CFR part 40: −27 respondents
NRC Form 241: −25 respondents
NRC Form 313: −398 respondents
Form 483: 60 respondents
NRC Form 1003: 398 respondents
Total: 897 unique respondents to the requirements in this proposed rule

An estimate of the total number of hours needed annually to comply with the information collection requirement or request:

10 CFR part 30: 23,736.6 (23,590 reporting + 146.6 recordkeeping)
10 CFR part 31: 1,490.3 (118.55 reporting + 1,371.8 recordkeeping)
10 CFR part 32: −34.55 (−34.5 reporting + 0 recordkeeping)
10 CFR part 34 −288.5 (−14.5 reporting + –274 recordkeeping)
10 CFR part 39: −4 (−4 reporting + 0 recordkeeping)
10 CFR part 40: −13.5 (−13.5 reporting + 0 recordkeeping)
NRC Form 241: −106.3 (−106.3 reporting + 0 recordkeeping)
NRC Form 313: −1,711.4 (−1,711.4 reporting + 0 recordkeeping)
NRC Form 483: −10.2 (−10.2 reporting + 0 recordkeeping)
NRC Form 1003: 881.55 (881.5 reporting + 0 recordkeeping)
Total: 23,960.4 (22,716.2 reporting + 1,244.4 recordkeeping)

Abstract: The NRC is proposing to amend its regulations to modernize the safe, effective, and efficient use of byproduct, source, and special nuclear material. This action would reduce licensing burden and the need for exemptions from existing regulations; address other deregulatory issues deemed relevant by the NRC; and support the NRC's Principles of Good Regulation, including openness, clarity, and reliability. This effort is consistent with, and implements direction in, the Accelerating Deployment of Versatile,

Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act), and recently issued E.O. 14300, ''Ordering the Reform of the Nuclear Regulatory Commission.''

The proposed rule covers a wide range of topics, including the following that would result in a reduction in recordkeeping and reporting requirements:

- Establishing a low burden class of standard GLs.
- Revising the decommissioning financial assurance tables.
- Addressing anti-competitive barriers.
- Reducing reporting of distribution to exempt persons.
- Removing or modifying redundant and unnecessary regulations.
- Reducing the burden for filing amended NRC Form 241's for work activities conducted in offshore waters.

This information collection includes burden reduction associated with revised information collection in 10 CFR parts 30, 31, 32, 34, 39, 40, and Forms 241, 483, and 313. It also includes burden associated with new information collection in proposed 10 CFR part 31 and proposed NRC Form 1003 that would create a low burden licensing option for licensees currently licensed under 10 CFR part 30 who use NRC Form 313.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility? Please explain your response.
2. Is the estimate of the burden of the proposed information collection accurate? Please explain your response.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected? Please explain your response.
4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the Office of Management and Budget (OMB) clearance package and proposed rule are available in the ''Availability of Documents'' section of this document or may be viewed free of charge by contacting the NRC's Public Document Room reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* You may obtain information and comment on submissions related to the OMB clearance package by searching on *https://www.regulations.gov* under Docket ID NRC–2025–1205.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the above issues, by the following method:

*Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2025–1205.

Submit comments by June 17, 2026. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

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

## XIII. Coordination With NRC Agreement States

On September 3, 2025, the NRC held a Government-to-Government meeting with the OAS to discuss this rulemaking. The rulemaking working group that prepared this proposed rule also included representatives from OAS. Comments from the Agreement States were taken into consideration during the development of this proposed rule.

## XIV. Compatibility of Agreement State Regulations

On the basis of the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** (82 FR 48535; October 18, 2017), NRC program elements can be placed into six categories (A, B, C, D, NRC, or health and safety (H&S)) to form the basis for evaluating and classifying the program elements. Under the Policy Statement, a program element means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to implementation of that program.

Compatibility Category A are those program elements that include basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. Compatibility Category A program elements adopted by an Agreement State should be essentially identical to those of the NRC to provide uniformity in the regulation of agreement material on a nationwide basis.

Compatibility Category B pertains to a limited number of program elements that cross jurisdictional boundaries and should be addressed to ensure uniformity of regulation on a nationwide basis. For Compatibility Category B, the Agreement State program element shall be essentially identical to that of NRC.

Compatibility Category C are those program elements that are important for an Agreement State to have in order to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State program shall embody the essential objectives of the Category C program elements. Under Category C, Agreement State program elements may be more restrictive than NRC program elements; however, they should not be so restrictive as to prohibit a practice authorized by the AEA, as amended, and in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and are not required to be adopted by Agreement States for purposes of compatibility. An Agreement State has the flexibility to adopt and implement program elements within the State's jurisdiction that are not addressed by the NRC or that are not required for compatibility (*i.e.,* Compatibility Category D). However, such program elements of an Agreement State relating to agreement material shall (1) not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis; (2) not preclude a practice authorized by the AEA and in the national interest; and (3) not preclude the ability of the NRC to evaluate the effectiveness of Agreement State programs for agreement material with respect to protection of public health and safety.

Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the AEA, or provisions of 10 CFR. The NRC maintains regulatory authority over these program elements and the Agreement States must not adopt these NRC program elements. However, an Agreement State may inform its licensees of these NRC requirements through a mechanism under the State's administrative procedure laws, as long

as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority as a result.

Category H&S program elements embody the basic health and safety aspects of the NRC's program elements. Although H&S program elements are not required for purposes of compatibility, they do have particular health and safety significance. The Agreement State must adopt the essential objectives of such program elements to maintain an adequate program.

This proposed rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. In this proposed rule, the NRC is not proposing to change the compatibility categories for requirements that are being amended. Therefore, for any requirements that are currently designated as Compatibility A or B, States would have to amend their rules to be essentially identical to the amended rule language.

However, for requirements that are designated as Compatibility C or Category H&S, States may not necessarily have to revise their rules so long as their current rule meets the essential objective for the amended requirement. For instance, the essential objective for § 150.20, is for Agreement States to provide reciprocal recognition of a specific license issued by the NRC or another Agreement State. However, proposed changes to § 150.20 include permitting SGLs to be used for the basis of reciprocal recognition. The NRC is proposing that the Compatibility Category of § 150.20 remain Category C, but to continue to meet the essential objective for the amended requirement, all Agreement States would be required to provide reciprocal recognition of a specific license or SGL issued by the NRC or another Agreement State. The State would have flexibility in the administration and requirements for reciprocity and would not need to revise their current program to remain compatible with the proposed revision to § 150.20.

The NRC is also proposing to remove requirements in §§ 34.20(d) and (e), 34.41(d), 34.43(a)(2), 34.43(h) and (i), 34.51, 34.101(c), and 39.77(c)(1). Except for 34.20(e), these requirements pertain to grandfathering and duplicative requirements and, as such, Agreement States are not required to also remove those regulations; Agreement States keeping their equivalent to the listed regulations (except for § 34.20(e)) would not lead to a disorderly pattern of regulation on a nationwide basis. However, Agreement States should remove their equivalent to § 34.20(e) to remove superseded standards and requirements. Failure to remove this would result in gaps and conflicts between programs in the National Materials Program that would negatively impact the uniformity of regulation on a nationwide basis because only radiographic equipment that meets the appropriate standards and requirements can used by licensees.

In developing the new SGL pathway, the NRC recognizes that Agreement States may not want to adopt the new subpart C of 10 CFR part 31, and it would therefore not be required for purposes of compatibility. For States that choose to adopt this pathway, some of the requirements would be required for either compatibility or H&S purposes. To ensure that transferors of devices and byproduct material are permitted to transfer materials to an SGL, the requirement in § 30.41(d)(1) is being revised.

The NRC is proposing that the Compatibility Category of § 30.41 remain Category C, but the NRC is proposing to clarify that to meet the essential objective for the amended requirement, all Agreement States must ensure that a validated SGL is an acceptable method of verification for § 30.41(c). Since a validated SGL is a verification method for transferring byproduct material under § 30.41(d), the requirement in § 31.13(a)(2), regarding issuing the validated SGL, is proposed to be designated as Compatibility Category C for Agreement States that adopt the SGL pathway. To meet the essential objective for § 31.13(a)(2), an Agreement State would need to issue a document validating an SGL. The SGL pathway codifies the minimum legally binding requirements needed to ensure health and safety that are required to obtain a specific license into the regulations, and it is therefore necessary that the State meet the essential objective for those requirements that have been designated as Compatibility Category C.

Provisions specifying the specific sealed sources and devices that are permitted under the SGL pathway are based on the SSDR use codes and have a proposed designation of Compatibility Category B since there is need for consistency across jurisdictions when using SSDRs for licensing purposes. The SGL for Certain Medical Uses includes an exhaustive list of the radionuclides authorized pursuant to 31.16(a)(2). Because 31.16(a)(2) is proposed to be designated Compatibility Category C, Agreement States would have the flexibility to permit other radionuclides than those authorized under the SGL to be used. However, authorizing additional radionuclides such as PET or generators other than Molybdenum-99/technetium-99m generators would not meet the essential objective for this requirement as these radionuclides or uses require additional licensing requirements to ensure an adequate level of safety. Administrative requirements, such as recordkeeping, are not required for purposes of compatibility and would be Compatibility Category D.

The proposed compatibility (A, B, C, D, and NRC) and adequacy (H&S) categories are designated in the following table.

ADEQUACY AND COMPATIBILITY TABLE

| Section | Change | Subject | Compatibility | |
|---|---|---|---|---|
| | | | Existing | New |
| **Part 30** | | | | |
| 30.4 | Amend | Definitions—Consortium | C | C. |
| 30.4 | Remove | Definitions—Physician | D. | |
| 30.4 | Amend | Definitions—Principal activities | D | D. |
| 30.6(b)(1) | Amend | Communications | D | D. |
| 30.32(j)(2) | Amend | Application for specific licenses | B | B. |

ADEQUACY AND COMPATIBILITY TABLE—Continued

| Section | Change | Subject | Compatibility | |
|---|---|---|---|---|
| | | | Existing | New |
| 30.34(h)(1) | Amend | Terms and conditions of licenses | H&S | H&S.<br>Note—the reference to 10 CFR 31 subpart C should only be included by States that adopt Standard General Licenses. |
| 30.35(g) | Amend | Financial assurance and recordkeeping for decommissioning. | H&S | H&S.<br>Note—the reference to 10 CFR 31 subpart C should only be included by States that adopt Standard General Licenses. |
| 30.41(d)(1) | Amend | Transfer of byproduct material | C | C. |
| Appendix B | Amend | Appendix B—Quantities of Licensed Material Used to Assess Financial Assurance for Decommissioning. | B | B. |
| **Part 31** | | | | |
| 31.5(c)(14) | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere. | C | C. |
| 31.5(c)(15) | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere. | C | C. |
| 31.11(a)(3), (4), (6), & (8). | Amend | General license for use of byproduct material for certain in vitro clinical or laboratory testing. | D | D. |
| 31.13(a) & (b), except (a)(2). | New | Standard General License Requirements | | D. |
| 31.13(a)(2) | New | Requirements | | C—for States that authorize Standard General Licenses.<br>D—for States who don't. |
| 31.13(c) & (d) | New | Standard General License Requirements | | C—for States that authorize Standard General Licenses.<br>D—for States who don't. |
| 31.13(e) | New | Standard General License Requirements | | NRC. |
| 31.13(f)–(h) | New | Standard General License Requirements | | H&S—for States that authorize Standard General Licenses.<br>D—for States who don't. |
| 31.14 except (a)(2), (c)(2)(ii), (c)(3)(ii), (c)(6)(i), (c)(6)(iii), (c)(7)(ii), (c)(8)(ii), (c)(9)(i) & (c)(10)(ii). | New | Standard General License for Certain Fixed Gauging. | | C—for States that authorize Standard General Licenses.<br>D—for States who don't.<br>Note—States should not incorporate references to Federal Government agencies. |
| 31.14(a)(2) | New | Standard General License for Certain Fixed Gauging. | | B—for States that authorize Standard General Licenses.<br>D—for States who don't. |
| 31.14(c)(2)(ii), (c)(3)(ii), (c)(6)(iii), (c)(7)(ii), (c)(8)(ii), (c)(9)(i) & (c)(10)(ii). | New | Standard General License for Certain Fixed Gauging. | | D. |
| 31.14(c)(6)(i) | New | Standard General License for Certain Fixed Gauging. | | H&S |
| 31.15 except (a)(2), (a)(3)(iii), (c)(2)(ii), (c)(3)(ii), (c)(5)(iii), (c)(7)(ii), (c)(8)(i). | New | Standard General License for Portable Gauging | | C—for States that authorize Standard General Licenses.<br>D—for States who don't.<br>Note—States should not incorporate references to Federal Government.<br>Reference to NRC Form 1003 is Compatibility D. |
| 31.15(a)(2) | New | Standard General License for Portable Gauging | | B—for States that authorize Standard General Licenses.<br>D—for States who don't. |
| 31.15(a)(3)(iii), (c)(2)(ii), (c)(3)(ii), (c)(5)(iii), (c)(7)(ii), (c)(8)(i). | New | Standard General License for Portable Gauging | | D. |

ADEQUACY AND COMPATIBILITY TABLE—Continued

| Section | Change | Subject | Compatibility | |
|---|---|---|---|---|
| | | | Existing | New |
| 31.16 except (c)(1)(iii), (c)(2)(iii), (c)(4)(iii), (c)(5)(iii), (c)(6)(iv). | New | Standard General License for Certain Medical Uses. | | C—for States that authorize Standard General Licenses. D—for States who don't. Note—States should not incorporate references to Federal Government. |
| 31.16(c)(1)(iii), (c)(2)(iii), (c)(4)(iii), (c)(5)(iii), (c)(6)(iv). | New | Standard General License for Certain Medical Uses. | | D. |
| 31.17 except (a)(2), (a)(3)(iii), (c)(2)(ii), (c)(4)(ii), (c)(5)(i) & (c)(6)(ii). | New | Standard General License for Certain Analytical Equipment Including Electron Capture Detectors, X-Ray Fluorescence Devices, and Ion Generators. | | C—for States that authorize Standard General Licenses. D—for States who don't. Note—States should not incorporate references to Federal Government. Reference to NRC Form 1003 is Compatibility D. |
| 31.17(a)(2) | New | Standard General License for Certain Analytical Equipment Including Electron Capture Detectors, X-Ray Fluorescence Devices, and Ion Generators. | | B—for States that authorize Standard General Licenses. D—for States who don't. |
| 31.17(a)(3)(iii), (c)(2)(ii), (c)(4)(ii), (c)(5)(i) & (c)(6)(ii). | New | Standard General License for Certain Analytical Equipment Including Electron Capture Detectors, X-Ray Fluorescence Devices, and Ion Generators. | | D. |
| 31.18 except (c)(1)(ii), (c)(2)(ii), (c)(4)(iii), (c)(5)(iii), (c)(6)(ii)–(iii). | New | Standard General License for Certain In Vitro Testing. | | C—for States that authorize Standard General Licenses. D—for States who don't. |
| 31.18 (c)(1)(ii), (c)(2)(ii), (c)(4)(iii), (c)(5)(iii), (c)(6)(ii)–(iii). | New | Standard General License for Certain In Vitro Testing. | | D. |
| **Part 32** | | | | |
| 32.12 | Amend | Same: Records and material transfer reports | NRC | NRC. |
| 32.16 | Amend | Certain items containing byproduct material: Records and reports of transfer. | NRC | NRC. |
| 32.20 | Amend | Same: Records and material transfer reports | NRC | NRC. |
| 32.25 | Amend | Conditions of licenses issued under§ 32.22: Quality control, labeling, and reports of transfer. | NRC | NRC. |
| 32.29 | Amend | Conditions of licenses issued under§ 32.26: Quality control, labeling, and reports of transfer. | NRC | NRC. |
| 32.32 | Amend | Conditions of licenses issued under§ 32.30: Quality control, labeling, and reports of transfer. | NRC | NRC. |
| 32.72 | Amend | Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under Part 35. | B | B. |
| 32.74 | Amend | Manufacture and distribution of sources or devices containing byproduct material for medical use. | B | B. |
| **Part 34** | | | | |
| 34.3 | New | Definitions—Sealed Source and Device Registry. | | [D]. |
| 34.13 | Amend | Specific license for industrial radiography | C | C. |
| 34.20(a)(1) & (c) | Amend | Performance requirements for industrial radiography equipment. | B | B. |
| 34.20(a)(2) | Amend | Performance requirements for industrial radiography equipment. | D | D. |
| 34.20(d) & (e) | Remove | Performance requirements for industrial radiography equipment. | B. | |
| 34.23 | Amend | Locking of radiographic exposure devices, storage containers and source changers. | B | B. |
| 34.27(c)(1) & (e) | Amend | Leak testing and replacement of sealed sources | C | C. |
| 34.33 | Amend | Permanent radiographic installations | H&S | H&S. |

ADEQUACY AND COMPATIBILITY TABLE—Continued

| Section | Change | Subject | Compatibility | |
|---|---|---|---|---|
| | | | Existing | New |
| 34.41(a) | Amend | Conducting industrial radiographic operations | C | C. |
| 34.41(d) | Remove | Conducting industrial radiographic operations | D. | |
| 34.43(a)(1) | Amend | Training | B | B. |
| 34.43(a)(2) | Remove | Training | D. | |
| 34.43(h) & (i) | Remove | Training | B. | |
| 34.51 | Remove | Surveillance | C | Note—requirement moved to 34.41(a). |
| 34.89(b) | Amend | Location of documents and records | C | C. |
| 34.101(c) | Remove | Notifications | C. | |
| **Part 39** | | | | |
| 39.33(c) | Amend | Radiation detection instruments | C | C. |
| 39.35(c) | Amend | Leak testing of sealed sources | C | C. |
| 39.77(c)(1) | Remove | Notification of incidents: abandonment procedures for irretrievable sources. | C. | |
| **Part 40** | | | | |
| 40.53(c) | Amend | Conditions for licenses issued for initial transfer of certain items containing source material: Quality control, labeling, and records. | NRC | NRC. |
| **Part 70** | | | | |
| 70.25(a)(2) | Amend | Financial Assurance and Recordkeeping for Decommissioning. | NRC | NRC. |
| 70.25(b) | Amend | Financial Assurance and Recordkeeping for Decommissioning. | H&S | H&S. |
| **Part 150** | | | | |
| 150.14 | Remove | Commission regulatory authority for physical protection.. | NRC. | |
| 150.20 | Amend | Recognition of Agreement State licenses. | C | C. Note—States should not incorporate references to offshore waters. |

*Please Note:* The bracket ''[]'' around a compatibility category designation means that the section may have been adopted elsewhere in a State's rules and it is not necessary to adopt it again.

## XV. Coordination With the Advisory Committee on the Medical Uses of Isotopes

The ACMUI established a subcommittee to review and comment on the draft proposed rule. The subcommittee will make its recommendations to the full committee on this proposed rule at a publicly held teleconference during the public comment period.

## XVI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC's goals in amending these regulations are to modernize the safe, effective, and efficient use of byproduct material. This action would reduce licensing burden and the need for exemptions from existing regulations and address other deregulatory issues deemed relevant by the NRC. This action does not constitute the establishment of a standard that contains generally applicable requirements.

## XVII. Availability of Guidance

The NRC expects to update NUREG–1556 series ''Consolidated Guidance About Materials Licenses'', NUREG 1757, Volume 1, ''Consolidated Decommissioning Guidance,'' various Inspection Procedures, and certain Inspection Manual Chapters to make changes to conform with this rulemaking effort. To support an accelerated development schedule for this proposed rule, the updates will be made in a future revision of the guidance, rather than concurrently with this rulemaking. However, for the new SGL program that is proposed in 10 CFR part 31 subpart C, the NRC has drafted interim guidance to aid licensees and the NRC in implementation of the new licensing option. The NRC has also drafted interim staff guidance to address the revised reciprocity requirements in § 150.20, using a Frequently Asked Questions format. The interim guidance will be added to the NRC's public website. You may submit comments on the draft interim guidance by the methods outlined in the **ADDRESSES** section of this document

## XVIII. Executive Orders

The following are Executive orders that are related to this proposed rule:

*A. Executive Order 12866: Regulatory Planning and Review (as Amended by Executive Order 14215, Ensuring Accountability for All Agencies)*

The Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is a

significant regulatory action. Accordingly, the NRC submitted this proposed rule to OIRA for review. The NRC is required to conduct an economic analysis in accordance with section 6(a)(3)(B) of E.O. 12866. More can be found in Section VII, of this document, ''Regulatory Analysis.''

*B. Executive Order 14154: Unleashing American Energy*

NRC has examined this proposed rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154.

*C. Executive Order 14192: Unleashing Prosperity Through Deregulation*

This action is tentatively determined to be a deregulatory action as defined by E.O. 14192. Details on the estimated costs of this proposed rule can be found in Section VII, of this document, ''Regulatory Analysis.''

*D. Executive Order 14267: Reducing Anti-Competitive Regulatory Barriers*

E.O. 14267 requires the NRC to identify anti-competitive regulations for recission or modification. It also serves an important regulatory goal. The NRC identified § 30.4 because this regulation creates a barrier to market participation by creating artificial barriers to facility location related to consortiums and PET radionuclide production. In addition, NRC identified § 34.20(a)(1) because this regulation creates a barrier to market participation by limiting the universe of acceptable radiography designs. The NRC identified 10 CFR part 31 because this regulation creates a barrier to market participation by increasing the compliance requirements on all market participants. The proposed changes to 10 CFR part 31 support the objectives of E.O. 14267 by adding standard general licensing pathway and thereby expanding the scope of general licenses for byproduct material to include additional devices and more activities.

*E. Executive Order 14270: Zero-Based Regulatory Budgeting To Unleash American Energy*

E.O. 14270, ''Zero-Based Regulatory Budgeting to Unleash American Energy,'' requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the Atomic Energy Act of 1954, as amended (AEA), the Energy Reorganization Act of 1974, as amended (ERA), and the Nuclear Waste Policy Act of 1982, as amended (NWPA); (2) not statutorily required; and (3) not part of the NRC's permitting regime. The NRC determined that the regulatory changes proposed in this rule are required because they would be necessary for providing reasonable assurance of adequate protection of public health and safety and provide for the common defense and security, and would be part of the NRC's permitting regime authorized by the AEA. Therefore, the NRC views this rulemaking to be outside the scope of E.O. 14270 and did not insert conditional sunset dates for the regulatory changes in this proposed rule.

## XIX. Availability of Documents

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

| Document | ADAMS accession No./web link/**Federal Register** citation |
|---|---|
| Interim Staff Guidance Reciprocity | ML25316A025. |
| Office Of Nuclear Material Safety and Safeguards Interim Staff Guidance NMSS–ISG–04 Guidance for the Implementation of 10CFRPart31 Subpart C Standard General Licenses. | ML25316A026. |
| Final rule, ''Requirements for Expanded Definition of Byproduct Material,'' dated October 1, 2007 | 72 FR 55864. |
| Final rule, ''Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements,'' dated October 16, 2007. | 72 FR 58473. |
| Final rule, ''Standards for Protection Against Radiation; Removal of Expired Material,'' dated December 22, 1993 | 58 FR 67657. |
| Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Materials—Regulatory Basis. | ML21235A480. |
| PRM–30–66 Petition for Rulemaking, Revision of 10 CFR 30 Appendix B, April 14, 2017 | ML17173A063. |
| SECY–23–0062, Enclosure 1—Proposed Rule **Federal Register** Notice for Decommissioning Financial Assurance for Sealed and Unsealed Radioactive Materials, July 24, 2023. | ML23010A171. |
| Final rule, ''Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License Exemptions,'' dated May 29, 2013. | 78 FR 32310. |
| Final rule, ''Safety Requirements for Industrial Radiographic Equipment,'' dated January 10, 1990 | 55 FR 843. |
| Final rule, ''Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations,'' dated May 28, 1997. | 62 FR 28948. |
| Notification of interpretation, ''Industrial Radiographic Operations and Training,'' dated June 1, 2021 | 86 FR 29173. |
| Final rule, ''Licenses and Radiation Safety Requirements for Well Logging,'' dated April 17, 2000 | 65 FR 20345. |
| Final rule, ''Consumer Products Containing Small Quantities of Radioactive Material; Modified Reporting and Recordkeeping Requirements,'' dated March 24, 1983.. | 48 FR 12331. |
| PRM–30–66, ''Request of the Organization of Agreement States for the NRC to Amend Appendix B, 'Quantities of Licensed Material Requiring Labeling,'" dated April 14, 2017. | ML17173A063. |
| PRM–34–6, ''Petition for Rulemaking on behalf of the Organization of Agreement States (AOS), Barbara Hamrick to amend 10 CFR part 34,'' dated November 3, 2005. | ML053190112. |
| NUREG–1556, ''Consolidated Guidance About Materials Licenses'' | *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/index.* |
| NUREG–1717, ''Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials,'' June 2001. | ML011980433 (Package). |
| NUREG–1757, ''Consolidated Decommissioning Guidance,'' Volume 1, Revision 2, September 2006 | ML063000243. |
| Regulatory Analysis for the Proposed Rule—Modernizing NRC Regulations for Byproduct Material Use | ML26125A393. |
| Redline Strikeout Document—Proposed Rule—Modernizing NRC Regulations for Byproduct Material Use | ML25323A157 (Package). |
| Revision to policy statement, ''Agreement State Program Policy Statement; Correction,'' dated October 18, 2017 | 82 FR 48535. |
| Regulatory basis; request for comment, ''Decommissioning Financial Assurance for Sealed and Unsealed Radioactive Materials,'' dated April 28, 2022. | 87 FR 25157. |
| Executive Order 12866, ''Regulatory Planning and Review,'' October 4, 1993 | 58 FR 51735. |
| Executive Order 14154, ''Unleashing American Energy,'' January 29, 2025 | 90 FR 8353. |

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| Executive Order 14192, ''Unleashing Prosperity Through Deregulation,'' February 6, 2025 | 90 FR 9065. |
| Executive Order 14270, ''Zero-Based Regulatory Budgeting To Unleash American Energy,'' April 15, 2025 | 90 FR 15643. |
| Burden Tables Modernizing Regulations for Byproduct Material use | ML25323A164. |
| Supporting Statement Modernizing Regulations for Byproduct Material Use | ML25322A158. |
| Presidential Memorandum, ''Plain Language in Government Writing,'' dated June 10, 1998 | 63 FR 31885. |

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**List of Subjects**

*10 CFR Part 30*

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear energy, Nuclear materials, Penalties, Radiation protection, Reporting and recordkeeping requirements, Whistleblowing.

*10 CFR Part 31*

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

*10 CFR Part 32*

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 34*

Criminal penalties, Manpower training programs, Occupational safety and health, Packaging and containers, Penalties, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures, X-rays.

*10 CFR Part 39*

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear material, Occupational safety and health, Oil and gas exploration—well logging, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

*10 CFR Part 40*

Criminal penalties, Exports, Government contracts, Hazardous materials transportation, Hazardous waste, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Source material, Uranium, Whistleblowing.

*10 CFR Part 70*

Classified information, Criminal penalties, Emergency medical services, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material, Whistleblowing.

*10 CFR Part 150*

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR parts 30, 31, 32, 34, 39, 40, 70 and 150:

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 30 continues to read as follows:

**Authority:** Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 2. In § 30.4, remove the definition of ''*Physician*'' and revise the definitions of ''*Consortium*'' and ''*Principle activities*'' to read as follows:

**§ 30.4 Definitions.**

* * * * *

*Consortium* means an association of medical use licensees and a PET radionuclide production facility that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a Federal facility or a medical facility.

* * * * *

*Principal activities,* as used in this part and part 31 of this chapter, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal, and activities incidental to decontamination or decommissioning are not principal activities.

* * * * *

■ 3. In § 30.6, revise paragraph (b)(1) to read as follows:

**§ 30.6 Communications.**

* * * * *

(b) * * *

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued, and validate standard general license registrations, pursuant to 10 CFR parts 30 through 36, 39, 40, and 70 to all persons for academic, medical, and industrial uses, with the following exceptions:

* * * * *

■ 4. In § 30.32, revise paragraph (j)(2) to read as follows:

**§ 30.32 Application for specific licenses.**

* * * * *

(j) * * *

(2) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in § 32.72(a) of this chapter.

* * * * *

■ 5. In § 30.34, revise paragraph (h)(1) to read as follows:

**§ 30.34 Terms and conditions of licenses.**

* * * * *

(h) * * *

(1) Each general licensee that is required to register by § 31.5(c)(13) or part 31 subpart C in accordance with § 31.13 of this chapter, and each specific licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (Bankruptcy) of the United States Code by or against:

* * * * *

■ 6. In § 30.35, revise paragraph (g) introductory text to read as follows:

**§ 30.35 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(g) Each person licensed under this part, part 31 subpart C of this chapter, or parts 32 through 36 and 39 of this chapter shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with § 30.34(b), licensees shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

* * * * *

■ 7. In § 30.41, revise paragraph (d)(1) to read as follows:

**§ 30.41 Transfer of byproduct material.**

* * * * *

(d) * * *

(1) The transferor may have in his possession, and read, a current copy of the transferee's specific license, validated standard general license, or registration certificate;

* * * * *

■ 8. Revise appendix B to 10 CFR part 30 to read as follows:

Appendix B—Quantities of Licensed Material Used To Assess Financial Assurance for Decommissioning

| Material | Micro-curies |
|---|---|
| Aluminum-26 | 10 |
| Americium-241 | 0.01 |
| Antimony-125 | 100 |
| Argon-39 | 1,000 |
| Barium-133 | 100 |
| Berkelium-249 | 0.1 |
| Beryllium-10 | 1 |
| Bismuth-207 | 10 |
| Bismuth-210m | 0.1 |
| Cadmium-109 | 10 |
| Cadmium-113m | 0.1 |
| Cadmium-113 | 100 |
| Calcium-41 | 100 |
| Calcium-45 | 100 |
| Californium-248 | 0.01 |
| Carbon-14 | 100 |
| Cerium-139 | 100 |
| Cerium-144 | 1 |
| Cesium-134 | 10 |
| Cesium-135 | 100 |
| Cesium-137 | 10 |
| Chlorine-36 | 10 |
| Cobalt-57 | 100 |
| Cobalt-60 | 1 |
| Curium-242 | 0.01 |
| Dysprosium-159 | 100 |
| Europium-150 | 1 |
| Europium-152 | 1 |
| Europium-154 | 1 |
| Europium-155 | 10 |
| Gadolinium-151 | 10 |
| Gadolinium-152 | 100 |
| Gadolinium-153 | 10 |
| Germanium-68 | 10 |
| Gold-195 | 10 |
| Hafnium-172 | 1 |
| Hafnium-178m | 0.1 |
| Hafnium-182 | 0.1 |
| Holmium-166m | 1 |
| Hydrogen-3 | 1,000 |
| Indium-115 | 100 |
| Iodine-129 | 1 |
| Iridium-194m | 10 |
| Iron-55 | 100 |
| Iron-60 | 1 |
| Krypton-81 | 1,000 |
| Krypton-85 | 1,000 |
| Lanthanum-137 | 10 |
| Lanthanum-138 | 100 |
| Lead-202 | 10 |
| Lead-205 | 100 |
| Lutetium-173 | 10 |
| Lutetium-174m | 10 |
| Lutetium-174 | 10 |
| Lutetium-176 | 100 |
| Lutetium-177m | 10 |
| Manganese-53 | 1,000 |
| Manganese-54 | 100 |
| Mercury-194 | 1 |
| Molybdenum-93 | 10 |
| Neptunium-235 | 100 |
| Nickel-59 | 100 |
| Nickel-63 | 100 |
| Niobium-93m | 10 |
| Niobium-94 | 1 |
| Osmium-194 | 1 |
| Palladium-107 | 10 |
| Platinum-193 | 1,000 |
| Plutonium-239 | 0.01 |
| Polonium-210 | 0.1 |
| Potassium-40 | 100 |
| Promethium-143 | 100 |
| Promethium-144 | 10 |
| Promethium-145 | 10 |
| Promethium-146 | 1 |
| Promethium-147 | 10 |
| Radium-226 | 0.1 |
| Radium-228 | 0.1 |
| Rhenium-184m | 10 |
| Rhenium-186m | 10 |
| Rhenium-187 | 1,000 |
| Rhodium-101 | 10 |
| Rhodium-102m | 10 |
| Rhodium-102 | 10 |
| Rubidium-87 | 100 |
| Ruthenium-106 | 1 |
| Samarium-145 | 100 |
| Samarium-146 | 1 |
| Samarium-147 | 100 |
| Samarium-151 | 10 |
| Selenium-79 | 100 |
| Silicon-32 | 1 |
| Silver-108m | 1 |
| Silver-100m | 10 |
| Sodium-22 | 10 |
| Strontium-90 | 0.1 |
| Tantalum-179 | 100 |
| Technetium-97 | 1,000 |
| Technetium-98 | 10 |
| Technetium-99 | 100 |
| Tellurium-121m | 10 |
| Tellurium-123 | 100 |
| Terbium-157 | 10 |
| Terbium-158 | 1 |
| Thallium-204 | 100 |
| Thorium-232 | 100 |
| Thorium-natural [1] | 100 |
| Thulium-170 | 10 |
| Thulium-171 | 10 |
| Tin-119m | 100 |
| Tin-121m | 100 |
| Tin-123 | 10 |
| Tin-126 | 10 |
| Titanium-44 | 1 |
| Tungsten-181 | 1,000 |
| Uranium-233 | 0.01 |
| Uranium-234 | 0.01 |
| Uranium-235 | 0.01 |
| Uranium-238 | 100 |
| Uranium-natural [2] | 100 |
| Vanadium-49 | 1,000 |
| Zinc-65 | 10 |
| Zirconium-93 | 10 |
| Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition. | 0.01 |
| Any radionuclide other than alpha emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition. | 0.1 |

[1] Based on alpha disintegration rate of Th-232, Th-230, and their daughter products.

[2] Based on alpha disintegration rate of U–238, U–234, and U–235.

* * * * *

## PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

■ 9. The authority citation for part 31 continues to read as follows:

**Authority:** Atomic Energy Act secs. 81, 161, 183, 223, 234 (42 U.S.C. 2111, 2201, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 10. Add subpart A, before § 31.1 to read as follows:

## PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

### Subpart A—General Information

#### § 31.1 Purpose and scope.

* * * * *

■ 11. In § 31.4, revise paragraph (b) and add paragraph (c)(2) to read as follows:

#### § 31.4 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 31.5, 31.8, 31.11, 31.12, 31.13, 31.14, 31.15, 31.16, 31.17, and 31.18.

(c) * * *

(2) In § 31.13, NRC Form 1003 is approved under control number 3150–XXXX.

* * * * *

■ 12. Add subpart B, before § 31.5, and revise paragraphs (c)(14) and (15) to read as follows:

### Subpart B—General Licenses

#### § 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.[2]

* * * * *

c. * * *

(14) Shall report changes to the mailing address for the location of use (including change in name of general licensee) within 30 days of the effective date of the change by electronic submission such as Electronic Information Exchange, email to *GLTS.Resource@nrc.gov,* or CD–ROM; via mail to the Director, Office of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 for mail where a signature is not required; or via mail to the Director, Office of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852–2738 for signature required correspondence. For a portable device, a report of address change is only required for a change in the device's primary place of storage. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC 's website at *https://www.nrc.gov/site-help/e-submittals.html;* by email to *MSHD.Resource@nrc.gov;* or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(15) May not hold devices that are not in use for longer than 36 months. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by paragraph (c)(2) of this section need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the 36 month time limit if the general licensee performs semi-annually physical inventories of these devices while they are in standby.

■ 13. In § 31.11, revise paragraphs (a)(3), (a)(4), (a)(6) and (a)(8) to read as follows:

#### § 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing.

(a) * * *

(1) * * *

(3) Carbon-14, in units not exceeding 100 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals.

(4) Hydrogen-3 (tritium), in units not exceeding 1000 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals.

(5) * * *

(6) Selenium-75, in units not exceeding 100 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals.

(7) * * *

(8) Cobalt-57, in units not exceeding 100 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals.

* * * * *

■ 14. Add subpart C, consisting of §§ 31.13 through 31.18, to read as follows:

### Subpart C—Standard General Licenses

31.13 Standard General License Requirements.
31.14 Standard General License for Certain Fixed Gauging.
31.15 Standard General License for Portable Gauging.
31.16 Standard General License for Certain Medical Uses.
31.17 Standard General License for Certain Analytical Equipment Including Electron Capture Detectors, X-Ray Fluorescence Devices, and Ion Generators.
31.18 Standard General License for Certain In Vitro Testing.

### Subpart C—Standard General Licenses

#### § 31.13 Standard General License Requirements.

(a) Any person, as defined in § 30.4 of this chapter, engaging in standard general license activities described in § 31.14–31.18 of this part, shall:

(1) At least 30 calendar days prior to acquiring, receiving possessing, using, or transferring byproduct material, file a submittal containing an NRC Form 1003, with the Commission using a communication method defined in § 30.6(a) of this chapter;

(2) Receive from the Commission, a validated standard general license in the form of a copy of NRC Form 1003 with a registration number assigned; and

(3) Pay the appropriate fee as prescribed in § 170.31 of this chapter. No fee will be required to accompany an amendment of a standard general license, except as provided in § 170.31 of this chapter.

(b) A standard general licensee under this subpart shall:

(1) Limit the number of locations of use to no more than five locations of use, excluding temporary job sites as permitted by the standard general licenses in § 31.15 and § 31.17 of this part.

(2) File a submittal containing an NRC Form 1003, with the Commission using a communication method defined in § 30.6(a) of this chapter, at least 30 calendar days prior to the effective date

of any of the following changes to the most recently validated NRC Form 1003: the licensee's direct ownership, controlling ownership of the licensed activities, name of the licensee, location of use addresses, mailing address, Radiation Safety Officer, or materials.

(i) If licensed activities are transferred or assigned to a different ownership, each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated: Records of disposal of licensed material made under §§ 20.2002 (including burials authorized before January 28, 1981[1]), 20.2003, 20.2004, 20.2005; and Records required by § 20.2103(b)(4) of this chapter.

(3) Pay an annual fee as prescribed in § 171.16 of this chapter.

(c) A person licensed under this subpart shall restrict the possession of licensed material:

(1) To a total quantity below unity for the radionuclides listed in 10 CFR part 37 appendix A, calculated using the Category 2 activity thresholds specified in the table, according to 10 CFR part 37 appendix A;

(2) To quantities below the minimum limits for unsealed and/or sealed material as specified in § 30.35(d) of this chapter for which decommissioning financial assurance is required; and

(3) To quantities below the limits specified in § 30.72 of this chapter, in the form of unsealed material and foil or plated sources, above which, consideration of the need for an emergency plan for responding to a release of licensed material is required.

(d) A person licensed under this subpart shall not abandon byproduct material.

(e) A person licensed under this subpart shall not export the byproduct material except in accordance with part 110 of this chapter.

(f)(1) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the Commission by filing a submittal containing an NRC Form 1003 with the Commission using a communication method defined in § 30.6(a) of this chapter any of the following and indicate which approach under paragraph (f)(2) of this section the licensee intends to pursue:

(i) The licensee has decided to permanently cease principal activities, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with Commission requirements, or

(ii) No principal activities under the license have been conducted for a period of 36 months, or

(iii) No principal activities have been conducted for a period of 36 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(2) When notification is made pursuant to paragraph (f)(1) of this section, the licensee must—

(i) Within 45 days, submit a request to delay initiation of decommissioning activities consistent with paragraph (g) of this section, or

(ii) Immediately begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with NRC requirements, or

(iii) Within 12 months, submit a decommissioning plan, if required by paragraph (f)(3) of this section, and begin decommissioning upon approval of that plan.

(3)(i) A decommissioning plan must be submitted if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public, such as in any cases described in § 30.36(g)(1)(i)–(iv).

(ii) The Commission may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (f)(2) of this section if the Commission determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(iii) Procedures such as those listed in paragraph (f)(3)(i) of this section with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(iv) The proposed decommissioning plan for the site or separate building or outdoor area must include the information listed in § 30.36 (g)(4)(i)–(vi):

(v) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(4) Licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(5) When decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(6) As the final step in decommissioning, the licensee shall—

(i) Certify the disposition of all licensed material, including accumulated wastes, by filing a submittal containing an NRC Form 1003, with the Commission using a communication method defined in § 30.6(a) of this chapter; and

(ii) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E. The licensee shall, as appropriate—

(A) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters—removable and fixed—for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(B) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(g) The Commission may grant a request to extend the time periods established in paragraph (f). The schedule for decommissioning set forth in paragraph (f) of this section may not commence until the Commission has made a determination on the request. The request must include the following:

(1) Discussion of the business need for continued possession or authorization of licensed material or how the request is otherwise in the public interest.

(2) Discussion of the health and safety plan that will be in effect during the extension period.

(3) Discussion of the current decommissioning cost estimate and the potential for increased decommissioning costs if an extension of the time period is approved.

(4) A timeframe for which principal activities will resume, which shall not exceed 36 months from the date that principal activities ceased at the site, separate building, or outdoor area, as provided for in (f)(1)(ii) and (f)(1)(iii) of this section.

(5) A commitment that, should principal activities not resume within the timeframe specified in paragraph (g)(4), the licensee shall submit provide notification to the NRC consistent with paragraph (f) of this section.

(h) A licensee shall terminate a standard general license with the Commission by filing a submittal containing an NRC Form 1003, with the Commission using a communication method defined in § 30.6(a) of this chapter. The standard general license will be terminated by written notice to the licensee when the Commission determines that:

(i) Byproduct material has been properly disposed;

(ii) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(iii)(A) A radiation survey has been performed which demonstrates that the premises are suitable for unrestricted release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E; or

(B) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for unrestricted release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

(iv) Records required by § 30.51 (d) and (f) of this chapter have been received.

**§ 31.14 Standard General License for Certain Fixed Gauging.**

(a)(1) Provided that the provisions of paragraph (b) of this section have been met, a general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies to acquire, receive, possess, use, or transfer byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, or qualitative or quantitative chemical composition in accordance with the provisions of paragraph (c) of this section.

(2)(i) The provisions of paragraph (a)(1) of this section apply to byproduct material contained in devices which are registered in the Sealed Source and Device Registry with the Commission under § 32.210, as defined in § 32.2 of this chapter, or with an Agreement State, with the principle use codes D—gamma gauges or E—beta gauges.

(ii) The provisions of paragraph (a)(1) of this section apply to the use specifically licensed devices that are distributed in accordance with § 30.41 of this chapter.

(3) The provisions of paragraph (a)(1) of this section apply for use of these materials at fixed locations listed on the most recent NRC Form 1003 provided to the Commission in accordance with § 31.13 of this part.

(4) The provisions of paragraph (a)(1) of this section do not authorize the manufacture, initial transfer or distribution, or import of devices containing byproduct material.

(b)(1) The general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7, 30.8, 30.9, 30.10, 30.11, 30.31, 30.34, 30.35, 30.41, 30.50 through 30.64 of this chapter; §§ 31.1 through 31.4 of this part; §§ 31.21 through 31.23 of this part; and to the provisions of 10 CFR parts 19, 20, 21, and 71.

(2) Any person engaging in activities under the general licenses provided in this section need not comply with § 30.34(b) of this chapter.

(3) In addition, any person engaging in activities under the general licenses provided in this section shall comply with the requirements in § 31.13 of this part.

(c) A licensee shall —

(1)(i) Limit the use of sealed sources to those registered either with Commission under § 32.210 of this chapter or with an Agreement State.

(ii) Ensure sealed sources are incorporated in compatible devices, by manufacturer and model, and limited to use as specified in the Sealed Source and Device Registry for the devices manufacturer and model.

(iii) Ensure the activity of byproduct material in sealed sources is limited to the activity listed in the Sealed Source and Device Registry for the associated devices manufacturer and model.

(2)(i) Appoint and designate, in writing, a radiation safety officer responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(ii) Maintain a record of an individual's training and experience, and appointment as the Radiation Safety Officer for 5 years following their last day in the role.

(3)(i) Designate, in writing, individuals to work as authorized users, who have sufficient training and experience to use and supervise the use of licensed materials. Additionally, Licensee staff engaged in leak test sample collection, on-off mechanism testing, and routine maintenance shall be trained on the licensee's procedures and the manufacturer's written recommendations and instructions for the relevant activities.

(ii) Maintain the designation and record of the individuals' training and experience for 5 years after the individuals last works as an Authorized User for the licensee.

(4) Ensure licensed materials authorized by paragraph (a) of this section are used by, or under the supervision of, individuals who have been designated as authorized users by paragraph (c)(3) of this section.

(5)(i) Operate each device containing byproduct material within the manufacturer's specified temperature and environmental limits such that shielding and shutter mechanisms of the source holder are not comprised.

(ii) Ensure sealed sources containing licensed material are not opened and sources are not removed from source holders.

(iii) Ensure only the gauge manufacturer, distributor, or other person authorized by the Commission or an Agreement State will perform nonroutine maintenance such as installation, initial radiation survey, repair and maintenance of radiological safety components, relocation, replacement, alignment, removal from service, and disposal of sealed sources.

(6)(i) Prepare an evaluation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the limits in § 20.1502 of this chapter; or

(ii) Develop, implement, and maintain a program for individual monitoring of external and internal occupational dose in accordance with § 20.1502 of this chapter.

(iii) maintain records of the evaluation described in (6)(i) for 3 years following the last use of licensed material by unmonitored individuals.

(iv) maintain records of individual monitoring results in accordance with § 20.2106 of this chapter.

(7)(i) Ensure any radiation detection instruments used to perform on-off

mechanism tests and surveys required by this part, 10 CFR part 20, and 10 CFR part 30 are appropriate for the isotopes and activities present and meet the requirements of § 20.1501 of this chapter.

(ii) Ensure the instruments used for required surveys are calibrated at least annually by a person licensed by the Commission or an Agreement State to perform instrument calibration services.

(iii) Maintain a record of the calibration for 3 years. The record must include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

(8)(i) Conduct physical inventories every 6 months to account for all sealed sources and/or devices received and possessed under the license.

(ii) Maintain records of inventories for 3 years from the date of each inventory, and shall include the radionuclides, quantities, manufacturer's name and model numbers, and the date of the inventory.

(9) Ensure sealed sources and detector cells are tested for leakage periodically.

(i)The licensee shall keep a record of leak test results in units of becquerels (microcuries) and retain the record for inspection by the Commission for 3 years after the leak test is performed. The final leak test record performed prior to the sealed source or detector cell being transferred or disposed of shall be retained until the license is terminated. Records must also show the dates of performance and the names of persons performing testing.

(ii) Ensure leak tests are performed by an organization licensed by the NRC or an Agreement State to provide leak testing services to other licensees; or by using a leak test sample collection kit supplied by an organization licensed by the NRC or an Agreement State to provide leak test kits and/or sample analysis services to other licensees and according to the kit supplier's instructions. The leak test sample must be taken from the nearest accessible point to the sealed source or detector cell where contamination might accumulate. The leak test sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq [0.005 microcuries] of radioactive material on the test sample and is performed by persons specifically licensed by the U.S. Nuclear Regulatory Commission or an Agreement State to perform such services.

(iii)(A) Ensure each sealed source, except sealed sources and detector cells designed to primarily emit alpha particles, are tested at intervals specified either in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under § 32.210 of this chapter or by an Agreement State. In the absence of a registration certificate, sealed sources or detector cell shall be tested for leakage and/or contamination at intervals not to exceed 6 months, or at such other intervals as specified.

(B) Ensure sealed sources and detector cells designed to primarily emit alpha particles are tested for leakage and/or contamination at intervals not to exceed 3 months.

(C) Ensure that, in the absence of a certificate from a transferor indicating that a leak test has been made within the intervals specified in the certificate of registration issued by the Commission under § 32.210 of this chapter or by an Agreement State, prior to the transfer, a sealed source or detector cell received from another person not be put into use until tested and the test results received.

(iv)(A) Ensure that, if the test conducted pursuant to paragraphs (i) and (ii) of this section reveals the presence of 185 becquerels (0.005 microcuries) or more of removable contamination, a report shall be filed with the Commission in accordance with § 30.50(c)(2) of this chapter, and the source shall be removed immediately from service and decontaminated, repaired, or disposed of in accordance with Commission regulations.

(B) Submit a report to the appropriate NRC Regional Office listed in appendix D of part 20 of this chapter, within 5 days of receiving the test results. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source, and the corrective actions taken up to the time the report is made.

(v) Exempt the following sealed sources and detector cells from the periodic leak test requirements set out in paragraphs (i) through (iv) of this section:

(A) Hydrogen-3 (tritium) sources;

(B) Sources containing licensed material with a half-life of 30 days or less;

(C) sources containing licensed material in gaseous form;

(D) Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and

(E) Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

(F) Sealed sources if they are in storage and are not being used. However, when they are removed from storage for use or transferred to another person and have not been tested within the required leak test interval, they shall be tested before use or transfer. No source shall be stored for a period of more than 10 years without being tested for leakage and/or contamination.

(10)(i) Test each gauge for the proper operation of the on-off mechanism (shutter) and indicator, if any, at intervals not to exceed 6 months. This requirement does not apply to gauges that are in storage with the shutter mechanism is in the locked position.

(ii) Maintain on-off mechanism test records for 3 years. The record must include the model and serial number of the device, the date of the test, the results of the test, and the name of the individual who performed the test.

(11) Develop, implement, and maintain procedures for routine maintenance of gauges according to each manufacturer's or distributor's written recommendations and instructions.

(12) Develop, implement, and maintain operating, emergency, and security procedures that meet the requirements of §§ 19.11(a)(3), 20.1101, 20.1801–1802, 20.2201–2203, 2207, 21.21, and 30.50 of this chapter.

**§ 31.15 Standard General License for Portable Gauging.**

(a)(1) Provided that the provisions of paragraph (b) of this section have been met, a general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies to acquire, receive, possess, use, or transfer, byproduct material contained in devices designed and manufactured for the purpose of measuring the physical properties of materials in accordance with the provisions of paragraph (c) of this section.

(2)(i)The provisions of paragraph (a)(1) of this section apply to byproduct material contained in devices which are registered in the Sealed Source and Device Registry with the Commission under § 32.210 of this chapter, as defined in § 32.2 of this chapter, or with an Agreement State, with the principle use codes G—Portable Moisture Density Gauges.

(ii) The provisions of paragraph (a)(1) of this section apply to the use of specifically licensed devices that are distributed in accordance with § 30.41 of this chapter.

(3)(i) The provisions of paragraph (a)(1) of this section authorize use, possession and storage of licensed materials at fixed locations listed on the most recent NRC Form 1003 provided to the Commission in accordance with § 31.13 of this part; and

(ii) Use, possession and storage of licensed materials at temporary job sites of the licensee anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating the use of licensed material, including areas of exclusive Federal jurisdiction within Agreement States. If the jurisdiction status of a Federal facility within an Agreement State is unknown, the licensee shall contact the Federal agency controlling the job site in question to determine whether the proposed job site is an area of exclusive Federal jurisdiction.

(iii) Authorization for use of radioactive materials at job sites in Agreement States in areas not under exclusive Federal jurisdiction is not provided under this general license and shall be obtained from the appropriate State regulatory agency.

(4) The provisions of paragraph (a)(1) of this section do not authorize the manufacture, initial transfer or distribution, or import of devices containing byproduct material

(b)(1)The general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7,30.8, 30.9, 30.10, 30.11, 30.31, 30.34, 30.35, 30.41, 30.50 through 30.64 of this chapter; §§ 31.1 through 31.4 of this part; §§ 31.21 through 31.23 of this part; and to the provisions of 10 CFR parts 19, 20, 21, and 71.

(2) Any person engaging in activities under the general licenses provided in this section need not comply with § 30.34(b) of this chapter.

(3) In addition, any person engaging in activities under the general licenses provided in this section shall comply with the requirements in § 31.13 of this part.

(c) The licensee shall—

(1)(i) Limit the use of sealed sources to those registered either with Commission under § 32.210 of this chapter or with an Agreement State.

(ii) Ensure sealed sources are incorporated in compatible devices, by manufacturer and model, and limited to use as specified in the Sealed Source and Device Registry for the devices manufacturer and model.

(iii) Ensure the activity of byproduct material in sealed sources is limited to the activity listed in the Sealed Source and Device Registry for the associated devices manufacturer and model.

(2)(i) Appoint and designate, in writing, a radiation safety officer responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(ii) Maintain a record of an individual's training and experience, and appointment as the Radiation Safety Officer for 5 years following their last day in the role.

(3)(i) Designate, in writing, individuals to work as authorized users, who have completed a portable gauge safety course for users and hands-on training in the use of portable gauges.

(ii) Maintain the designation and record of the individual's training and experience for 5 years after the individual last works as an Authorized User for the licensee.

(4) Ensure licensed materials authorized by paragraph (a) of this section are used by, or under the supervision of, individuals who have been designated as authorized users by paragraph (c)(3) of this section.

(5)(i) Prepare an evaluation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the limits in § 20.1502 of this chapter; or

(ii) Develop, implement, and maintain a program for individual monitoring of external and internal occupational dose in accordance with § 20.1502 of this chapter.

(iii) maintain records of the evaluation described in (5)(i) for 3 years following the last use of licensed material by unmonitored individuals.

(iv) maintain records of individual monitoring results in accordance with § 20.2106 of this chapter.

(6)(i) Possess and use, or have access to and use, a radiation detection instrument for surveys required by parts 20 and 71 of this chapter.

(ii) Ensure the instruments used for required surveys are calibrated at least annually by a person licensed by the Commission or an Agreement State to perform instrument calibration services.

(7)(i) Develop, implement, and maintain procedures for ensuring accountability of licensed materials at all times.

(ii) Conduct Physical inventories every 6 months to account for all sealed sources and/or devices received and possessed under the license.

(iii) Maintain records of inventories for 3 years from the date of each inventory, and shall include the radionuclides, quantities, manufacturer's name and model numbers, and the date of the inventory.

(8) Ensure sealed sources are tested for leakage periodically.

(i) The licensee shall keep a record of leak test results in units of becquerels (microcuries) and retain the record for inspection by the Commission for 3 years after the leak test is performed. The final leak test record performed prior to the sealed source being transferred or disposed of shall be retained until the license is terminated. Records must also show the dates of performance and the names of persons performing testing.

(ii) Ensure leak tests are performed by an organization licensed by the NRC or an Agreement State to provide leak testing services to other licensees; or by using a leak test sample collection kit supplied by an organization licensed by the NRC or an Agreement State to provide leak test kits and/or sample analysis services to other licensees and according to the kit supplier's instructions. The leak test sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The leak test sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq [0.005 microcuries] of radioactive material on the test sample and is performed by persons specifically licensed by the U.S. Nuclear Regulatory Commission or an Agreement State to perform such services.

(iii)(A) Ensure each sealed source, except sealed sources designed to primarily emit alpha particles, are tested at intervals specified either in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under § 32.210 of this chapter or by an Agreement State. In the absence of a registration certificate, sealed sources shall be tested for leakage and/or contamination at intervals not to exceed 6 months, or at such other intervals as specified.

(B) Ensure sealed sources designed to primarily emit alpha particles are tested for leakage and/or contamination at intervals not to exceed 3 months.

(C) Ensure, that in the absence of a certificate from a transferor indicating that a leak test has been made within the intervals specified in the certificate

of registration issued by the Commission under § 32.210 of this chapter or by an Agreement State, prior to the transfer, a sealed source received from another person not be put into use until tested and the test results received.

(iv)(A) Ensure, that if the test conducted pursuant to paragraphs (i) and (ii) of this section reveals the presence of 185 becquerels (0.005 microcuries) or more of removable contamination, a report shall be filed with the Commission in accordance with § 30.50(c)(2) of this chapter, and the source shall be removed immediately from service and decontaminated, repaired, or disposed of in accordance with Commission regulations.

(B) Submit a report to the appropriate NRC Regional Office listed in appendix D of part 20 of this chapter, within 5 days of receiving the test results. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source, and the corrective actions taken up to the time the report is made.

(v) Exempt the following sealed sources from the periodic leak test requirements set out in paragraphs (i) through (iv) of this section:

(A) Hydrogen-3 (tritium) sources;

(B) Sources containing licensed material with a half-life of 30 days or less;

(C) sources containing licensed material in gaseous form;

(D) Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and

(E) Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

(F) Sealed sources if they are in storage and are not being used. However, when they are removed from storage for use or transferred to another person, and have not been tested within the required leak test interval, they shall be tested before use or transfer. No source shall be stored for a period of more than 10 years without being tested for leakage and/or contamination.

(9) Develop, implement, and maintain procedures for routine maintenance of gauges according to each manufacturer's or distributor's written recommendations and instructions.

(10) Develop, implement, and maintain operating, emergency, and security procedures that meet the requirements of §§ 20.1101, 20.1801 through 1802, 20.2201 through 2203, 30.34, and 30.50 of this chapter.

**§ 31.16 Standard General License for Certain Medical Uses.**

(a)(1) Provided that the provisions of paragraph (b) of this section have been met, a general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies to manufacture, produce, acquire, receive, possess, prepare, use, or transfer, byproduct material for certain medical uses in accordance with the provisions of paragraph (c) of this section.

(2) The provisions of paragraph (a)(1) of this section apply for use of:

(i) Unsealed gallium-67, indium-111, iodine-123, iodine-125, iodine-131), technetium-99m, thallium-201, and xenon-133 for uptake, dilution, excretion, imaging, and localization studies for which a written directive is not required for medical uses as described in §§ 35.100 and 35.200 of this chapter;

(ii) Molybdenum-99/technetium-99m generators to prepare radiopharmaceuticals for medical uses as described in §§ 35.100 and 35.200 of this chapter; and

(iii) Calibration, transmission, and reference sources for uses as described in § 35.65 of this chapter.

(3)(i) The provisions of paragraph (a)(1) of this section do not apply for use of unsealed byproduct material for mobile medical services as defined in § 35.2.

(ii) The provisions of paragraph (a)(2)(iii) do not apply for use of sources for medical use as defined in § 35.2 of this chapter including with the requirements § 35.500 of this chapter.

(4) The provisions of paragraph (a)(1) of this section apply for use of these materials at fixed locations listed on the most recent NRC Form 1003 provided to the Commission in accordance with § 31.13 of this part.

(b)(1)The general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7, 30.8, 30.9, 30.10, 30.11, 30.31, 30.34, 30.35, 30.41, 30.50 through 30.64 of this chapter; §§ 31.1 through 31.4 of this part; §§ 31.21 through 31.23 of this part; and to the provisions of 10 CFR parts 19, 20, 21, 35 with the exceptions provided in paragraph (b)(2) of this section, and 10 CFR part 71.

(2) Any person engaging in activities under the general licenses provided in this section need not comply with § 30.34(b) of this chapter and §§ 35.11, 35.12, 35.13, 35.14, 35.18, 35.24(a)-(b), and 35.24(d),of this chapter.

(3) In addition, any person engaging in activities under the general licenses provided in this section shall comply with the requirements in § 31.13 of this part.

(c) A licensee shall—

(1)(i) Designate, in writing, an individual to work as the Radiation Safety Officer, as defined in 10 CFR 35.2 who meets the training and experience requirements in § 35.50 of this chapter to be responsible for implementing the radiation protection program.

(ii) Ensure the individual working as Radiation Safety Officer meets the training, experience and criteria established in § 35.59 of this chapter.

(iii) Maintain the designation and record of the individual's training and experience for 5 years after the individual last works as a Radiation Safety Officer for the licensee.

(iv) For the time period described in § 35.24(c) of this chapter, a licensee may permit an individual qualified to be a Radiation Safety Officer, under §§ 35.50 and 35.59 of this chapter, to function as a temporary Radiation Safety Officer and to perform the functions of a Radiation Safety Officer, as provided in § 35.24(g) of this chapter, if the licensee takes the actions required in paragraphs (2)(i)-(iii) of this paragraph and the required actions in §§ 35.24(e), 35.24(g), and 35.24(h) of this chapter and notifies the Commission in accordance with § 31.13 of this chapter.

(2)(i) Designate, in writing, individuals to work as authorized users, as defined in § 35.2 of this chapter who meet the training and experience requirements in § 35.190 of this chapter for § 35.100 activities § 35.290 of this chapter for § 35.200 activities.

(ii) Ensure individuals working as authorized users meet the training, experience and criteria established in § 35.59 of this chapter.

(iii) Maintain the designation and record of the individual's training and experience for 5 years after the individual last works as an Authorized User for the licensee.

(3) Ensure licensed materials authorized by paragraph (a) of this section are used by, or under the supervision of, individuals who have been designated as authorized users by paragraph (c)(2) of this section.

(4)(i) Prepare an evaluation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the limits in § 20.1502 of this chapter; or

(ii) Develop, implement, and maintain a program for individual monitoring of external and internal occupational dose

in accordance with § 20.1502 of this chapter.

(iii) maintain records of the evaluation described in (4)(i) for 3 years following the last use of licensed material by unmonitored individuals.

(iv) maintain records of individual monitoring results in accordance with § 20.2106 of this chapter.

(5)(i) Ensure any radiation detection instruments used to perform surveys required by this part, 10 CFR parts 20, 30, 35, and 71 are appropriate for the isotopes and activities present and meet the requirements of § 20.1501 of this chapter.

(ii) Ensure the instruments used for required surveys are calibrated at least annually by a person licensed by the Commission or an Agreement State to perform instrument calibration services.

(iii) Maintain a record of the calibrations for 3 years. The record must include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

(6)(i) Develop, implement, and maintain written procedures for sealed-source leak testing that meet the requirements of § 35.67 of this chapter; or

(ii) Ensure leak test sample collection and analysis is performed by an organization authorized by the Commission or an Agreement State to provide leak testing services to other licensees; or

(iii) Use a leak test sample collection kit supplied by an organization licensed by the Commission or an Agreement State to provide leak test kits or sample analysis services to other licensees and according to the instructions provided in the leak test sample collection kit;

(iv) Maintain records of leak testing in accordance with § 35.2067(a) of this chapter.

(7) Develop, implement, and maintain written procedures for safe use of unsealed byproduct material that meet the requirements of §§ 20.1101 and 20.1201 of this chapter.

(8) Develop, implement, and maintain written procedures for safe response to spills of licensed material in accordance with § 20.1101 of this chapter.

(9) Develop, implement, and maintain written procedures for area surveys in accordance with § 20.1101 of this chapter that meet the requirements of §§ 20.1501 and 35.70 of this chapter.

(10) Develop, implement, and maintain written procedures for licensed material accountability and control to ensure that: license possession limits are not exceeded; licensed material in storage is secured from unauthorized access or removal; licensed material not in storage is maintained under constant surveillance and control; records of receipt (either from the licensee's own production operations or from another licensee), transfer, and disposal of licensed material, are maintained.

(11) Develop, implement, and maintain written procedures for a program for training required under § 19.12 of this chapter for each group of workers, including (i) topics covered, (ii) qualifications of the instructors, (iii) method of training, (iv) method for assessing the success of the training, (v) initial training, and (vi) annual refresher training.

(12) Develop, implement, and maintain written waste disposal procedures for licensed material in accordance with § 20.1101 of this chapter, that also meet the requirements of the applicable section of 10 CFR part 20, subpart K, and of § 35.92 of this chapter.

**§ 31.17 Standard General License for Certain Analytical Equipment Including Electron Capture Detectors, X-Ray Fluorescence Devices, and Ion Generators.**

(a)(1) Provided that the provisions of paragraph (b) of this section have been met, a general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies to acquire, receive, possess, use, or transfer, byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, or qualitatively or quantitatively assessing chemical composition, or for producing an ionized atmosphere in accordance with the provisions of paragraph (c) of this section.

(2)(i) The provisions of paragraph (a)(1) of this section apply to byproduct material contained in devices which are registered in the Sealed Source and Device Registry with the Commission under § 32.210 of this chapter, as defined in § 32.2 of this chapter, or with an Agreement State, with the principle use codes N—Ion Generators, Chromatography, or U—X-Ray Fluorescence.

(ii) The provisions of paragraph (a)(1) of this section apply to the use of specifically licensed devices that are distributed in accordance with § 30.41 of this chapter.

(3)(i) The provisions of paragraph (a)(1) of this section authorize use, possession and storage of licensed materials at fixed locations listed on the most recent NRC Form 1003 provided to the Commission in accordance with § 31.13 of this part; and

(ii) Temporary job sites of the licensee anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating the use of licensed material, including areas of exclusive Federal jurisdiction within Agreement States. If the jurisdiction status of a Federal facility within an Agreement State is unknown, the licensee shall contact the Federal agency controlling the job site in question to determine whether the proposed job site is an area of exclusive Federal jurisdiction.

(iii) Authorization for use of radioactive materials at job sites in Agreement States in areas not under exclusive Federal jurisdiction is not provided under this general license, and shall be obtained from the appropriate State regulatory agency.

(4) The provisions of paragraph (a)(1) of this section do not authorize the manufacture, initial transfer or distribution, or import of devices containing byproduct material.

(b)(1)The general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7, 30.8, 30.9, 30.10, 30.11, 30.31, 30.34, 30.35, 30.41, 30.50 through 30.64 of this chapter; §§ 31.1 through 31.4 of this part; §§ 31.21 through 31.23 of this part; and to the provisions of 10 CFR parts 19, 20, 21, and 71.

(2) Any person engaging in activities under the general licenses provided in this section need not comply with § 30.34(b) of this chapter.

(3) In addition, any person engaging in activities under the general licenses provided in this section shall comply with the requirements in § 31.13 of this chapter.

(c) A licensee shall—

(1)(i) Limit the use of sealed sources to those registered either with Commission under § 32.210 of this chapter or with an Agreement State.

(ii) Ensure sealed sources are incorporated in compatible devices, by manufacturer and model, and limited to use as specified in the Sealed Source and Device Registry for the devices manufacturer and model.

(iii) Ensure the activity of byproduct material in sealed sources is limited to the activity listed in the Sealed Source and Device Registry for the associated devices manufacturer and model.

(2)(i) Appoint and designate, in writing, a radiation safety officer responsible for having knowledge of the appropriate regulations and

requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(ii) Maintain a record of an individual's training, and appointment as the Radiation Safety Officer for 5 years following their last day in the role.

(3)(i) Ensure detector cells containing a titanium tritide foil or scandium tritide foil are only used in conjunction with a properly operating temperature control mechanism that prevents the foil temperature from exceeding that specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission pursuant to § 32.210 of this chapter or equivalent regulations from an Agreement State.

(ii) Ensure when in use, detector cells containing a titanium tritide foil or scandium tritide foil are vented to the outside.

(iii) Ensure sealed sources, source rods, foil sources, or detector cells containing licensed material are not opened or sources removed from source holders or detached from source rods, or foil sources removed from detector cells.

(iv) Except for maintaining labeling as required by 10 CFR part 20 or 10 CFR part 71, the licensee shall not make any changes in the sealed source, device, or source-device combination that would alter the description or specifications as indicated in the respective certificate of registration issued either by the U.S. Nuclear Regulatory Commission pursuant to § 32.210 of this chapter or by an Agreement State.

(v) Ensure maintenance, repair, cleaning, replacement, and disposal of foils contained in detector cells or of sealed sources is performed only by the device manufacturer or other persons specifically authorized by the U.S. Nuclear Regulatory Commission or an Agreement State to perform such services.

(4)(i) Conduct Physical inventories every 6 months to account for all sealed sources and/or devices received and possessed under the license.

(ii) Maintain records of inventories for 3 years from the date of each inventory, and shall include the radionuclides, quantities, manufacturer's name and model numbers, and the date of the inventory.

(5) Ensure sealed sources and plated foil sources are tested for leakage periodically.

(i) The licensee shall keep a record of leak test results in units of becquerels (microcuries) and retain the record for inspection by the Commission for 3 years after the leak test is performed. The final leak test record performed prior to the sealed source or foil plated source being transferred or disposed of shall be retained until the license is terminated. Records must also show the dates of performance and the names of persons performing testing.

(ii) Ensure leak tests are performed by an organization licensed by the NRC or an Agreement State to provide leak testing services to other licensees; or by using a leak test sample collection kit supplied by an organization licensed by the NRC or an Agreement State to provide leak test kits and/or sample analysis services to other licensees and according to the kit supplier's instructions. The leak test sample must be taken from the nearest accessible point to the sealed source or plated foil sources where contamination might accumulate. The leak test sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq [0.005 microcuries] of radioactive material on the test sample and is performed by persons specifically licensed by the U.S. Nuclear Regulatory Commission or an Agreement State to perform such services.

(iii)(A) Ensure each sealed source, except sealed sources and plated foil sources designed to primarily emit alpha particles, are tested at intervals specified either in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under § 32.210 of this chapter or by an Agreement State. In the absence of a registration certificate, sealed sources or foil plated source shall be tested for leakage and/or contamination at intervals not to exceed 6 months, or at such other intervals as specified.

(B) Ensure sealed sources and plated foil sources designed to primarily emit alpha particles are tested for leakage and/or contamination at intervals not to exceed 3 months.

(C) Ensure, that in the absence of a certificate from a transferor indicating that a leak test has been made within the intervals specified in the certificate of registration issued by the Commission under § 32.210 of this chapter or by an Agreement State, prior to the transfer, a sealed source or plated foil sources received from another person not be put into use until tested and the test results received.

(iv)(A) Ensure, that if the test conducted pursuant to paragraphs (i) and (ii) of this section reveals the presence of 185 becquerels (0.005 microcuries) or more of removable contamination, a report shall be filed with the Commission in accordance with § 30.50(c)(2) of this chapter, and the source shall be removed immediately from service and decontaminated, repaired, or disposed of in accordance with Commission regulations.

(B) Submit a report to the appropriate NRC Regional Office listed in appendix D of part 20 of this chapter, within 5 days of receiving the test results. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source, and the corrective actions taken up to the time the report is made.

(v) Exempt the following sealed sources and plated foil sources from the periodic leak test requirements set out in paragraphs (i) through (iv) of this section:

(A) Hydrogen-3 (tritium) sources;

(B) Sources containing licensed material with a half-life of 30 days or less;

(C) sources containing licensed material in gaseous form;

(D) Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and

(E) Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

(F) Sealed sources if they are in storage and are not being used. However, when they are removed from storage for use or transferred to another person, and have not been tested within the required leak test interval, they shall be tested before use or transfer. No source shall be stored for a period of more than 10 years without being tested for leakage and/or contamination.

(6)(i) Test each analytical instrument, as applicable, for the proper operation of the on-off mechanism (shutter) and indicator, if any, at intervals not to exceed 6 months. This requirement does not apply to analytical instruments that are in storage with the shutter lock mechanism is in the locked position.

(ii) Maintain on-off mechanism test records for 3 years. The record must include the model and serial number of the device, the date of the test, the results of the test, and the name of the individual who performed the test.

**§ 31.18 Standard General License for Certain In Vitro Testing.**

(a)(1) Provided that the provisions of paragraph (b) of this section have been met, a general license is hereby issued

to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies to acquire, receive, possess, use, or transfer, byproduct material for certain in vitro clinical or laboratory test in accordance with the provisions of paragraph (c) of this section.

(2) The provisions of paragraph (a)(1) of this section apply for use of materials listed in § 31.11(a)(1)–(8) of this part.

(3) The provisions of paragraph (a)(1) of this section do not apply for use of licensed materials in or on humans.

(4) The provisions of paragraph (a)(1) of this section do not authorize the use of licensed material in field applications where radioactivity is released.

(5) The provisions of paragraph (a)(1) of this section apply for use of these materials at fixed locations listed on the most recent NRC Form 1003 provided to the Commission in accordance with § 31.13 of this part.

(b)(1) The general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7, 30.8, 30.9, 30.10, 30.11, 30.31, 30.34, 30.35, 30.41, 30.50 through 30.64 of this chapter; §§ 31.1 through 31.4 of this part; §§ 31.21 through 31.23 of this part; and to the provisions of 10 CFR parts 19, 20, 21, and 71.

(2) Any person engaging in activities under the general licenses provided in this section need not comply with § 30.34(b) of this chapter or § 31.11 of this part.

(3) In addition, any person engaging in activities under the general licenses provided in this section shall comply with the requirements in § 31.13 of this part.

(c) A licensee shall—

(1)(i) Appoint and designate, in writing, a radiation safety officer responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(ii) Maintain a record of an individual's training and experience, and appointment as the Radiation Safety Officer for 5 years following their last day in the role.

(2)(i) Designate, in writing, individuals to work as authorized users, who have sufficient training and experience to use and supervise the use of licensed materials.

(ii) Maintain the designation and record of the individuals' training and experience for 5 years after the individuals last works as an Authorized User for the licensee.

(3) Ensure licensed materials authorized by paragraph (a) of this section are used by, or under the supervision of, individuals who have been designated as authorized users by paragraph (c)(3) of this section.

(4)(i) Prepare an evaluation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the limits in § 20.1502 of this chapter; or

(ii) Develop, implement, and maintain a program for individual monitoring of external and internal occupational dose in accordance with § 20.1502 of this chapter.

(iii) maintain records of the evaluation described in (5)(i) for 3 years following the last use of licensed material by unmonitored individuals.

(iv) maintain records of individual monitoring results in accordance with § 20.2106 of this chapter.

(5)(i) Ensure any radiation detection instruments used to perform surveys required by this part, 10 CFR parts 20, 30, and 71 are appropriate for the isotopes and activities present and meet the requirements of § 20.1501 of this chapter.

(ii) Ensure the instruments used for required surveys are calibrated at least annually by a person licensed by the Commission or an Agreement State to perform instrument calibration services.

(iii) Maintain a record of the calibrations for 3 years. The record must include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

(6)(i) Dispose of radioactive waste in accordance with 10 CFR part 20.

(ii) Where appropriate, hold radioactive material with a physical half-life of less than or equal to 275 days for decay-in-storage before disposal in ordinary trash provided:

(A) Before disposal as ordinary trash, the waste shall be surveyed at the container surface with the appropriate survey instrument set on its most sensitive scale and with no interposed shielding to determine that its radioactivity cannot be distinguished from background. All radiation labels shall be removed or obliterated, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.

(B) A record of each such disposal permitted under this license requirement shall be retained for 3 years. The record must include the date of disposal, the date on which the byproduct material was placed in storage, the radionuclides disposed, the survey instrument used, the background dose rate, the dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

(iii) Waste from *in vitro* kits, except mock I–125, that are generally licensed under § 31.11 of this part are exempt from waste disposal regulations in 10 CFR part 20, as set forth in § 31.11(f). Radioactive labels shall be defaced or removed. There is no need to keep any record of release or make any measurement.

(7) Develop, implement, and maintain written procedures for safe use of unsealed byproduct material that meet the requirements of §§ 20.1101 and 20.1201 of this chapter.

(8) Develop, implement, and maintain written procedures for safe response to spills of licensed material in accordance with § 20.1101 of this chapter.

(9) Develop, implement, and maintain written procedures for area surveys in accordance with § 20.1101 of this chapter that meet the requirements of § 20.1501 of this chapter.

(10) Develop, implement, and maintain written procedures for licensed material accountability and control to ensure that: license possession limits are not exceeded; licensed material in storage is secured from unauthorized access or removal; licensed material not in storage is maintained under constant surveillance and control; records of receipt (either from the licensee's own production operations or from another licensee), transfer, and disposal of licensed material, are maintained.

(11) Develop, implement, and maintain written procedures for a program for training required under § 19.12 of this chapter for each group of workers, including (i) topics covered, (ii) qualifications of the instructors, (iii) method of training, (iv) method for assessing the success of the training, (v) initial training, and (vi) annual refresher training.

(12) Develop, implement, and maintain written waste disposal procedures for licensed material in accordance with § 20.1101 of this chapter, that also meet the requirements of the applicable section of 10 CFR part 20, subpart K.

**§ 31.19–31.20 [Reserved]**

■ 15. Add subpart D, before § 31.21 to read as follows:

## Subpart D—Records

**§ 31.21 Maintenance of records.**

* * * * *

■ 16. Add subpart E, before § 31.22 to read as follows:

## Subpart E—Enforcement

**§ 31.22 Violations.**

* * * * *

## PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 17. The authority citation for part 32 continues to read as follows:

**Authority:** Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 18. Revise and republish § 32.12 to read as follows:

**§ 32.12 Same: Records of material transfer.**

(a) Each person licensed under § 32.11 shall maintain records of transfer of byproduct material identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.14 of this chapter or the equivalent regulations of an Agreement State and stating the kinds, quantities, and physical form of byproduct material transferred.

(b) The record must identify the:

(1) Type and quantity of each product or material into which byproduct material has been introduced by calendar year, if applicable;

(2) Name and address of the person who owned or possessed the product or material, into which byproduct material has been introduced, at the time of introduction;

(3) The type and quantity of radionuclide introduced into each product or material; and

(4) The initial concentrations of the radionuclide in the product or material at time of transfer of the byproduct material by the licensee.

(c) The licensee shall maintain the record of a transfer in accordance with § 30.51.

■ 19. Revise and republish § 32.16 to read as follows:

**§ 32.16 Certain items containing byproduct material: Records of transfer.**

(a) Each person licensed under § 32.14 shall maintain records of all transfers of byproduct identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.15 of this chapter or the equivalent regulations of an Agreement State and stating the kinds, quantities, and physical form of byproduct material transferred.

(b) The record must include the following information:

(1) A description or identification of the type of each product and the model number(s), if applicable;

(2) For each radionuclide in each type of product and each model number, if applicable, the total quantity of the radionuclide; and

(3) The number of units of each type of product transferred by calendar year and model number, if applicable;

(c) The licensee shall maintain the record of a transfer in accordance with § 30.51.

■ 20. Revise and republish § 32.20 to read as follows:

**§ 32.20 Same: Records of material transfer.**

(a) Each person licensed under § 32.18 shall maintain records of transfer of material identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.18 of this chapter or the equivalent regulations of an Agreement State and stating the kinds, quantities, and physical form of byproduct material transferred.

(b) The record must include the following information:

(1) For each radionuclide in each physical form, the record shall indicate the total quantity of each radionuclide and the physical form, transferred under the specific license.

(c) The licensee shall maintain the record of a transfer in accordance with § 30.51 of this chapter.

■ 21. Revise and republish § 32.25 to read as follows:

**§ 32.25 Conditions of licenses issued under § 32.22: Quality control, labeling, and records of transfer.**

Each person licensed under § 32.22 shall:

(a) Carry out adequate control procedures in the manufacture of the product to assure that each production lot meets the quality control standards approved by the Commission;

(b) Label or mark each unit so that the manufacturer, processor, producer, or initial transferor of the product and the byproduct material in the product can be identified; and

(c) Each person licensed under § 32.22 shall maintain records of transfer of material identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.19 of this chapter or the equivalent regulations of an Agreement State and stating the kinds, quantities, and physical form of byproduct material transferred.

(1) The record must include the following information:

(i) A description or identification of the type of each product and the model number(s);

(ii) For each radionuclide in each type of product and each model number, the total quantity of the radionuclide; and

(iii) The number of units of each type of product transferred by calendar year and model number, if applicable.

(b) The licensee shall maintain the record of a transfer in accordance with § 30.51.

■ 22. Revise and republish § 32.29 to read as follows:

**§ 32.29 Conditions of licenses issued under § 32.26: Quality control, labeling, and records of transfer.**

Each person licensed under § 32.26 shall:

(a) Carry out adequate control procedures in the manufacture of the product to assure that each production lot meets the quality control standards approved by the Commission;

(b) Label or mark each detector and its point-of-sale package so that:

(1) Each detector has a durable, legible, readily visible label or marking on the external surface of the detector containing:

(i) The following statement: ''CONTAINS RADIOACTIVE MATERIAL'';

(ii) The name of the radionuclide and quantity of activity; and

(iii) An identification of the person licensed under § 32.26 to transfer the detector for use pursuant to § 30.20 of this chapter or equivalent regulations of an Agreement State.

(2) The labeling or marking specified in paragraph (b)(1) of this section is located where its will be readily visible when the detector is removed from its mounting.

(3) The external surface of the point-of-sale package has a legible, readily visible label or marking containing:

(i) The name of the radionuclide and quantity of activity;

(ii) An identification of the person licensed under § 32.26 to transfer the detector for use pursuant to § 30.20 of this chapter or equivalent regulations of an Agreement State; and

(iii) The following or a substantially similar statement: THIS DETECTOR

CONTAINS RADIOACTIVE MATERIAL AND HAS BEEN MANUFACTURED IN COMPLIANCE WITH U.S. NRC SAFETY CRITERIA IN 10 CFR 32.27. THE PURCHASER IS EXEMPT FROM ANY REGULATORY REQUIREMENTS.

(4) Each detector and point-of-sale package is provided with such other information as may be required by the Commission; and

(c) Each person licensed under § 32.26 shall maintain records of transfer of material identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.20 of this chapter or the equivalent regulations of an Agreement State and stating the kinds, quantities, and physical form of byproduct material transferred.

(1) The record must include the following information:

(i) A description or identification of the type of each product and the model number(s);

(ii) For each radionuclide in each type of product and each model number, the total quantity of the radionuclide; and

(iii) The number of units of each type of product transferred by calendar year and model number, if applicable.

(d) The licensee shall maintain the record of a transfer in accordance with § 30.51.

■ 23. Revise and republish § 32.32 to read as follows:

**§ 32.32 Conditions of licenses issued under § 32.30: Quality control, labeling, and records of transfer.**

Each person licensed under § 32.30 shall:

(a) Carry out adequate control procedures in the manufacture of the device to ensure that each production lot meets the quality control standards approved by the Commission;

(b) Label or mark each device and its point-of-sale package so that:

(1) Each item has a durable, legible, readily visible label or marking on the external surface of the device containing:

(i) The following statement: ''CONTAINS RADIOACTIVE MATERIAL'';

(ii) The name of the radionuclide(s) and quantity(ies) of activity;

(iii) An identification of the person licensed under § 32.30 to transfer the device for use under § 30.22 of this chapter or equivalent regulations of an Agreement State; and

(iv) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information).

(2) The external surface of the point-of-sale package has a legible, readily visible label or marking containing:

(i) The name of the radionuclide and quantity of activity;

(ii) An identification of the person licensed under § 32.30 to transfer the device for use under § 30.22 of this chapter or equivalent regulations of an Agreement State; and

(iii) The following or a substantially similar statement: ''THIS DEVICE CONTAINS RADIOACTIVE MATERIAL AND HAS BEEN MANUFACTURED IN COMPLIANCE WITH U.S. NUCLEAR REGULATORY COMMISSION SAFETY CRITERIA IN 10 CFR 32.31. THE PURCHASER IS EXEMPT FROM ANY REGULATORY REQUIREMENTS.''

(3) Each device and point-of-sale package contains such other information as may be required by the Commission; and

(c) Each person licensed under § 32.30 shall maintain records of transfer of material identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.22 of this chapter or the equivalent regulations of an Agreement State and stating the kinds, quantities, and physical form of byproduct material transferred.

(1) The record must include the following information:

(i) A description or identification of the type of each product and the model number(s);

(ii) For each radionuclide in each type of product and each model number, the total quantity of the radionuclide; and

(iii) The number of units of each type of product transferred by calendar year and model number, if applicable.

(d) The licensee shall maintain the record of a transfer in accordance with § 30.51.

■ 24. Revise and republish § 32.72 to read as follows:

**§ 32.72 Manufacture, preparation, or transfer for commercial distribution of radioactive drugs or preparation or transfer for commercial distribution microsources containing byproduct material for medical use under part 35.**

(a) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs, or to prepare or transfer for commercial distribution microsources containing byproduct material for use by persons authorized pursuant to part 35 of this chapter or § 31.16 will be approved if:

(1) The applicant satisfies the general requirements specified in § 30.33 of this chapter;

(2) The applicant submits evidence that it is legally authorized, under applicable Federal or State law, to manufacture, compound, prepare, or distribute radioactive drugs or medical devices, including those regulated under 21 CFR part 207, 21 CFR part 212, or 21 CFR part 820, as applicable;

(3) The applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug or microsources; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs or microsources by medical use licensees; and

(4) The applicant commits to the following labeling requirements:

(i) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of radioactive drugs or microsources to be transferred for commercial distribution. The label must include the radiation symbol and the words ''CAUTION, RADIOACTIVE MATERIAL'' or ''DANGER, RADIOACTIVE MATERIAL''; the name of the radioactive drug, microsource, or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs or microsources with a half-life greater than 100 days, the time may be omitted.

(ii) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug or microsources to be transferred for commercial distribution. The label must include the radiation symbol and the words ''CAUTION, RADIOACTIVE MATERIAL'' or ''DANGER, RADIOACTIVE MATERIAL'' and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label, and

(iii) A label is affixed in accordance with the Sealed Source and Device Registry, as applicable.

(b) A licensee that meets the requirements of paragraph (a)(2) and is licensed as a pharmacy by a State Board of Pharmacy or that is operating as a nuclear pharmacy within a Federal medical institution:

(1) May prepare radioactive drugs or microsources for medical use, as defined in § 35.2 of this chapter, provided that the radioactive drug or microsources are prepared by either an authorized nuclear pharmacist, as specified in paragraphs (b)(2) and (b)(4) of this section, or an individual under the supervision of an authorized nuclear pharmacist as specified in § 35.27 of this chapter.

(2) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) This individual qualifies as an authorized nuclear pharmacist as defined in § 35.2 of this chapter;

(ii) This individual meets the requirements specified in § 35.55(b) and 35.59 of this chapter, and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) This individual is designated as an authorized nuclear pharmacist in accordance with paragraph (b)(4) of this section.

(3) The actions authorized in paragraphs (b)(1) and (b)(2) of this section are permitted in spite of more restrictive language in license conditions.

(4) May designate a pharmacist (as defined in § 35.2 of this chapter) as an authorized nuclear pharmacist if:

(i) The individual was a nuclear pharmacist preparing only radioactive drugs or microsources containing accelerator-produced radioactive material; and

(ii) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(5) Shall provide to the Commission:

(i) A copy of each individual's certification by a specialty board whose certification process has been recognized by the Commission or an Agreement State as specified in § 35.55(a) of this chapter; or

(ii) The Commission or Agreement State license, or

(iii) Commission master materials licensee permit, or

(iv) The permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist, or

(v) Documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(vi) A copy of the State pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, under paragraphs (b)(2)(i) and (b)(2)(iii) of this section, the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs and microsources. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs or microsources prior to transfer for commercial distribution. In addition, the licensee shall:

(1) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(2) Check each instrument for constancy and proper operation at the beginning of each day of use.

(d) A licensee shall satisfy the labeling requirements in paragraph (a)(4) of this section.

(e) Nothing in this section relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs or microsources.

■ 25. In § 32.74, revise section heading, paragraphs (a) introductory text, (a)(2) introductory text, (a)(2)(ii), (a)(2)(viii), (a)(3) and (b)(1) to read as follows:

**§ 32.74 Manufacture and distribution of sources, microsources, or devices containing byproduct material for medical use.**

(a) An application for a specific license to manufacture and distribute sources, microsources, or devices containing byproduct material to persons licensed under part 35 of this chapter or § 31.16 of this chapter for use as a calibration, transmission, or reference source or for the medical uses listed in part 35 of this chapter will be approved if:

(1) * * *

(2) The applicant submits sufficient information regarding each type of source, or device pertinent to an evaluation of its radiation safety, including:

(i) * * *

(ii) Details of design and construction of the source, or device;

* * * * *

(viii) Instructions for handling and storing the source, or device from the radiation safety standpoint; these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source, or device: *Provided,* That instructions which are too lengthy for such label may be summarized on the label and printed in detail on a brochure which is referenced on the label.

(3) The label affixed to the source or device, or to the permanent storage container for the source, or device, contains information on the radionuclide, quantity and date of assay, and a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the (name of source, or device) to persons licensed to use byproduct material identified in §§ 35.65, 35.400, 35.500, 35.600, 35.700, and 35.1000 of this chapter as appropriate, and to persons who hold an equivalent license issued by an Agreement State.

* * * * *

(b) * * *

(1) In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, he shall include in his application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source.

## PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

■ 26. The authority citation for part 34 continues to read as follows:

**Authority:** Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note). Atomic Energy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111)

Section 34.45 also issued under Energy Reorganization Act sec. 206 (42 U.S.C. 5846).

■ 27. In § 34.3, add in alphabetical order the definition for *Sealed Source and Device Registry* to read as follows:

* * * * *

*Sealed Source and Device Registry* means the national registry that contains all the registration certificates, generated by both the NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

* * * * *

■ 28. In § 34.13, revise paragraph (b) and remove paragraphs (b)(1) and (b)(2). The revision reads as follows:

**§ 34.13 Specific license for industrial radiography.**

* * * * *

(b) The applicant submits an adequate program for training radiographers and radiographers' assistants that meets the requirements of § 34.43. A license applicant need not describe its initial training and examination program for radiographers in the subjects outlined in § 34.43(g).

* * * * *

**§ 34.20 [Amended]**

■ 29. Amend § 34.20 by:
■ a. Revising paragraphs (a)(1) and (a)(2);
■ b. Removing paragraph (c)(8) and redesigning paragraph (c)(9) as paragraph (c)(8); and
■ d. Removing paragraphs (d) and (e).

The revisions read as follows:

**§ 34.20 Performance requirements for industrial radiography equipment.**

* * * * *

(a) * * *

(1) Each radiographic exposure device, source assembly or sealed source must have been evaluated by the NRC or an Agreement State and registered in the Sealed Source and Device Registry, and all associated equipment must meet the manufactures' specifications and instructions.

(2) Engineering analysis may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the Commission may find this an acceptable alternative to actual testing of the component pursuant to the requirements referenced in paragraph (a)(1) of this section.

* * * * *

**§ 34.23 [Amended]**

■ 30. In § 34.23, in paragraph (a) remove the phrase ''§ 34.51'' and add in its place the phrase ''§ 34.41''.

**§ 34.27 [Amended]**

■ 31. Amend § 34.27 by:
■ a. In the first sentence of (c)(1), add the phrase ''or at other intervals approved by the Commission or an Agreement State in the Sealed Source and Device Registry'', after the phrase ''6 months'';
■ b. In paragraph (e), removing the phrase ''Licensees will have until June 27, 1998, to comply with the DU leak-testing requirements of this paragraph''.

**§ 34.33 [Amended]**

■ 32. In § 34.33, in paragraph (b) remove the phrase ''§ 34.51'' and add in its place the phrase ''§ 34.41''.

■ 33. Revise and republish § 34.41 to read as follows:

**§ 34.41 Conducting industrial radiographic operations.**

(a) Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of § 34.43(c). Radiography may not be performed if only one qualified individual is present.

(1) During each radiographic operation either the radiographer or the other qualified individual present shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in 10 CFR part 20 of this chapter.

(2) The second individual present must be in sufficiently close proximity to the radiographic operation and sufficiently aware of the ongoing activities to be able to provide immediate assistance when necessary and to prevent unauthorized entry.

(b) All radiographic operations conducted at locations of use authorized on the license must be conducted in a permanent radiographic installation, unless specifically authorized by the Commission.

(c) A licensee may conduct lay-barge, offshore platform, or underwater radiography only if procedures have been approved by the Commission or by an Agreement State.

■ 34. Amend § 34.43 by:
■ a. Revising paragraph (a) and removing paragraphs (a)(1) and (2); and
■ b. Removing paragraphs (h) and (i).

The revision reads as follows:

**§ 34.43 Training.**

(a) The licensee may not permit any individual to act as a radiographer until the individual has received training in the subjects in paragraph (g) of this section, in addition to a minimum of 2 months of on-the-job training, and is certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in appendix A of this part. (An independent organization that would like to be recognized as a certifying entity shall submit its request to the Director, Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 30.6(a) of this chapter.)

* * * * *

**§ 34.51 [Reserved]**

■ 35. Remove and reserve § 34.51.
■ 36. In § 34.89, revise paragraph (b) to read as follows:

**§ 34.89 Location of documents and records.**

* * * * *

(b) Each licensee shall also maintain copies of the following documents and records sufficient to demonstrate compliance at each applicable field station and each temporary jobsite;

(1) The license authorizing the use of licensed material;

(2) Utilization records for each radiographic exposure device dispatched from that location as required by § 34.71.

(3) Records of alarm system and entrance control checks required by § 34.75, if applicable;

(4) Records of direct reading dosimeters such as pocket dosimeter and/or electronic personal dosimeters readings as required by § 34.83;

(5) Current operating and emergency procedures required by § 34.81;

(6) Evidence of the latest calibration of the radiation survey instruments in use at the site, as required by § 34.65;

(7) Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and/or electronic personal dosimeters as required by § 34.83;

(8) Latest survey records required by § 34.85;

(9) The shipping papers for the transportation of radioactive materials required by § 71.5 of this chapter; and

(10) When operating under reciprocity pursuant to § 150.20 of this chapter, a copy of the Agreement State license authorizing the use of licensed materials.

* * * * *

**§ 34.101 [Amended]**

■ 37. In § 34.101, remove and reserve paragraph (c).

## PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

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

**Authority:** Atomic Energy Act secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

**§ 39.33 [Amended]**

■ 39. In § 39.33, in paragraph (c)(1), remove the phrase ''6 months'' and add in its place the phrase ''12 months''.
■ 40. In § 39.35, revise paragraph (c)(1) to read as follows:

**§ 39.35 Leak testing of sealed sources.**

* * * * *

(c) Each sealed source (except an energy compensation source (ECS)) must be tested at intervals not to exceed 6 months or at other intervals approved by the Commission or an Agreement State in the Sealed Source and Device Registry. In the absence of a certificate from a transferor that a test has been made within the 6 months or at other intervals approved by the Commission or an Agreement State in the Sealed Source and Device Registry before the transfer, the sealed source may not be used until tested.

* * * * *

■ 41. In § 39.77, remove paragraph (c)(1) and redesignate paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2).

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 42. The authority citation for part 40 continues to read as follows:

**Authority:** Atomic Energy Act secs. 11(e)(2), 62, 63, 64, 65, 81, 161, 181, 182, 183, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2231, 2232, 2233, 2236, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Public Law 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Energy Reorganization Act sec. 211, Public Law 95–601, sec. 10, as amended by Public Law 102–486, sec. 2902 (42 U.S.C. 5851). Section 40.31(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 40.46 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 40.71 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 43. Revise and republish § 40.53 to read as follows:

**§ 40.53 Conditions for licenses issued for initial transfer of certain items containing source material: Quality control, labeling, and records.**

(a) Each person licensed under § 40.52 shall ensure that the quantities or concentrations of source material do not exceed any applicable limit in § 40.13(c).

(b) Each person licensed under § 40.52 shall ensure that each product is labeled as provided in the specific exemption under § 40.13(c) and as required by their license. Those distributing products to be used under § 40.13(c)(1)(i) and (iii) or equivalent regulations of an Agreement State shall provide radiation safety precautions and instructions relating to handling, use, and storage of these products as specified in the license.

(c)(1) Each person licensed under § 40.52 shall maintain record of transfer.

(2) The record must clearly identify the specific licensee preparing the record and include the license number of the specific licensee and indicate that the products are transferred for use under § 40.13(c), giving the specific paragraph designation, or equivalent regulations of an Agreement State.

(3) The record must include the following information on products transferred to other persons for use under § 40.13(c) or equivalent regulations of an Agreement State:

(i) A description or identification of the type of each product and the model number(s), if applicable;

(ii) For each type of source material in each type of product and each model number, if applicable, the total quantity of the source material; and

(iii) The number of units of each type of product transferred by calendar year and model number, if applicable.

(4) The licensee shall maintain the record of a transfer and all information concerning transfers in accordance with § 40.61.

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 44. The authority citation for part 70 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 184, 186, 187, 193, 223, 234, 274, 1701 (42 U.S.C. 2071, 2073, 2077(d), 2138, 2152, 2201, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

**§ 70.25 [Amended]**

■ 45. Amend § 70.25 by:

■ a. In paragraph (a)(2), remove the phrase ''unsealed special nuclear material'' and add in its place the phrase ''unsealed special nuclear material of half-life greater than 120 days and''; and

■ b. In paragraph (b) introductory text, remove the phrase ''unsealed special nuclear material'' and add in its place the phrase ''unsealed special nuclear material of half-life greater than 120 days''.

## PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 46. The authority citation for part 150 continues to read as follows:

**Authority:** Atomic Energy Act sec. 161, 181, 223, 234 (42 U.S.C. 2201, 2021, 2231, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under Atomic Energy Act secs. 11e(2), 81, 83, 84 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under Atomic Energy Act sec. 53 (42 U.S.C. 2073). Section 150.15 also issued under Nuclear Waste Policy Act secs. 135 (42 U.S.C. 10155). Section 150.17a also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 150.30 also issued under Atomic Energy Act sec. 234 (42 U.S.C. 2282).

**§ 150.14 [Reserved]**

■ 47. Remove and reserve § 150.14.

■ 48. Revise and republish § 150.20 to read as follows:

**§ 150.20 Recognition of Agreement State licenses.**

(a)

(1) Provided that the provisions of paragraph (b) of this section have been met, any person who holds a specific license or a standard general license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted a general license to conduct the same activity in—

(i) Non-Agreement States;

(ii) Areas of Exclusive Federal jurisdiction within Agreement States; and

(iii) Offshore waters.

(2) The provisions of paragraph (a)(1) of this section do not apply if the specific Agreement State license or Agreement State standard general license limits the authorized activity to a specific installation or location.

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State or standard general license granted by an Agreement State to a person engaging in activities in a non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7(a) through (f), 30.9, 30.10, 30.34, 30.41, and 30.51 through 30.63 of this chapter; §§ 40.7(a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61 through 40.63, 40.71, and 40.81 of this chapter; §§ 70.7(a) through (f), 70.9, 70.10, 70.32, 70.42, 70.52, 70.55, 70.56, 70.60 through 70.62 of this chapter;

§§ 74.11, 74.15, and 74.19 of this chapter; and to the provisions of 10 CFR parts 19, 20 and 71 and subparts C through H of part 34, §§ 39.15 and 39.31 through 39.77 of this chapter. In addition, any person engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters under the general licenses provided in this section:

(1) Shall, no later than the day of engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, ''Report of Proposed Activities in Non-Agreement States,'' a copy of its Agreement State specific license or a copy of its validated Agreement State standard general license, and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed on the NRC Form 241 and in appendix D to part 20 of this chapter for the Region in which the Agreement State that issued the license is located.

(2) Shall file an amended NRC Form 241 for changes in work locations except for activities performed offshore, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

(3) Shall not, in any non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters, transfer or dispose of radioactive material possessed or used under the general licenses provided in this section, except by transfer to a person who is specifically licensed by the Commission to receive this material.

(4) Shall not, under the general license concerning activities in non-Agreement States or in areas of exclusive Federal jurisdiction within Agreement States, possess or use radioactive materials, or engage in the activities authorized in paragraph (a) of this section, for more than 180 days in any calendar year, except that the general license in paragraph (a) of this section concerning activities in offshore waters authorizes that person to possess or use radioactive materials, or engage in the activities authorized, for an unlimited period of time.

(5) Shall comply with all terms and conditions of the specific license issued by an Agreement State, or as applicable, comply with the terms and conditions of the standard general license granted by an Agreement State, except such terms or conditions as are contrary to the requirements of this section.

Dated: May 14, 2026.

For the Nuclear Regulatory Commission.

**Carrie Safford,**

*Secretary of the Commission.*

[FR Doc. 2026–09877 Filed 5–15–26; 8:45 am]

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Part VI

## National Credit Union Administration

12 CFR Parts 702, 704, et al.
Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the National Credit Union Administration; Proposed Rule

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 702, 704, 706, 745, and 747

**RIN 3133–AG10**

### Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the National Credit Union Administration

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Supplemental proposed rule.

**SUMMARY:** The NCUA Board (Board) is seeking comment on proposed regulations to implement portions of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act). The GENIUS Act charges the NCUA with licensing, regulating, and supervising Payment Stablecoin issuers that are subsidiaries of federally insured credit unions (FICU subsidiaries). In February 2026, the NCUA issued proposed regulations to govern investments in and licensing of permitted payment stablecoin issuers subject to the NCUA's jurisdiction. This current proposal supplements the previous proposal and would govern the issuance of Payment Stablecoins and certain related activities by entities subject to the NCUA's jurisdiction. This proposal would also make amendments to address share insurance coverage, tokenized shares, and other conforming and clarifying amendments.

**DATES:** Comments must be received by July 17, 2026.

**ADDRESSES:** Comments may be submitted in one of the following ways. (Please send comments by one method only):

- *Federal eRulemaking Portal: https://www.regulations.gov.* The docket number for this proposed rule is NCUA–2026–1024. Follow the ''Submit a comment'' instructions. If you are reading this document on federalregister.gov, you may use the green ''SUBMIT A PUBLIC COMMENT'' button beneath this rulemaking's title to submit a comment to the regulations.gov docket. A plain language summary of the proposed rule is also available on the docket website.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mailing address. Mailed and hand-delivered comments must be received by the close of the comment period.

*Public inspection:* Please follow the search instructions on *https://www.regulations.gov* to view the public comments. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*Office of Examination and Insurance:* Amanda Parkhill, at (703) 518–6385 or at 1775 Duke Street, Alexandria, VA 22314. *Office of General Counsel:* Thomas Zells and Rachel Ackmann, Senior Staff Attorneys; or Ariel Woodard-Stephens, Staff Attorney at (703) 518–6540 or at the above address.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

On July 18, 2025, President Trump signed the GENIUS Act into law. The GENIUS Act establishes a regulatory framework for Payment Stablecoins and provides pathways for regulation at both the Federal and State level.

Stablecoins are Digital Assets, *i.e.,* digital representations of value recorded on a cryptographically secured Distributed Ledger,[1] such as a blockchain.[2] In contrast to many other types of Digital Assets, stablecoins are intended to maintain a stable value relative to a reference asset, most often fiat currency.[3] Most stablecoin issuers use a pool of high quality and highly liquid reserve assets to back the stablecoin and maintain a stable value.[4] Stablecoins often rely on smart contracts (*i.e.,* self-executing programs that automatically enforce agreements between users) for different aspects of their functionality.[5] When an issuer redeems a tendered stablecoin, it typically accepts a stablecoin from a user or third party in exchange for a fixed amount of Monetary Value, *e.g.,* one dollar.[6] Stablecoins are frequently used to facilitate trading in Digital Assets and may be used for retail and institutional payments.[7] Certain stablecoin issuers have the capability to freeze funds or block transactions involving their stablecoin, which they may do, for example, to effectuate a court order.[8]

The GENIUS Act focuses on a subset of stablecoins: Payment Stablecoins. Under section 2(22) of the Act, ''payment stablecoin'' means ''a digital asset—(i) that is, or is designed to be, used as a means of payment or settlement; and (ii) the issuer of which—(I) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value, not including a digital asset denominated in a fixed amount of monetary value; and (II) represents that such issuer will maintain, or create the reasonable expectation that it will maintain, a stable value relative to the value of a fixed amount of monetary value[.]'' [9] The term does not include a Digital Asset that is (i) a national currency; (ii) a deposit, including a deposit recorded using distributed ledger technology; or (iii) a security, as defined in 15 U.S.C. 77b, 78c, or 80a–2.[10]

The GENIUS Act generally prohibits any Person other than a permitted payment stablecoin issuer (PPSI) from issuing a Payment Stablecoin in the

[1] 12 U.S.C. 5901(6).

[2] White House, ''Strengthening American Leadership in Digital Financial Technology,'' at 15 (July 17, 2025), [hereinafter, Digital Financial Technology Report], *https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf.* A cryptographically secured ledger uses cryptography to maintain the integrity of the ledger. *See also* E.O. No. 14178, Strengthening American Leadership in Digital Financial Technology, 90 FR 8647 (Jan. 31, 2025) (defining blockchain to mean ''any technology where data is: (i) shared across a network to create a public ledger of verified transactions or information among network participants; (ii) linked using cryptography to maintain the integrity of the public ledger and to execute other functions; (iii) distributed among network participants in an automated fashion to concurrently update network participants on the state of the public ledger and any other functions; and (iv) composed of source code that is publicly available'').

[3] Digital Financial Technology Report at 88, 130.

[4] *See id.* at 90.

[5] *See id.* at 11.

[6] Currently, rather than mint or redeem stablecoins through the issuer, most market participants rely on digital asset

trading platforms to exchange stablecoins for national currencies (or even other stablecoins).

[7] *Id.* at 93.

[8] *See id.* at 105.

[9] 12 U.S.C. 5901(22).

[10] The Act provides that, for the avoidance of doubt, no bond, note, evidence of indebtedness, or investment contract that was issued by a permitted payment stablecoin issuer shall qualify as a security solely by virtue of its satisfying the conditions described in section 2(22)(A) of the Act, consistent with section 17 of the Act. 12 U.S.C. 5901(22)(B)(iii).

United States.[11] It further prohibits digital asset service providers [12] from offering or selling a Payment Stablecoin to a Person in the United States unless the issuer is a PPSI or the issuer is a foreign payment stablecoin issuer that meets certain requirements.[13] The GENIUS Act sets forth various regulatory and licensing requirements for PPSIs and foreign payment stablecoin issuers. In many instances, the GENIUS Act states that the specific requirements applicable to these entities (*e.g.,* those related to capital, liquidity, operational risk management), shall be set forth by regulations issued by the relevant primary Federal payment stablecoin regulator, in coordination with other relevant agencies, as appropriate.[14] This proposed rulemaking represents one piece of the GENIUS Act's implementing regulations.[15]

Under the GENIUS Act, ''insured depository institutions,'' which the Act defines to include both FDIC-insured depository institutions and FICUs (collectively referred to as ''IDIs''), cannot be issuers of Payment Stablecoins. Instead, IDIs must use ''subsidiaries'' as issuers. The GENIUS Act defines the term ''subsidiary of an insured credit union'' to mean ''(A) an organization providing services to the insured credit union that are associated with the routine operations of credit unions, as described in section 107(7)(I) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I)); (B) a credit union service organization, as such term is used under part 712 of title 12, Code of Federal Regulations, with respect to which the insured credit union has an ownership interest or to which the insured credit union has extended a loan; and (C) a subsidiary of a State chartered insured credit union authorized under State law.'' [16] The GENIUS Act requires that issuers that are subsidiaries of IDIs (including subsidiaries of FICUs) must be regulated by the primary Federal payment stablecoin regulators and does not allow them to opt for the state-level regulatory framework. Thus, the NCUA has jurisdiction over Payment Stablecoin issuers that are FICU subsidiaries.

Under the GENIUS Act, only PPSIs may issue a Payment Stablecoin in the United States, subject to certain exceptions and safe harbors. PPSIs are subject to a number of requirements, including requirements related to reserves, capital, liquidity, illicit finance, and information technology risk management standards. For example, PPSIs must maintain reserves backing the Payment Stablecoin on a one-to-one basis using U.S. currency or certain other liquid assets, as specified. PPSIs must also publicly disclose their redemption policy and publish monthly the details of their reserves.

The GENIUS Act details the process for the primary Federal payment stablecoin regulators, which include the NCUA, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve System (Federal Reserve Board), to evaluate and review applications for licenses to be PPSIs and provides examination, supervision, and enforcement authority over PPSIs. Other issues addressed in the GENIUS Act include the provision of custody services for Payment Stablecoins; application of the Bank Secrecy Act and anti-money laundering and economic sanctions requirements; and treatment of PPSIs in insolvency proceedings.

The GENIUS Act establishes clear prohibitions and penalties to prevent the misrepresentation of Federal backing or insurance for Payment Stablecoins and to ensure that only authorized products may be marketed as such.[17] The GENIUS Act explicitly dictates that Payment Stablecoins are not backed by the full faith and credit of the United States, they are not guaranteed by the U.S. Government, nor are they covered by deposit or share insurance from the FDIC or NCUA. Similarly, it is unlawful to market a product in the United States as a Payment Stablecoin unless it is issued pursuant to the GENIUS Act.[18]

As detailed below, the GENIUS Act imposes a number of rulemaking, review, and reporting requirements on the primary Federal payment stablecoin regulators, including the NCUA. This supplemental proposal proposes regulations to implement the standards and restrictions imposed by the GENIUS Act on PPSIs (hereinafter, the ''NCUA Standards Proposal''). This NCUA Standards Proposal supplements the notice of proposed rulemaking that the NCUA published in the **Federal Register** on February 12, 2026, entitled ''Investments in and Licensing of Permitted Payment Stablecoins Issuers'' (hereinafter, the ''NCUA Licensing Proposal'').[19]

Separately, as is required by the GENIUS Act, the NCUA is engaging in a required review of its existing guidance and regulations to determine what steps are necessary, if any, to amend or promulgate new regulations and guidance to clarify FICUs' authority to engage in the Payment Stablecoin activities and investments contemplated by the GENIUS Act.

In addition to the above, the GENIUS Act requires the NCUA to examine and supervise issuers that are FICU subsidiaries. Thus, the NCUA is working to update various NCUA examination policies, guidance, and procedures, such as the National Supervision Policy Manual and Examiner's Guide, to accommodate the new examination and supervision authority over these FICU subsidiaries. The NCUA is also working to determine

[11] See 12 U.S.C. 5902(a). See also 12 U.S.C. 5916 (excepting foreign payment stablecoin issuers that meet certain requirements from the prohibition in section 3 of the Act).

[12] ''Digital asset service provider'' means a person that, for compensation or profit, engages in the business in the United States (including on behalf of customers or users in the United States) of: (1) exchanging digital assets for monetary value; (2) exchanging digital assets for other digital assets; (3) transferring digital assets to a third party; (4) acting as a digital asset custodian; or (5) participating in financial services relating to digital asset issuance. See 12 U.S.C. 5901(7). The term ''digital asset service provider'' does not include (1) a distributed ledger protocol; (2) an immutable and self-custodial software interface; or (3) a person solely by virtue of their (A) developing, operating, or engaging in the business of developing distributed ledger protocols or self-custodial software interfaces; (B) developing, operating, or engaging in the business of validating transactions or operating a distributed ledger; or (C) participating in a liquidity pool or other similar mechanism for the provisioning of liquidity for peer-to-peer transactions. See id. A liquidity pool is a portfolio of digital assets that is algorithmically bound and traded based on smart contracts. Liquidity providers and takers interact with liquidity pools by adding assets that the liquidity pools trade and receive a liquidity pool token in return that is proportionate to the percentage of assets they have contributed to the liquidity pool. Digital Financial Technology Report at 23.

[13] The prohibition against digital asset service providers offering or selling Payment Stablecoins that are not issued by PPSIs begins on July 18, 2028. See 12 U.S.C. 5902(b)(1). The prohibition against digital asset service providers offering or selling Payment Stablecoins that are not issued by foreign payment stablecoin issuers that meet certain requirements goes into effect as of the effective date of the GENIUS Act. See 12 U.S.C. 5902(b)(2). The prohibitions that apply to a digital asset service provider would apply to an issuer to the extent that the issuer is a digital asset service provider.

[14] *See, e.g.,* 12 U.S.C. 5903(a)(4), (b), (h).

[15] For example, on September 19, 2025, the Department of the Treasury issued an advance notice of proposed rulemaking concerning the GENIUS Act. See 90 FR 45159 (Sept. 19, 2025). On December 19, 2025, the FDIC released a notice of proposed rulemaking related to certain application provisions under the GENIUS Act. 90 FR 59409 (Dec. 19, 2025). On February 12, 2026, the NCUA issued a notice of proposed rulemaking relating to investments in and licensing of PPSIs. 91 FR 6531 (Feb. 12, 2026). On March 2, 2026, the OCC issued a notice of proposed rulemaking relating to the issuance of Payment Stablecoins and certain related activities by entities subject to the OCC's jurisdiction. 91 FR 10202 (Mar. 2, 2026).

[16] 12 U.S.C. 5901(33).

[17] *See* 12 U.S.C. 5903(e).

[18] 12 U.S.C. 5903(e)(3).

[19] 91 FR 6531 (Feb. 12, 2026).

whether further guidance to FICUs and FICU subsidiaries may be necessary on these subjects.

This proposal sets forth, and seeks comment on, the regulations that would apply to NCUA-Licensed Permitted Payment Stablecoin Issuers (NCUA-Licensed PPSIs) as well as certain custody activities conducted by FICUs and NCUA-Licensed PPSIs. These proposed regulations do not address stablecoins that do not qualify as Payment Stablecoins or issuers for which the NCUA does not have regulatory or enforcement authority. The GENIUS Act's effective date is the earlier of 18 months after the enactment date (July 18, 2025) or 120 days after the primary Federal payment stablecoin regulators issue final regulations implementing the GENIUS Act. The NCUA anticipates that these implementing regulations will be updated, as necessary, in the years following the effective date of the GENIUS Act as the business practices of NCUA-Licensed PPSIs continue to evolve and develop. In addition, other regulations beyond those addressed in this rulemaking may need to be updated in light of the passage of the GENIUS Act. This proposal would also make amendments to address share insurance coverage, tokenized shares, and other conforming and clarifying amendments.

*A. Self-Executing Provisions*

The GENIUS Act includes a number of self-executing provisions that are not addressed in this rulemaking. For example, the GENIUS Act includes several provisions addressing the applicability of State law to PPSIs. These provisions ensure that FICU subsidiaries approved to be NCUA-Licensed PPSIs are not subject to State licensure and address the effect of the GENIUS Act on State consumer protection laws.

Section 5(h) of the GENIUS Act expressly preempts ''any State requirement for a charter, license, or other authorization to do business with respect to a'' FICU subsidiary approved to be an NCUA-Licensed PPSI.[20] As a result, these entities are only required to obtain authorization to do business from the NCUA, which reduces the unnecessary complexity that would result from requiring these entities to also obtain a charter, license, or other authorization from one or more States. Section 7(f)(4) of the GENIUS Act provides that nothing in the GENIUS Act preempts State consumer protection laws.[21]

Together, these GENIUS Act provisions establish a framework for assessing the applicability of State law to a FICU subsidiary approved to be an NCUA-Licensed PPSI.[22] Because these GENIUS Act provisions are self-executing, the NCUA is not proposing regulatory text to implement them. However, the agency invites public comment on all aspects of this framework, including whether the self-executing provisions of the GENIUS Act should be codified in the NCUA's regulations for convenience.

## II. Legal Authority

As discussed in Section I. Background of this **SUPPLEMENTARY INFORMATION** section, the NCUA is a primary Federal payment stablecoin regulator with respect to a FICU or FICU subsidiary.[23] As a primary Federal payment stablecoin regulator, the GENIUS Act provides authority for the NCUA to approve and license issuance of Payment Stablecoins through FICU subsidiaries,[24] establish regulations for issuing Payment Stablecoins,[25] and examine for and enforce applicable requirements imposed on FICU subsidiaries.[26] The GENIUS Act also confers authority related to standards for custody of Payment Stablecoins, Private Keys, and reserves.[27] The GENIUS Act grants the NCUA general authority to promulgate regulations to carry out the GENIUS Act through appropriate notice and comment rulemaking.[28]

Apart from the GENIUS Act, the FCU Act grants the NCUA a broad mandate to issue regulations governing both Federal Credit Unions (FCUs) and all FICUs. Section 120 of the FCU Act is a general grant of regulatory authority, and it authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[29] Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[30]

Additionally, Section 204 of the FCU Act authorizes the Board, through its examiners, ''to examine any [federally] insured credit union . . . to determine the condition of any such credit union for insurance purposes.'' [31] Section 206(e) of the FCU Act authorizes the Board to take certain actions against a FICU, if, in the opinion of the Board, the credit union ''is engaging or has engaged, or the Board has reasonable cause to believe that the credit union or any institution affiliated party is about to engage, in any unsafe or unsound practice in conducting the business of such credit union.'' [32] Therefore, the Board has statutory authority to determine whether a FICU is operated in an unsafe or unsound manner and terminate a FICU's insurance if a FICU is not operated in a safe or sound manner.

With respect to proposed amendments to clarify the share insurance coverage of funds deposited in Share Accounts at FICUs that serve as Reserve Assets and the treatment of tokenized Share Accounts, in addition to the broad FCU Act authorities provided in sections 120 and 209 of the FCU Act, the FCU Act provides that the ''[d]etermination of the net amount of share insurance under subparagraph (A), shall be in accordance with such regulations as the Board may prescribe . . .'' [33] and that the ''Board may define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts. . ..'' [34] As discussed later in this preamble, the FCU Act also defines the term ''member account.'' [35] The NCUA insures member accounts at all FICUs. Importantly, this term is not limited to those persons enumerated in the credit union's field of membership who have become members. It also includes as member accounts certain nonmembers, such as other nonmember credit unions; nonmember public units and political subdivisions; and, in the case of credit unions serving predominantly low-income members, deposits of nonmembers generally. In other words, the NCUA provides share insurance coverage to members and those otherwise eligible to maintain insured accounts at FICUs.

## III. The NCUA Licensing Proposal

On February 12, 2026, the NCUA published a notice of proposed rulemaking in the **Federal Register** entitled ''Investments in and Licensing of Permitted Payment Stablecoins Issuers.'' The NCUA Licensing Proposal served as the first of two main proposed

[20] 12 U.S.C. 5904(h).

[21] 12 U.S.C. 5906(f)(4).

[22] The GENIUS Act also addresses the applicability of State law to State qualified payment stablecoin issuers. *See, e.g.,* section 7(f) of the Act (12 U.S.C. 5906(f)).

[23] 12 U.S.C. 5901(25)(B).

[24] 12 U.S.C. 5904.

[25] 12 U.S.C. 5903(h).

[26] 12 U.S.C. 5903 and 5905.

[27] 12 U.S.C. 5909.

[28] 12 U.S.C. 5913.

[29] 12 U.S.C. 1766.

[30] 12 U.S.C. 1789.

[31] 12 U.S.C. 1784.

[32] 12 U.S.C. 1786.

[33] 12 U.S.C. 1787(k)(1)(B).

[34] 12 U.S.C. 1787(k)(1)(C).

[35] 12 U.S.C. 1752(5).

rules that the NCUA anticipated issuing to implement the GENIUS Act. The NCUA is providing a high-level summary of that proposal to assist stakeholders as they review this second NCUA supplemental proposed rulemaking, the NCUA Standards Proposal, addressing standards for NCUA-Licensed PPSIs and FICUs, among other subjects.

The NCUA interprets the GENIUS Act to limit PPSI status to those institutions functioning as a subsidiary of an IDI (including a FICU),[36] a Federal qualified payment stablecoin issuer,[37] and a State qualified payment stablecoin issuer.[38] FICUs are not permitted to issue Payment Stablecoins directly. However, the GENIUS Act provides that subsidiaries of IDIs may apply and be approved to be PPSIs. As FICUs are expressly defined as IDIs, FICU subsidiaries may apply for and receive approval and license under the GENIUS Act to be PPSIs.

Section 5 of the GENIUS Act establishes the procedures and standards for the ''approval of subsidiaries of insured depository institutions.'' [39] The NCUA is required to ''receive, review, and consider for approval applications'' to issue Payment Stablecoins through a FICU subsidiary and to ''establish a process and framework for the licensing, regulation, examination and supervision of such entities that prioritizes the safety and soundness of such entities.'' Section 5(a)(2) requires the NCUA to issue regulations to carry out section 5.[40] Section 5(g) further requires that the NCUA issue rules necessary for the regulation of the issuance of Payment Stablecoins.[41]

As explained in more detail in the NCUA Licensing Proposal, the GENIUS Act does not allow FICUs to directly issue Payment Stablecoins and instead provides that they must be issued through FICU subsidiaries that receive an NCUA–PPSI license. The Board made certain decisions in proposing to implement the GENIUS Act's application and licensing requirements that it believes will simplify the process and reduce the costs for the credit union industry and the NCUA. The Board discusses this approach in more detail in the NCUA Licensing Proposal.

The NCUA Licensing Proposal determined that it is preferrable for FICU subsidiaries themselves to submit the required applications to be an NCUA-Licensed PPSI jointly with their FICU Parent Company(ies), as defined in the NCUA-Licensing Proposal, rather than having every single FICU investing in them submit an application. The Board's proposed approach would also require the applying FICU subsidiary, and any of its FICU Parent Companies and Principal Shareholders, to provide written certification that any filing or supporting material submitted to the NCUA contains no material misrepresentations or omissions. Further, as required by the GENIUS Act, all Directors and Officers of the applying FICU subsidiary, its FICU Parent Company(ies), and any of its Principal Shareholders would have to provide certain information so that the NCUA can evaluate their competence, experience, and integrity and ensure they do not have felony convictions prohibited by the GENIUS Act. Finally, the NCUA Licensing Proposal proposed limiting FICUs to investing in NCUA-Licensed PPSIs. The Board believes this limitation is consistent with the definition of FICU subsidiary in the GENIUS Act and should not pose a barrier to the credit union industry's ability to facilitate Payment Stablecoin services for their members.

Further information about the proposed regulations to govern the process for reviewing and granting NCUA–PPSI licenses can be found in the NCUA Licensing Proposal.

## IV. The NCUA Standards Proposal

The NCUA is issuing this supplemental proposed rule governing the issuance of Payment Stablecoins and certain related activities by entities subject to the NCUA's jurisdiction to supplement the NCUA Licensing Proposal and substantially implement the NCUA's proposed regulatory regime for NCUA-Licensed PPSIs and FICUs.

The NCUA is proposing the following procedures and standards for NCUA-Licensed PPSIs. Each section of the proposed rule will be discussed separately. As noted, the NCUA is providing a high-level summary of portions of the NCUA Licensing Proposal to assist stakeholders as they review this NCUA Standards Proposal. Unless explicitly stated in this supplemental proposal, the NCUA is not reproposing or otherwise modifying those provisions proposed in the NCUA Licensing Proposal.

The NCUA also notes that, as discussed throughout the NCUA Licensing Proposal, the GENIUS Act frequently uses banking-specific terminology and standards. Given this reliance on banking-specific terminology and the importance of providing consistent regulatory terminology and standards across the various primary Federal payment stablecoin regulators, where possible, proposed part 706 would maintain consistency with the standards and terminology proposed by the other primary Federal payment stablecoin regulators.

### *A. § 706.1. Authority, Purpose, and Scope*

The NCUA Licensing Proposal proposed § 706.1 to describe the authority, purpose, and scope of part 706. The NCUA Standards Proposal is not proposing changes to what was previously proposed, but is restating the explanation provided in the NCUA Licensing Proposal to assist stakeholders as they review this proposal. Proposed § 706.1 would state that the NCUA is issuing part 706 under the GENIUS Act. Section 706.1 would state that part 706 applies to FICUs and all PPSIs with investment or loans from FICUs and sets forth such entities' requirements for an NCUA-issued license. Finally, § 706.1 would state that there is nothing in this part that shall be read to limit the authority of the NCUA to take action under provisions of law other than the GENIUS Act, including action to address unsafe or unsound practices or conditions, or violations of law or regulation, under section 206 of the FCU Act.

[36] As discussed throughout the proposed rule, the GENIUS Act uses banking-specific terminology when defining PPSIs. For example, the GENIUS Act uses the two defined terms ''subsidiary'' and ''insured depository institution'' without using the defined term, ''subsidiary of an insured credit union.'' With respect to subsidiaries of FICUs, the Board believes the defined terms ''subsidiary'' of an ''insured depository institution'' should be read referring to the defined term ''subsidiary of an insured credit union.'' Given that FICUs are defined as insured depository institutions, it appears reasonable to read the terms synonymously. Additionally, the GENIUS Act expressly provides that all subsidiaries of an Insured Credit Union are subject to NCUA jurisdiction incorporating the defined term of ''subsidiary of an insured credit union'' into the definition of primary Federal payment stablecoin regulator. The term primary Federal payment stablecoin regulator is used for approvals under section 5 and it would be inharmonious for the NCUA to approve applications for issuers that otherwise are not subject to NCUA supervision.

[37] A Federal qualified payment stablecoin issuer includes (1) a nonbank entity, (2) an uninsured national bank, and (3) a Federal branch. FICUs and their subsidiaries would not qualify as Federal qualified payment stablecoin issuers.

[38] A State qualified payment stablecoin issuer is an entity that is: (A) legally established under the laws of a State and approved to issue payment stablecoins by a State payment stablecoin regulator; and (B) is not an uninsured national bank chartered by the OCC, a Federal branch, an IDI, or a subsidiary of a national bank, Federal branch, or IDI. FICUs and FICU subsidiaries, including CUSOs, therefore, would not qualify as a State qualified payment stablecoin issuer.

[39] 12 U.S.C. 5904.

[40] 12 U.S.C. 5904(a)(2).

[41] 12 U.S.C. 5904(g).

*B. § 706.2. Definitions*

Proposed § 706.2 would provide the definitions used throughout part 706.[42] It would state that, unless otherwise provided in part 706, the terms used in this part have the same meanings as set forth in 12 U.S.C. 1752 and 5901. It would also state that all accounting terms not otherwise defined in this part have meanings consistent with the commonly accepted meanings under United States generally accepted accounting principles (U.S. GAAP). Proposed § 706.2 would provide the following defined terms specific to part 706.

This NCUA Standards Proposal restates the definitions provided in the NCUA Licensing Proposal to assist commenters. Except where explicitly noted, the NCUA Standards Proposal does not modify the proposed definitions from the NCUA Licensing Proposal.

As discussed throughout the NCUA Licensing Proposal, the GENIUS Act frequently uses banking-specific terminology and standards. Given this reliance on banking-specific terminology and the importance of providing consistent regulatory terminology and standards across the various primary Federal payment stablecoin regulators, where possible, proposed part 706 would maintain consistency with the standards and terminology proposed by the other primary Federal payment stablecoin regulators. The GENIUS Act's reliance on banking-specific terminology also compels the NCUA to at times clarify the best meaning of credit union specific terminology in part 706.

The NCUA solicits stakeholder input as to the below definitions and specifically as to whether individual definitions appropriately balance consistent meaning across the primary Federal payment stablecoin regulators with needed differences to accommodate the credit union industry.

1. Affiliate

The NCUA is proposing to define the term ''Affiliate'' consistent with the definition proposed by the OCC in their Payment Stablecoin notice of proposed rulemaking published in the **Federal Register** on March 2nd (hereinafter, the ''OCC Proposal''). The OCC proposal would define the term consistent with the definition in the Bank Holding Company Act, 12 U.S.C. 1841(k), but modified to use the defined term ''Person'' in place of the term ''company.''[43] Under the proposed rule, the term ''Affiliate'' would mean a Person that controls, is controlled by, or is under common Control with another person. The NCUA believes the proposed definition of Affiliate would include the appropriate individuals and entities that could be involved in Payment Stablecoin issuance. As articulated above, the NCUA also believes that it is important to, where possible, provide consistent regulatory standards across the various primary Federal payment stablecoin regulators.

2. Applying Issuer

As proposed in the NCUA Licensing Proposal, the term ''Applying Issuer'' would mean any entity applying to the NCUA for an NCUA–PPSI license. This term would be used throughout part 706 to generally refer to any entity that is applying for an NCUA–PPSI license. As is required in proposed § 706.103, an Applying Issuer must apply jointly with any Insured Credit Union Parent Company(ies), as defined in the NCUA Licensing Proposal.

3. Bank Secrecy Act

The NCUA is proposing to define the term ''Bank Secrecy Act'' consistent with the definition provided in the GENIUS Act, 12 U.S.C. 5901(2). Under the proposal, the term ''Bank Secrecy Act'' would mean: (1) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b); (2) chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 *et seq.*); and (3) subchapter II of chapter 53 of title 31, United States Code and notes thereto (31 U.S.C. 5311 *et seq.*). The proposal would add the phrase ''and notes thereto'' as a clarification.

4. Control

The NCUA is defining ''Control'' such that a Person would control another Person if: (1) the Person directly or indirectly or acting through one or more other Persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other Person; (2) the Person controls in any manner the election of a majority of the Directors or trustees of the other Person; or (3) the NCUA determines, after notice and opportunity for hearing, that the Person directly or indirectly exercises a controlling influence over the management or policies of the other Person. Like the definition of ''Affiliate,'' the proposed definition of ''Control'' is generally consistent with the Bank Holding Company Act.[44] The NCUA notes that § 706.111, as proposed in the NCUA Licensing Proposal, included certain provisions regarding changes in control of an NCUA-Licensed PPSI related to ownership interests of FICU Parent Companies. As discussed later in this NCUA Standards Proposal, the NCUA is proposing to change proposed § 706.111 to refer to changes in FICU Parent Companies rather than changes in control. This is to help clarify that NCUA-Licensed PPSIs obtaining investment from FICUs and the investing FICUs should refer to the standards for FICUs that are or would be Parent Companies as described in § 706.111 while NCUA-Licensed PPSIs obtaining investment from non-FICU investors and the non-FICU investors should refer to this definition of Control and § 706.205(m). This is not intended to create a substantive change from the standards applicable to FICU Parent Companies initially proposed in the NCUA Licensing Proposal.

5. Customer

The NCUA is proposing to define the term ''Customer'' to mean a Person that purchases (through any consideration) the products or services of another Person. This term appears in a variety of different contexts in the proposed rule, so the NCUA has proposed a broad definition for the term. The definition for purposes of the proposed rule is not intended to affect any customer identification program or customer due diligence rules.

6. Digital Asset

The NCUA is proposing to define the term ''Digital Asset'' as provided in section 2(6) of the GENIUS Act.[45] Under the proposed rule, the term ''Digital Asset'' would mean any digital representation of value that is recorded on a cryptographically secured Distributed Ledger.

7. Director

As provided in the NCUA Licensing Proposal, proposed § 706.2 would define the term ''Director'' to mean an individual who serves on the board of directors of an Applying Issuer, a Parent Company of the Applying Issuer, or a Principal Shareholder of the Applying

[42] The definitions in proposed § 706.2 describe only terms used in proposed part 706. These definitions do not interpret terms for purposes of any other statute or regulation and are not issued pursuant to section 3(d) of the GENIUS Act (12 U.S.C. 5902(d)).

[43] While the proposed definition of ''Affiliate'' is consistent with the definition in the Bank Holding Company Act, the NCUA would retain interpretive authority with respect to this definition for purposes of proposed 12 CFR part 706.

[44] While the proposed definition of Control is consistent with the definition in the Bank Holding Company Act, the NCUA would retain interpretive authority with respect to this definition for purposes of proposed 12 CFR part 706.

[45] 12 U.S.C. 5901(6).

Issuer. Under the NCUA-Licensing Proposal, individuals meeting the definition of a Director will generally need to complete the NCUA's Biographical and Financial Report so that the NCUA can verify their competence, experience, and integrity, as is required by the GENIUS Act.[46] The Directors and proposed Directors of an Applying Issuer will also generally need to provide legible fingerprints for a biometric based criminal history search so that the NCUA can evaluate whether any of these individuals have been convicted of a felony offense involving insider trading, embezzlement, cybercrime, money laundering, financing of terrorism, or financial fraud as is required by the GENIUS Act.[47]

As part of this NCUA Standards Proposal, the NCUA is proposing to amend the definition as proposed in the NCUA Licensing Proposal to specifically include individuals who serve on the board of directors of an NCUA-Licensed PPSI and to exempt certain advisory directors. These are not intended to be substantive changes, but instead to make clear that (1) an individual that is a Director of an Applying Issuer remains covered by the term Director once the Appling Issuer becomes an NCUA-Licensed PPSI; and (2) the definition is not intended to cover advisory directors who do not have the authority to vote on matters before the board of directors or any committee of the board of directors and provide solely general policy advice to the board of directors or any committee. Additionally, it is worth noting that Directors of NCUA-Licensed PPSIs would be subject to a number of additional requirements imposed by the NCUA Standards Proposal, including those related to Insider and Affiliate transactions in proposed § 706.204(a)(6).

Finally, as noted above, the NCUA is also proposing to include language in the definition of Director exempting advisory directors who do not have the authority to vote on matters before the board of directors or any committee of the board of directors and provides solely general policy advice to the board of directors or any committee.

8. Distributed Ledger

The NCUA is proposing to define the term ''Distributed Ledger'' as provided in the GENIUS Act with certain technical edits.[48] The proposed rule would define the term ''Distributed Ledger'' to mean technology in which (1) data is shared across a network that creates a public digital ledger of verified transactions or information among network participants and (2) cryptography is used to link the data to maintain the integrity of the public ledger and execute other functions. The proposed definition reformats the definition in the GENIUS Act by using numbering to distinguish between the two components of the definition. The formatting changes are technical and do not have a substantive effect on the definition.

9. Distributed Ledger Protocol

The NCUA is proposing to define the term ''Distributed Ledger Protocol'' as provided in the GENIUS Act.[49] The term ''Distributed Ledger Protocol'' would mean publicly available and accessible executable software deployed to a Distributed Ledger, including smart contracts or networks of smart contracts.

10. Eligible Financial Institution

The NCUA is proposing to define ''Eligible Financial Institution'' to mean (1) a Person that (a) is eligible to hold Reserve Assets in custody under section 10(a) of the GENIUS Act; [50] (b) complies with the applicable requirements in section 10(b), (c), and (d) of the GENIUS Act,[51] including with applicable implementing regulations issued by a relevant Federal payment stablecoin regulator as defined in 12 U.S.C. 5901(25), primary financial regulatory agency described in 12 U.S.C. 5301(12)(B) or (C), State bank supervisor, or State credit union supervisor; and (c), if applicable, enters into a custody agreement with an NCUA-Licensed PPSI documenting the Person's compliance with section 10(b), (c) and (d) of the Act as well as policies and procedures to ensure compliance; or (2) a Federal Reserve Bank.

The term ''Eligible Financial Institution'' is relevant to the Reserve Asset diversification and concentration requirements in proposed § 706.202(c) of the proposed rule. Under section 10(a) of the GENIUS Act, a Person may only engage in the business of providing custodial or safekeeping services for the Payment Stablecoin reserve, the Payment Stablecoins used as collateral, or the Private Keys used to issue Payment Stablecoins if the Person (1) is subject to (A) supervision or regulation by a primary Federal payment stablecoin regulator or a primary financial regulatory agency described under subparagraph (B) or (C) of section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301(12)); or (B) supervision by a State bank supervisor, as defined under section 3 of the FDI Act (12 U.S.C. 1813), or a State credit union supervisor, as defined under section 6003 of the Anti-Money Laundering Act of 2020 (31 U.S.C. 5311 note), and such State bank supervisor or State credit union supervisor makes available to the Federal Reserve such information as the Federal Reserve determines necessary and relevant to the categories of information under section 10(d) of the Act; and (2) complies with the requirements under section 10(b), unless such Person holds such property in accordance with similar requirements as required by a primary Federal payment stablecoin regulator, the Securities and Exchange Commission, or the Commodity Futures Trading Commission.

Eligible Financial Institutions would include IDIs regardless of whether the entities engaged in stablecoin activities or provided custody services to NCUA-Licensed PPSIs because these entities are subject to supervision or regulation by a primary Federal payment stablecoin regulator. Thus, for example, under proposed § 706.202(c) an NCUA-Licensed PPSI could deposit reserves in Share Accounts at a FICU regardless of whether the FICU acted as custodian for the NCUA-Licensed PPSI's other Reserve Assets.

To meet the proposed definition, a financial institution must also comply with the applicable requirements of section 10 of the Act,[52] and the relevant custody agreement must reflect compliance with section 10 as well as policies and procedures to ensure such compliance.[53] These criteria are intended to ensure compliance with section 10 of the Act and to encourage appropriate due diligence of entities that hold Reserve Assets for NCUA-Licensed PPSIs.

The NCUA recognizes that multiple agencies will regulate PPSIs and that multiple agencies regulate the entities that may permissibly custody Reserve Assets. The proposed rule would impose requirements on where and how NCUA-Licensed PPSIs may hold Reserve Assets and would also impose requirements on NCUA-regulated institutions that hold Reserve Assets on behalf of PPSIs, including PPSIs not regulated by the NCUA. Accordingly, there may be overlap between the

[46] 12 U.S.C. 5904(c)(3).

[47] *See* 12 U.S.C. 5903(f).

[48] 12 U.S.C. 5901(8).

[49] 12 U.S.C. 5901(9).

[50] 12 U.S.C. 5909(a).

[51] 12 U.S.C. 5909(b)–(d).

[52] 12 U.S.C. 5909.

[53] As discussed above, to the extent that an Eligible Financial Institution does not engage in custody of covered assets, section 10 of the GENIUS Act (12 U.S.C. 5909) would not apply.

requirements imposed by different regulators with separate requirements implementing section 10 of the GENIUS Act that govern how their regulated entities must handle Reserve Assets placed by other PPSIs. The NCUA invites comment on the best ways to manage potentially overlapping requirements. The proposed rule would require that an ''Eligible Financial Institution'' comply with the requirements in section 10(b), (c), and (d) of the GENIUS Act, including applicable implementing regulations. Accordingly, even if different types of Eligible Financial Institutions are subject to different regulations on the safe handling of Payment Stablecoin Reserve Assets, an NCUA-Licensed PPSI could still custody Reserve Assets at any entity that meets the requirements in the definition of ''Eligible Financial Institution.'' Given the diverse set of entities that may permissibly hold Payment Stablecoin reserves, the proposed definition of ''Eligible Financial Institution'' would not necessarily require that Eligible Financial Institutions be subject to uniform regulations implementing the requirements in section 10(b), (c), and (d) of the GENIUS Act. The proposed rule would require an NCUA-Licensed PPSI to enter into a custody agreement with an Eligible Financial Institution, which would establish a baseline that the Eligible Financial Institution is adhering to the requirements in section 10(b), (c), and (d), along with any implementing regulations. In the absence of this requirement, Reserve Assets might be placed at a financial institution without the financial institution even purporting to comply with the requirements in section 10(b), (c), or (d), or possibly even knowing that its Customer's assets represent Payment Stablecoin reserves.

11. Fair Value

The NCUA is proposing to include a definition of the term ''Fair Value'' in the rule. As proposed, the term ''Fair Value'' would mean the fair value as determined under GAAP.[54] Fair value is used in proposed § 706.202 in describing proposed reserve requirements.

12. FDIC

The NCUA is proposing to define FDIC to mean the Federal Deposit Insurance Corporation. This accords with the definition of ''Corporation'' in section 2(5) of the GENIUS Act.[55] The NCUA has opted not to use the term ''Corporation'' to describe the FDIC because that term is used more broadly in the definition of Person, discussed below.

13. GAAP

The NCUA is proposing to include a definition of the term GAAP in the rule. The proposed rule would define the term ''GAAP'' to mean the generally accepted accounting principles as used in the United States. GAAP is used in the definition of Fair Value and proposed subparts B and D.

14. Immediate Family

The NCUA is proposing to define the term ''Immediate Family'' to mean the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home. This term is relevant to the risk management standards concerning Insider and Affiliate transactions. It aligns with the definition in the OCC Proposal and is consistent with the definition in Regulation O.[56]

15. Insider

The NCUA is proposing to define the term ''Insider'' to mean: (1) an Officer or Director of an NCUA-Licensed PPSI; (2) any Parent Company, and the Officers and Directors of the Parent Company, of an NCUA-Licensed PPSI; (3) any Principal Shareholder, and Officers and Directors of the Principal Shareholder, of an NCUA-Licensed PPSI; and (4) a Related Interest of or the Immediate Family of any of these Persons. This term is relevant to the risk management standards concerning Insider and Affiliate transactions. It aligns with the definition in the OCC Proposal, which was adapted from the definition in Regulation O,[57] while accounting for Parent Company FICUs and their Officers and Directors. It has been adapted to make direct reference to the Immediate Family of one of the covered groups of Officers, Directors, Parent Companies, and Principal Shareholders to mitigate the risk of an Insider engaging in inappropriate transactions to benefit Immediate Family members.

16. Insured Credit Union

The NCUA proposes to define the term ''Insured Credit Union'' consistent with the definition of the term in the GENIUS Act.[58] As proposed, the term ''Insured Credit Union'' would have the meaning given to that term in section 101 of the Federal Credit Union Act.[59]

17. Insured Depository Institution

The NCUA is proposing to define the term ''Insured Depository Institution'' consistent with the definition of the term in the GENIUS Act.[60] As proposed, the term ''Insured Depository Institution'' would mean an Insured Depository Institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and an Insured Credit Union.

18. Issuing Group

As proposed in the NCUA Licensing Proposal, proposed § 706.2 would define the term ''Issuing Group'' to mean the Applying Issuer and Parent Company(ies) and the Officers, Directors, and Principal Shareholders, if applicable, of the Applying Issuer, its subsidiaries, and Parent Company(ies).

As part of this NCUA Standards Proposal, the NCUA is proposing to amend the definition as proposed in the NCUA Licensing Proposal to specifically include NCUA-Licensed PPSIs. This is not intended to be a substantive change, but instead to make clear that an Applying Issuer that becomes an NCUA-Licensed PPSI remains a member of the Issuing Group and is subject to the requirements proposed part 706 imposes on Issuing Groups.

19. Monetary Value

The NCUA is proposing to define the term ''Monetary Value'' as provided in the GENIUS Act.[61] The proposal would define ''Monetary Value'' to mean a National Currency or deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) denominated in a National Currency.

However, as noted throughout the NCUA's Licensing Proposal and this NCUA Standards Proposal, the GENIUS Act frequently relies on banking-specific terminology. The references to a ''deposit'' as defined by the FDI Act in the GENIUS Act's definitions of ''Monetary Value'' [62] and ''Payment Stablecoin'' [63] are an example of this. Despite these references to FDI Act ''deposits,'' which do not explicitly cover ''accounts,'' [64] as defined by the FCU Act, or ''shares'' at FICUs (defined as ''Share Accounts'' in this proposal), the Board believes the GENIUS Act broadly contemplates treating deposits

[54] See discussion of the definition of ''GAAP,'' infra.

[55] 12 U.S.C. 5901(5).

[56] 12 CFR part 215.

[57] *Id.*

[58] 12 U.S.C. 5901(14).

[59] 12 U.S.C. 1752.

[60] 12 U.S.C. 5901(15).

[61] 12 U.S.C. 5901(17).

[62] *See* 12 U.S.C. 5901(17).

[63] *See* 12 U.S.C. 5901(22).

[64] *See* 12 U.S.C. 1752(5).

at banks and savings associations and funds in Share Accounts at FICUs interchangeably and is concerned that to do otherwise could potentially create interpretive and implementation issues.

More specifically, the GENIUS limits ''Payment Stablecoins'' to Digital Assets that the issuer must (1) ''be obligated to convert, redeem, or repurchase for a fixed amount of monetary value'' and (2) ''represent[ ] that such issuer will maintain, or create the reasonable expectation that it will maintain, a stable value relative to the value of a fixed amount of monetary value[.]'' [65] The GENIUS Act generally defines ''Monetary Value'' to mean (1) a National Currency; or (2) a deposit (as defined by the FDI Act) denominated in a National Currency.[66] In relevant part, a National Currency is defined by the GENIUS Act to include Federal Reserve notes and Money standing to the credit of an account with a Federal Reserve Bank.[67] The Payment Stablecoin definition also clarifies that Digital Assets that are a National Currency or a deposit (as defined by the FDI Act), including a deposit recorded using Distributed Ledger technology, are not Payment Stablecoins.[68]

While the Payment Stablecoin and Monetary Value definitions do not explicitly address ''accounts'' or ''shares'' at FICUs (Share Accounts), the Board believes that an overall reading of the GENIUS Act warrants that funds in Share Accounts at FICUs have Monetary Value (1) for which an issuer is ''obligated to convert, redeem, or repurchase'' their Payment Stablecoins for; and (2) against which an issuer can utilize as ''a fixed amount of monetary value.'' The GENIUS Act provides numerous instances demonstrating the intention that ''deposits'' at FDIC-insured banks and savings associations and ''shares'' at FICUs be treated the same, including: (1) parallel treatment of ''demand deposits'' and ''insured shares'' at all ''insured depository institutions,'' which the Act defines to include both FDIC-insured banks and FICUs, as permissible reserves by which Payment Stablecoins can be backed; [69] (2) explicitly granting FDIC-insured banks and FICUs the power to accept Payment Stablecoin reserves as ''cash on *deposit*'' when providing custody services for PPSIs; [70] (3) explicit recognition that the GENIUS Act does not limit the authority of a bank or credit union to ''accept[] or receiv[e] deposits or shares (in the case of a credit union), and issu[e] digital assets that represent those deposits or shares''; [71] (4) recognition that ''[e]ntities regulated by the primary Federal payment stablecoin regulators [including FICUs] are authorized to engage in the Payment Stablecoin activities and investments contemplated by this Act, including acting as a principal or agent with respect to any Payment Stablecoin and payment of fees to facilitate customer transactions''; [72] and (5) a parallel prohibition for misrepresentation of insured status of Payment Stablecoins by FDIC-insured banks and NCUA-insured credit unions.[73]

Given the GENIUS Act's clear intention that, despite the use of banking-specific terminology, Share Accounts at FICUs and deposits at banks are to be given parallel treatment, the NCUA is specifically seeking comment as to whether the NCUA should adopt a definition of the term ''Deposit'' and, if so, the proper definition. Should the parenthetical to the Federal Deposit Insurance Act definition of a ''deposit'' be dropped? Should a definition specifically include ''deposits'' as defined by the Federal Deposit Insurance Act and ''accounts'' as defined by the FCU Act (and defined as Share Accounts in this proposal)? Relatedly, the Board seeks comment as to whether the NCUA should provide an explicit interpretation in Part 706, the final rule's preamble, or other guidance that the definition of Monetary Value and/or Payment Stablecoin in the GENIUS Act expressly covers a Digital Asset for which an issuer has an obligation to redeem funds placed in a Share Account at a FICU? If so, how? For example, should the NCUA expressly interpret Monetary Value to include a broader conception of ''deposits'' not limited to the definition in section 3 of the Federal Deposit Insurance Act? Does the ubiquitous convertibility of funds in Share Accounts and bank deposits in the U.S. financial system bear on this question (*e.g.,* is redemption in funds placed in a Share Account at a FICU functionally equivalent to redemption in bank deposits for purposes of the scope of a Payment Stablecoin)? What are the practical or evasion risks of possible interpretations? In practice, will FICU subsidiaries likely seek to issue Payment Stablecoins that are redeemable only in funds in Share Accounts, bank deposits, or both?

20. Money

Section 2(18) of the GENIUS Act defines ''Money'' to mean a medium of exchange currently authorized or adopted by a domestic or foreign government, including a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.[74] This definition is relevant to the definition of National Currency (discussed below) and certain Reserve Assets described in section 4(a)(1)(A)(i) and (iv) of the GENIUS Act.[75] Section 4(a)(1)(A)(i) refers to Money standing to the credit of an account with a Federal Reserve Bank. Section 4(a)(1)(A)(iv) refers to Money received under a repurchase agreement that meets certain requirements. Although the statutory definition of Money clearly includes Monetary Value, it may be unclear at any point in time whether other mediums of exchange have been authorized or adopted by a domestic or foreign government. Moreover, whether a medium of exchange meets this definition may change based on actions of foreign governments or intergovernmental organizations. While it may be relatively clear whether an asset is Money standing to the credit of an account with a Federal Reserve Bank, there could be ambiguity as to whether a particular asset is Money received under a repurchase agreement. Therefore, to promote clarity and uniformity for purposes of determining whether certain assets would qualify as Money under proposed part 706, the NCUA proposes that it would provide prior confirmation publicly that a medium of exchange (other than those defined as Monetary Value) meets the definition of ''Money'' under the GENIUS Act. Specifically, the NCUA proposes to define ''Money'' for the purposes of part 706 to mean Monetary Value and any other medium of exchange that the NCUA has determined is currently authorized or adopted by a domestic or foreign government, including a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

21. National Currency

The NCUA is proposing to define the term ''National Currency'' as provided in the GENIUS Act.[76] Under the proposed rule, the term ''National Currency'' would mean (1) a Federal Reserve note (as the term is used in the

[65] *See* 12 U.S.C. 5901(22)(A)(ii)(I)–(II).

[66] 12 U.S.C. 5901(17)

[67] *See* 12 U.S.C. 5901(19)(A)–(B).

[68] *See* 12 U.S.C. 5901(22)(B)(i)–(ii).

[69] *See* 12 U.S.C. 5903(a)(1)(A)(ii).

[70] *See* 12 U.S.C. 5909(c)(2)(D).

[71] *See* 12 U.S.C. 5915(a)(1).

[72] *See* 12 U.S.C. 5915(b).

[73] *See* 12 U.S.C. 5903(e).

[74] 12 U.S.C. 5901(18).

[75] 12 U.S.C. 5903(a)(1)(A)(i) and (iv).

[76] 12 U.S.C. 5901(19).

first undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 411)); (2) Money standing to the credit of an account with a Federal Reserve Bank; (3) Money issued by a foreign central bank; or (4) Money issued by an intergovernmental organization pursuant to an agreement by two or more governments.

22. NCUA-Licensed Permitted Payment Stablecoin Issuer

As proposed in the NCUA's Licensing Proposal, proposed § 706.2 would define an NCUA-Licensed Permitted Payment Stablecoin Issuer to mean a Person formed in the United States that is a FICU subsidiary that has been approved and licensed by the NCUA under subpart A to issue Payment Stablecoins.

23. Nonpublic Personal Information

The NCUA is proposing to define the term ''Nonpublic Personal Information'' to mean information (1) provided by a Customer to an NCUA-Licensed PPSI to obtain a financial product or service, (2) about a Customer resulting from any transaction involving a financial product or service between the NCUA-Licensed PPSI and a Customer, or (3) otherwise obtained by the NCUA-Licensed PPSI in connection with providing a financial product or service to a Customer. The proposed definition does not include publicly available information, unless such publicly available information, when combined with other information, would reveal the identity of a Customer or would enable access to the Customer's account.

24. Officer

As proposed in the NCUA's Licensing Proposal, proposed § 706.2 would define the term ''Officer'' to mean the president, chief executive officer, chief operating officer, chief financial officer, chief technology officer, chief lending officer, chief investment officer, chief risk officer, Bank Secrecy Act officer, and any other individual the NCUA identifies in writing to the Issuing Group who exercises significant influence over, or participates in, major policy making decisions of the Issuing Group without regard to title, salary, or compensation. The term also includes employees of entities retained by an Issuing Group to perform such functions in lieu of directly hiring the individuals.

25. Outstanding Issuance Value

The NCUA is proposing to define the term ''Outstanding Issuance Value'' to mean the total consolidated par value of all of an NCUA-Licensed PPSI's Payment Stablecoins. This would include the combined total par value of different brands of Payment Stablecoin issued by the NCUA-Licensed PPSI (*e.g.,* under a white label arrangement) to the extent that such an arrangement complies with proposed 12 CFR part 706. The proposed definition includes the defined term ''Payment Stablecoin'' and should be read consistent with that definition, discussed below. For purposes of calculating the Outstanding Issuance Value, the NCUA believes that a Digital Asset that is, or is designed to be, used as a means of payment or settlement but for which there is not yet an obligation to convert, redeem, or repurchase for a fixed amount of Monetary Value should not be included in the calculation. A Digital Asset minted (*i.e.,* created on a blockchain) by an issuer to be a Payment Stablecoin would not be included in the calculation of Outstanding Issuance Value until the obligation to convert, redeem, or repurchase the Digital Asset for a fixed amount of Monetary Value is incurred.

Similarly, once an issuer permanently removes a Payment Stablecoin from circulation (*e.g.,* burns the Payment Stablecoin) the Digital Asset would cease to be included in the calculation of Outstanding Issuance Value. Payment Stablecoins for which holder access has been restricted pursuant to applicable law, regulation, or court order would remain Payment Stablecoins, as the issuer's obligation to convert, redeem, or repurchase for a fixed amount of Monetary Value continues and the associated reserves are maintained in segregated accounts pending resolution of the restriction. Likewise, if an issuer repurchased a Payment Stablecoin but did not burn the Payment Stablecoin, the stablecoin in the NCUA-Licensed PPSI's inventory would not be part of the issuer's Outstanding Issuance Value (but would become part of the Outstanding Issuance Value if the NCUA-Licensed PPSI subsequently put the Payment Stablecoin back into circulation). Therefore, the proposed definition of ''Outstanding Issuance Value'' only includes Payment Stablecoins for which the NCUA-Licensed PPSI is obligated to convert, redeem, or repurchase for a fixed amount of Monetary Value (generally the issued Payment Stablecoins in circulation).

The NCUA also considered whether the proposed ''Outstanding Issuance Value'' definition should include only those Payment Stablecoins issued by an NCUA-Licensed PPSI, or also the Payment Stablecoins issued by the issuer's non-consolidated Affiliates.[77] The NCUA determined that it was appropriate to limit the proposed definition to include only the Payment Stablecoins issued by an NCUA-Licensed PPSI (and consolidated subsidiaries). The NCUA believes that the proposed definition would scope in the appropriate NCUA-Licensed PPSIs to the relevant provisions regarding Reserve Assets,[78] the frequency of examinations,[79] required audits,[80] and minimum capital calculation [81] without being overly expansive and that it best aligns with the language in the statute. Notwithstanding the proposed definition of ''Outstanding Issuance Value,'' non-consolidated Affiliates of an issuer that issue Payment Stablecoins would separately need to comply with the requirements of the GENIUS Act.

26. Parent Company

As proposed in the NCUA's Licensing Proposal, proposed § 706.2 would define the term ''Parent Company.'' The GENIUS Act requires that applications for a PPSI license granted by a primary Federal payment stablecoin regulator be evaluated using specifically defined factors.[82] One of these factors requires the NCUA to evaluate the competency, experience, and integrity of the Officers and Directors of the Applying Issuer's Parent Company(ies).[83] Proposed § 706.2 would define the term Parent Company to specify when a FICU must sign onto an application and when a FICU's Officers and Directors should be evaluated as part of an Applying Issuer's licensure application. The term Parent Company would also be used to determine when a FICU's investment in an NCUA-Licensed PPSI requires prior notice as a change in control.

Proposed § 706.2 would define a Parent Company as an Insured Credit Union(s) that will own, control or hold the power to vote 10 percent or more of any class of voting securities, or has the ability to direct the management or policies, of a Permitted Payment Stablecoin Issuer. If no Insured Credit Union will own, control or hold the power to vote 10 percent or more of any class of voting securities, the Insured Credit Union with the largest percentage of voting securities in relation to all other Insured Credit Unions is considered the Parent Company.'' Under

[77] As noted above, the definition of ''Outstanding Issuance Value'' includes the consolidated value of issued Payment Stablecoins.

[78] *See* proposed § 706.202.

[79] *See* proposed § 706.205.

[80] *See* id.

[81] See proposed subpart D.

[82] 12 U.S.C. 5904(b)–(c).

[83] 12 U.S.C. 5904(c)(3).

this definition, any FICU that owns 10 percent or more of a class of voting securities would be a Parent Company. Additionally, if no FICU owns 10 percent or more of a class of voting securities, then the FICU with the greatest percentage of a class of voting securities in relation to any other FICU is the Parent Company for purposes of an NCUA PPSI license. The definition would also provide that a FICU that has the ability to direct the management or policies of a PPSI would be considered a Parent Company. The Board believes it is important that the definition of Parent Company cover FICUs that have the power to direct the management or policies of a PPSI regardless of their ownership interests.

27. Payment Stablecoin

The NCUA is proposing to define the term ''Payment Stablecoin'' consistent with the definition of the term in the GENIUS Act, 12 U.S.C. 5901(22), with certain technical changes. Under the proposal, the term ''Payment Stablecoin'' would mean a Digital Asset (i) that is, or is designed to be, used as a means of payment or settlement; and (ii) the issuer of which (A) is obligated to convert, redeem, or repurchase for a fixed amount of Monetary Value, not including a Digital Asset denominated in a fixed amount of Monetary Value; and (B) represents that such issuer will maintain, or creates the reasonable expectation that it will maintain, a stable value relative to the value of a fixed amount of Monetary Value.[84] For a Digital Asset to be a Payment Stablecoin under proposed part 706, the issuer must be obligated to convert, redeem, or repurchase the Digital Asset for a fixed amount of Monetary Value.

The proposed definition also provides that a ''Payment Stablecoin'' does not include a Digital Asset that is a (i) National Currency; (ii) deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), including a deposit recorded using Distributed Ledger technology; or (iii) security, as defined in section 2 of the Securities Act of 1933 (15 U.S.C. 77b), section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2).

The GENIUS Act's definition of ''Payment Stablecoin'' includes a parenthetical with the term ''deposit'' in (B)(2) limiting the scope of the term to a ''deposit'' as defined in section 3 of the FDI Act. However, as discussed in this preamble's proposed definition of the term ''Monetary Value,'' the Board believes that an overall reading of the GENIUS Act makes clear the intention that, despite the use of banking-specific terminology, Share Accounts at FICUs and deposits at banks are to be given parallel treatment. Further, the GENIUS Act also specifically states that ''[n]othing in this Act may be construed to limit the authority of a Federal credit union [or] State credit union to engage in activities permissible pursuant to applicable State and Federal law, including—(1) accepting or receiving deposits or shares (in the case of a credit union), and issuing digital assets that represent those deposits or shares.'' [85] The GENIUS Act clearly contemplates shares (Share Accounts) represented by Digital Assets, but does not intend to limit the ability of FICUs to directly accept, receive, or issue Digital Assets that represent shares (Share Accounts). Conversely, the GENIUS Act does prohibit FICUs from directly issuing Payment Stablecoins. Given this clear delineation between Share Accounts/deposits represented by digital assets and Payment Stablecoins, the Board believes that in addition to excluding deposits recorded using Distributed Ledger technology from the GENIUS Act's definition of a Payment Stablecoin, shares (Share Accounts) recorded using Distributed Ledger technology are also not covered by the GENIUS Act's definition of a Payment Stablecoin.

The Board is specifically seeking comment as to whether the final rule should modify the text drawn from the GENIUS Act's definition to specifically exempt Share Accounts recorded using Distribution Ledger technology from the GENIUS Act's definition of a Payment Stablecoin. If so, how? Should the NCUA drop the parenthetical to the Federal Deposit Insurance Act definition of the a ''deposit?'' Should the NCUA adopt a definition of the term ''Deposit'' that drops the parenthetical to the Federal Deposit Insurance Act definition of a ''deposit''? Should a definition specifically include ''deposits'' as defined by the Federal Deposit Insurance Act and ''accounts'' as defined by the FCU Act (and defined as Share Accounts in this proposal)? Relatedly, the Board seeks comment as to whether the NCUA should provide an explicit interpretation in Part 706, the final rule's preamble, or other guidance that the definition of Monetary Value and/or Payment Stablecoin in the GENIUS Act expressly covers a Digital Asset for which an issuer has an obligation to redeem funds placed in a Share Account at a FICU? If so, how?

The GENIUS Act's definition of ''Payment Stablecoin'' also contains language clarifying that ''no bond, note, evidence of indebtedness, or investment contract that was issued by a permitted payment stablecoin issuer shall qualify as a security solely [because the issuer satisfies] the conditions in [paragraph (1) of the proposed ''payment stablecoin'' definition], consistent with section 17 of the Act.'' The GENIUS Act provides that this language was included ''for the avoidance of doubt.'' The NCUA determined that it was not necessary to include this language in the proposed ''Payment Stablecoin'' definition because section 17 of the GENIUS Act includes amendments to the cited Federal statutes that clarify that Payment Stablecoins are not securities.

28. Person

The NCUA is proposing to define the term ''Person'' as the term is defined in the GENIUS Act, 12 U.S.C. 5901(24). As proposed, the term ''Person'' would mean an individual, partnership, company, corporation, association, trust, estate, cooperative organization, or other business entity, incorporated or unincorporated.

29. Principal Shareholder

As proposed in the NCUA's Licensing Proposal, proposed § 706.2 would define the term ''Principal Shareholder.'' The GENIUS Act requires that applications for a PPSI license granted by a primary Federal payment stablecoin regulator be evaluated using specifically defined factors.[86] One of these factors requires the NCUA to evaluate the competency, experience, and integrity of the Officers and Directors of the Applying Issuer's Principal Shareholders.[87] Proposed § 706.2 would define a Principal Shareholder to mean a Person other than an Insured Credit Union that directly or indirectly or acting in concert with one or more Persons or companies, or together with members of their Immediate Family, will own, control, or hold the power to vote 10 percent or more of any class of voting securities. Under this definition, any non-FICU that owns 10 percent or more of a class of voting securities would be a Principal Shareholder. Proposed § 706.2 would include the defined term of Principal Shareholder to specify when a non-FICU's Officers and Directors should be evaluated as part of

[84] The NCUA interprets the statutory language in 12 U.S.C. 5901(22) to mean that the PPSI would be obligated to meet redemption requests at par.

[85] *See* 12 U.S.C. 5915(a)(1).

[86] 12 U.S.C. 5904(b)–(c).

[87] 12 U.S.C. 5904(c)(3).

an Applying Issuer's licensure application. The proposed definition is derived from the FDIC's change of control regulations.[88] The intent of the definition is to capture only the non-FICUs that are most likely to have an ability to control or direct the management and policies of the PPSI. Under the proposed definition, if there is an Applying Issuer that is widely held by FICUs that also has non-FICU shareholders, then only the non-FICU shareholders with 10 percent or more of a class of voting securities would be considered Principal Shareholders. The Board believes the definition is the best interpretation of the term Principal Shareholders as used in the GENIUS Act and appropriately balances the NCUA's allocation of its resources with its statutory mandate under the GENIUS Act. While the GENIUS Act requires that the Board evaluate certain statutory factors related to the Officers and Directors of the Principal Shareholders, the Board does not believe it is practical or consistent with congressional intent for the NCUA to review the Officers and Directors of each investing shareholder. Requiring this level of review would disadvantage Applying Issuers seeking NCUA licenses and FICUs investing in them. It would also impose a prohibitive burden on the NCUA's resources, especially when considering the 120-day deadline the GENIUS Act imposes on the NCUA for rendering a decision on a substantially complete application. In summary, the Board believes it is prudent to only review Officers and Directors of an investing shareholder when the investing shareholder would have a material amount of control of the PPSI. The Board selected 10 percent as that is a common threshold used for determining a material amount of control under banking law.

30. Private Key

The NCUA is proposing to define the term ''Private Key'' to mean the unique alphanumeric string that allows an individual to transfer a particular unit of a Digital Asset using a Distributed Ledger. This definition is intended to include shards of a Private Key.[89]

31. Publicly Available Information

The NCUA is proposing to define the term ''Publicly Available Information'' to mean any information that a Person has a reasonable basis to believe is lawfully made available to the general public from: (1) Federal, State, or local government records; (2) widely distributed media; (3) disclosures to the general public that are required to be made by Federal, State, or local law; or (4) a Distributed Ledger.[90]

32. Registered Public Accounting Firm

The NCUA is proposing to define the term ''Registered Public Accounting Firm'' as provided in the GENIUS Act.[91] Under the proposal, the term ''Registered Public Accounting Firm'' would mean a registered public accounting firm set forth in section 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201).

33. Related Interest

The NCUA is proposing to define the term ''Related Interest'' of a Person to mean (1) a company that is controlled by that Person; or (2) a political or campaign committee that is controlled by that Person or the funds or services of which will benefit that Person. This term is relevant to the risk management standards for Insider and Affiliate transactions. It aligns with the OCC Proposal and is derived from the definition in Regulation O.[92]

34. Reserve Asset

The NCUA is proposing to define the term ''Reserve Asset'' to mean an asset maintained by an NCUA-Licensed PPSI of a type enumerated in § 706.202(b). An NCUA-Licensed PPSI may maintain Reserve Assets as a custodian.

35. Share Account

The NCUA is proposing to define the term ''Share Account'' to have the same meaning as the term ''account'' in section 101 of the FCU Act (12 U.S.C. 1752(5).

36. State

The NCUA is proposing to define the term ''State'' as provided in the GENIUS Act, 12 U.S.C. 5901(28). Under the proposed rule, the term ''State'' would mean each of the several States of the United States, the District of Columbia and each territory of the United States.

37. Subsidiary of an Insured Credit Union

As discussed at length in the NCUA's Licensing Proposal, proposed § 706.2 would define the definition of Subsidiary of an Insured Credit Union, or FICU subsidiary, as defined in the GENIUS Act. This definition includes three separate prongs. Specifically, the GENIUS Act defines a ''subsidiary of an insured credit union'' to include the following:

(A) an organization providing services to the insured credit union that are associated with the routine operations of credit unions, as described in section 1757(7)(I) of this title;

(B) a credit union service organization, as such term is used under part 712 of title 12, Code of Federal Regulations, with respect to which the insured credit union has an ownership interest or to which the insured credit union has extended a loan; and

(C) a subsidiary of a State chartered insured credit union authorized under State law.[93]

Each prong is a separate and distinct avenue to qualify as a FICU subsidiary for purposes of being a PPSI.

38. Trading Volume

The NCUA is proposing to define the term ''Trading Volume'' to mean the aggregate number of Payment Stablecoins issued by an NCUA-Licensed PPSI that were purchased or sold on exchanges during a specified period of time.

39. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 1:* Are the definitions in the proposed rule appropriately scoped? How should they be improved?

*Question 2:* Given the GENIUS Act's frequent use of banking-specific terminology, has the proposed rule struck the appropriate balance of maintaining consistency with the standards and terminology used in the GENIUS Act and proposed by the other primary Federal payment stablecoin regulators while also reflecting the nuances of the credit union industry and its terminology? Has the proposed rule appropriately clarified the best meaning for banking and credit union specific terminology? Do the proposal's definitions of terms like ''Share Account,'' ''Insured Credit Union,'' and ''Insured Depository Institution'' enhance the clarity of Part 706? Are there ways that these and other terms could be better defined or utilized to strike the appropriate balance between consistency across regulatory regimes and clarity for those subject to the NCUA's regulations?

*Question 3:* Is the definition of ''Control'' sufficiently clear? If not, how should the NCUA further clarify the term?

*Question 4:* The term ''Customer'' is broadly defined to mean a Person that purchases (through any consideration)

[88] 12 CFR part 303, subpart E.

[89] Sharding refers to dividing a Private Key into distinct pieces for enhanced security.

[90] As noted above, the term ''Distributed Ledger'' is limited to publicly available and accessible ledgers.

[91] 12 U.S.C. 5901(26).

[92] 12 CFR part 215.

[93] 12 U.S.C. 5901(33).

the products or services of another Person. Is the scope of this definition too broad? With respect to Customers of NCUA-Licensed PPSIs, should the definition expressly include only Persons with direct interactions with an NCUA-Licensed PPSI? Alternatively, should the definition include all downstream Payment Stablecoin holders (*i.e.,* not just Customers with direct interactions with the PPSI)? Please address any significant impact or burden the proposed definition or contemplated alternative definitions may have or add given other requirements in the proposed rule, such as the Customer notification requirements in proposed § 706.204. Because the term is used in several different contexts throughout the proposed rule, should the definition of ''Customer'' be refined with respect to certain requirements (*e.g.,* Customer notification)?

*Question 5:* Are the terms ''deposit'' and ''Share Account'' sufficiently clear as used in the proposed rule? If not, how should they be clarified? Is their intersection with the terms ''Monetary Value,'' ''Money,'' and ''Payment Stablecoin'' sufficiently clear? If not, what can the NCUA do to provide further clarity? Would commenters prefer that the proposed rule specifically refer to both deposits and Share Accounts in these terms and throughout the proposed rule or would they prefer the NCUA adopt a defined term ''Deposit'' to cover both deposits as defined by the FDI Act and Share Accounts?

*Question 6:* Is the scope of the term ''Digital Asset'' sufficiently clear? If not, how should it be clarified?

*Question 7:* The proposed rule does not define the term ''digital asset service provider.'' Is the scope of the term digital asset service provider under the statute sufficiently clear? If not, how should it be clarified? Are there specific activities that should be expressly excluded from digital asset service provider activities, consistent with the statutory definition? Should additional guidance on the exclusions from the definition of ''digital asset service provider'' or the meaning of ''engaging in the business'' of providing digital asset service provider activities be clarified? If so, how should the NCUA further clarify these terms? Should the NCUA clarify that only the provision of financial services that directly relate to Digital Asset issuance would result in an entity becoming a digital asset service provider?

*Question 8:* Is the term ''Director'' sufficiently clear? How should the NCUA further clarify the term?

*Question 9:* Is the term ''Distributed Ledger'' sufficiently clear? Should the term ''public digital ledger'' be further clarified? What additional clarifications would be helpful? Should certain permissioned or semi-permissioned digital ledgers be considered ''public?'' If so, how should the definition of ''public'' delineate between different types of permissioned or semi-permissioned blockchains?

*Question 10:* Is the definition of ''Eligible Financial Institution'' appropriately scoped? How could the term be further refined? Are there particular elements of the definition that should be excluded or should be addressed elsewhere in the proposed rule?

*Question 11:* Is the definition of ''Money'' appropriately scoped? Should the NCUA use the exact language of the statute, instead of using the proposed definition?

*Question 12:* Is the term ''Nonpublic Personal Information'' appropriately scoped? How could the term be further refined or clarified?

*Question 13:* The term ''Outstanding Issuance Value'' refers to the total consolidated par value of all of an issuer's Payment Stablecoins. Should the definition also include the par value of non-consolidated Affiliates? If so, what changes should be made to the Reserve Asset requirements to ensure 1:1 backing across all Affiliated entities?

*Question 14:* Is the term ''Payment Stablecoin'' sufficiently clear? If not, how should the definition be amended to provide additional clarity as to whether a particular stablecoin is a ''Payment Stablecoin''? Please describe the types of stablecoins that the NCUA should clarify do not meet the definition of a ''Payment Stablecoin'' and therefore would be outside the scope of the proposed rule. Should there be additional clarity around what it means that a Payment Stablecoin is a Digital Asset ''that is, or is designed to be, used as a means of payment or settlement?'' For example, are there certain settlement scenarios that the NCUA should clarify are not ''designed to be, used as a means of payment or settlement?''

*Question 15:* Is the exclusion of a Digital Asset that ''is a deposit, including a deposit recorded using Distributed Ledger technology'' from the definition of ''Payment Stablecoin'' sufficiently clear? Should the NCUA explicitly state in Part 706 that Share Accounts at FICUs, including Share Accounts recorded using Distributed Ledger technology are excluded from the definition of ''Payment Stablecoin?'' Should the NCUA clarify which tokenized products this exclusion may apply to?

*Question 16:* Is the term ''NCUA-Licensed Permitted Payment Stablecoin Issuer'' sufficiently clear? How should the definition be amended to provide additional clarity as to whether a particular entity issues a Payment Stablecoin and is subject to the requirements of the GENIUS Act? Should the more generic term ''Permitted Payment Stablecoin Issuer'' be used instead? If so, why? If not, why not?

*Question 17:* Is the term ''Person'' sufficiently clear? Should the NCUA further clarify the definition, including with respect to the meaning of ''association'' or other components of the definition?

*Question 18:* Is the term ''Private Key'' sufficiently clear? How could the term be further clarified? Should the NCUA define the term to mean the unique alphanumeric sequence that allows an individual to prove ownership of an account on a Distributed Ledger, including for the purpose of transferring a particular unit of a Digital Asset?

*Question 19:* Should the definition of ''Principal Shareholder'' or any other definitions explicitly incorporate governance instruments other than securities providing voting rights with respect to the activities of the issuer? In particular, are there governance instruments that may not qualify as securities that the NCUA should incorporate or instruments common to partnerships that the NCUA should consider incorporating?

*Question 20:* Is the term ''senior management'' as used in proposed part 706 sufficiently clear? Should the NCUA define the term, for example, to include all or a select subset of Officers?

*Question 21:* The GENIUS Act does not define ''payment stablecoin holder.'' Should the NCUA define the term? If so, should the NCUA define the term to mean the Person that beneficially owns the Payment Stablecoin? Should the NCUA instead define the term based on possession via Digital Wallets or control of cryptographic keys? What considerations relating to custody should the NCUA bear in mind if it chooses to define the term? What interactions with other requirements in the proposed rule should the NCUA consider if it chooses to define the term?

*Question 22:* Should the NCUA refine the definition of Trading Volume? Should the term be limited to trades that occur on exchanges? Should it include transactions that occur outside of an exchange? Should the NCUA define ''exchange'' for purposes of this definition? If so, should the NCUA

define it to mean a Person engaged in the business of making a market in Digital Assets (including Payment Stablecoins)? Should any definition include decentralized exchanges? What impediments are there to PPSIs collecting data concerning Trading Volume?

*C. § 706.2. Severability*

Proposed § 706.3 would provide that the provisions of this proposed part 706 are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the NCUA's intention that the remaining provisions shall continue in effect. If a provision of the rule were found to be invalid, the NCUA anticipates that it would evaluate whether any re-proposal of the rule is appropriate. The NCUA is proposing to include the severability clause to ensure that, in the event any particular provision of the proposed rule is held to be invalid, the remainder of the rule would continue in effect, providing clarity for market participants on how to comply with the NCUA's regulations implementing the GENIUS Act pending any re-proposal.

The NCUA generally intends all of its rulemakings to be severable to the extent portions of the rule are determined to be invalid regardless of the presence of a severability clause. The NCUA is proposing to include an explicit severability clause to this rulemaking given the novelty and scope of the GENIUS Act and the importance of ensuring as much certainty as possible for the regulatory framework for Payment Stablecoins.

*D. Subpart B—NCUA-Licensed Permitted Payment Stablecoin Issuers*

1. § 706.201. Activities

a. Permitted Activities

Section 4(a)(7)(A) of the GENIUS Act sets forth the list of activities in which a PPSI may engage.[94] Additionally, section 16(b) of the GENIUS Act outlines certain additional activities and investments in which PPSIs may engage.[95]

Consistent with the statute, the NCUA is proposing to mirror the permitted activities from section 4(a)(7)(A) of the GENIUS Act in proposed § 706.201(a)(1) through (4), which include: (1) issuing Payment Stablecoins; (2) redeeming Payment Stablecoins; (3) managing reserves related to the issuance or redemption of Payment Stablecoins, including purchasing, selling, and holding Reserve Assets or providing custodial services for reserve assets, consistent with applicable State and Federal law; and (4) providing custodial or safekeeping services for Payment Stablecoins, required reserves, or Private Keys of Payment Stablecoins consistent with the GENIUS Act, as implemented in proposed subpart C.[96] Additionally, proposed § 706.201(a)(8) provides that an NCUA-Licensed PPSI may undertake any other activities that directly support any of the activities in proposed § 706.201(a)(1) through (4), which is explicitly provided for in section 4(a)(7)(A)(v) of the GENIUS Act.[97] One such example of an activity that would qualify under proposed § 706.201(a)(8) because it directly supports both issuance and redemption of Payment Stablecoins would be the NCUA-Licensed PPSI's holding of non-Payment Stablecoin crypto-assets as principal necessary for testing a Distributed Ledger, whether internally developed or acquired from a third-party.[98] Such an activity may be necessary to ensure that the NCUA-Licensed PPSI may operate safely and effectively on a Distributed Ledger. To the extent that NCUA-Licensed PPSIs are unclear about whether an activity qualifies as activity that directly supports the activities in proposed § 706.201 (a)(1) through (a)(4), the NCUA encourages issuers to ask the NCUA directly whether an activity is permissible. The NCUA is seeking comment on whether there should be a more formal process for clarifications around permissibility, including whether the NCUA should provide additional clarity to the public through long-established channels such as Letters to Credit Unions, published frequently asked questions, or other means.

In addition to the activities outlined in section 4(a)(7) of the GENIUS Act, for the sake of clarification, proposed § 706.201(a)(5) provides that NCUA-Licensed PPSIs may assess fees that are associated with the purchasing or redeeming of Payment Stablecoins.[99] This power is inherent in the activities described above and is explicitly recognized in section 4(a)(1)(B)(ii) of the Act.[100]

The NCUA also proposes to include the permitted activities outlined in section 16(b) of the GENIUS Act,[101] namely acting as principal or agent with respect to any Payment Stablecoin and paying fees to facilitate customer transactions.[102] The NCUA notes that the language in section 16(b) of the Act is limited by the clause that provides that entities regulated by the primary Federal payment stablecoin regulators are ''authorized to engage in the payment stablecoin activities and investments contemplated by this Act . . . .'' [103] Accordingly, ''acting as principal or agent with respect to any Payment Stablecoin'' is permissible within the limited set of authorities otherwise prescribed by the GENIUS Act rather than, for example, any activity that may be conducted as principal or agent (*i.e.,* any activity involving a Payment Stablecoin). Therefore, proposed § 706.201(a)(6) would allow NCUA-Licensed PPSIs to hold and transact in Payment Stablecoins as principal or agent. Payment Stablecoins are not, however, a permitted Reserve Asset in proposed § 706.202.[104] To the extent an NCUA-Licensed PPSI is a ''digital asset service provider,'' as defined section 2(7) of the GENIUS Act,[105] the issuer must also comply with the prohibition outlined in section 3(b)(2) of the GENIUS Act,[106] providing that it is unlawful for any digital asset service provider to offer, sell, or otherwise make available in the United States a Payment Stablecoin issued by a foreign payment stablecoin issuer, unless certain conditions are met.

Consistent with section 16(b) of the GENIUS Act, proposed § 706.201(a)(7) would allow NCUA-Licensed PPSIs to pay fees to facilitate Customer transactions (*e.g.,* network or ''gas'' fees). If an issuer's Payment Stablecoin operates on a blockchain that assesses transaction fees, then the issuer may choose to pay transaction fees on behalf of the Customer. The NCUA recognizes that, if an issuer is paying transaction

[94] 12 U.S.C. 5903(a)(7)(A).

[95] 12 U.S.C. 5915(b).

[96] 12 U.S.C. 5903(a)(7)(A).

[97] 12 U.S.C. 5903(a)(7)(A)(v).

[98] Separate from NCUA-Licensed PPSIs conducting this activity to support their permissible Payment Stablecoin activities, the NCUA believes that the holding of crypto-assets as principal necessary to support other permissible activities is a permissible activity for FCUs. FISCUs must look to State law to determine the permissibility of such activities.

[99] 12 U.S.C. 5903(a)(7).

[100] 12 U.S.C. 5903(a)(1)(B)(ii).

[101] 12 U.S.C. 5915(b).

[102] Section 16(b) of the Act provides in part that ''Entities regulated by the primary Federal payment stablecoin regulators are authorized to engage in the payment stablecoin activities and investments contemplated by this Act, including acting as a principal or agent with respect to any payment stablecoin and payment of fees to facilitate customer transactions.'' 12 U.S.C. 5915(b). The activities authorized under section 16(b) include, for example, acting as an agent for a Customer with respect to the redemption of a Payment Stablecoin issued by a third party.

[103] 12 U.S.C. 5915(b).

[104] *See* 12 U.S.C. 5903(a)(1) (setting forth permissible Reserve Assets).

[105] 12 U.S.C. 5901(7).

[106] 12 U.S.C. 5902(b)(2).

fees on certain Distributed Ledgers, the issuer may have to hold non-Payment Stablecoin crypto-assets to facilitate the payment of these transaction fees. Consistent with the GENIUS Act, such crypto-assets are not permitted Reserve Assets in proposed § 706.202.

Proposed § 706.201(b) incorporates language from section 16(a) of the GENIUS Act and emphasizes that nothing in proposed § 706.201(a) may be construed to limit the authority of an Insured Credit Union to engage in activities permissible pursuant to applicable State and Federal law.[107]

Beyond the core activities and those that directly support those activities, section 4(a)(7)(B) of the GENIUS Act provides a rule of construction such that none of a PPSI's activities discussed above (*i.e.,* issuance, redemption, managing reserve assets, limited custody, *etc.*) are to be construed as a limitation on certain incidental activities or Digital Asset service provider activities if the activities are authorized by the NCUA.[108] Digital Asset service provider activities encompass: (1) exchanging Digital Assets for Monetary Value; (2) exchanging Digital Assets for other Digital Assets; (3) transferring Digital Assets to a third party; (4) acting as a Digital Asset custodian; and (5) participating in financial services relating to Digital Asset issuance.[109] The NCUA is intending to adhere to the GENIUS Act's rule of construction and would authorize additional activities as appropriate.

The NCUA's authority to approve these activities is limited to those activities specified by the GENIUS Act that are consistent with all other Federal and State laws, and provided that in any insolvency proceedings described under section 11 of the GENIUS Act,[110] the activities would not jeopardize the claims of Payment Stablecoin holders, which would rank senior to claims of non-Payment Stablecoin creditors.[111] The NCUA seeks comment on how to implement section 4(a)(7)(B) of the GENIUS Act and whether it should serve as an independent grant of authority or whether it must be consistent with a grant of authority provided from another Federal or State law.[112]

[107] 12 U.S.C. 5915(a)

[108] 12 U.S.C. 5903(a)(7)(B).

[109] 12 U.S.C. 5901(7)(A).

[110] 12 U.S.C. 5911.

[111] *See* 12 U.S.C. 5903(a)(7)(B).

[112] *Id.*

b. Prohibited Activities

The GENIUS Act also provides for certain prohibitions for PPSIs, including the prohibition on rehypothecation in section 4(a)(2),[113] the prohibition on the use of deceptive names in section 4(a)(9),[114] the prohibition against misrepresenting insured status in section 4(e),[115] and the prohibition on paying interest or yield in section 4(a)(11).[116]

In proposed § 706.201(c)(1), the NCUA imports the prohibition on the use of a deceptive name from section 4(a)(9) of the GENIUS Act.[117] This provision prohibits an NCUA-Licensed PPSI from using any combination of terms relating to the United States Government, including ''United States,'' ''United States Government,'' and ''USG,'' in the name of the Payment Stablecoin. This prohibition does not apply to abbreviations relating directly to the currency to which the Payment Stablecoin is pegged, such as ''USD.''

Consistent with section 4(a)(9) of the GENIUS Act,[118] proposed § 706.201(c)(2) would prohibit NCUA-Licensed PPSIs from marketing a Payment Stablecoin in such a way that a reasonable person would perceive the Payment Stablecoin to be legal tender as described in 31 U.S.C. 5103, issued by the United States, or guaranteed or approved by the Government of the United States. The NCUA recognizes that NCUA-Licensed PPSIs may want to market themselves as PPSIs under the GENIUS Act. There is no prohibition against issuers marketing themselves in this manner, so long as they do not run afoul of the prohibitions outlined in proposed § 706.201(c)(1) and (2), including the prohibition against marketing a Payment Stablecoin in such a way that a reasonable person would perceive the Payment Stablecoin to be guaranteed, issued, or approved by the United States. The NCUA notes that misrepresentations by an NCUA-Licensed PPSI cannot be cured by a general disclaimer and that representations and disclosures should be clear to permitted Payment Stablecoin holders and Customers. Consistent with section 4(e) of the GENIUS Act,[119] proposed § 706.201(c)(3) would provide that an NCUA-Licensed PPSI may not directly or through implication represent that Payment Stablecoins are backed by the full faith and credit of the United States, guaranteed by the United States Government, or subject to Federal deposit insurance or Federal share insurance.

Consistent with section 4(a)(11) of the GENIUS Act,[120] proposed § 706.201(c)(4) provides that NCUA-Licensed PPSIs must not pay the holder of any Payment Stablecoin any form of interest or yield (whether in cash, tokens, or other consideration) solely in connection with the holding, use, or retention of such Payment Stablecoin. The NCUA understands that issuers could attempt to make prohibited payments of interest or yield to Payment Stablecoins holders through arrangements with third parties. Moreover, there likely will be a large and changing variety of arrangements with third parties in which issuers could achieve the payment of yield to Payment Stablecoin holders. It would not be possible to identify in detail all, or even most, of the potential arrangements between NCUA-Licensed PPSIs and third parties that the NCUA may prohibit under section 4(a)(11) of the GENIUS Act and the NCUA's rulemaking authority under section 4(h) of the GENIUS Act,[121] particularly as such arrangements may evolve over time. On the other hand, a rule with only a general prohibition on the payment of yield could create uncertainty within the Payment Stablecoin market.

To balance these interests, the NCUA is proposing to include a presumption in paragraph (c)(4)(i) that certain types of arrangements with certain types of Persons would be prohibited payments of yield or interest by the issuer. Specifically, the NCUA would presume that an NCUA-Licensed PPSI is paying the holder of any Payment Stablecoin any form of interest or yield (whether in cash, tokens, or other consideration) solely in connection with the holding, use, or retention of such Payment Stablecoin if: (A) the NCUA-Licensed PPSI has a contract, agreement, or other arrangement with an Affiliate or a related third party to pay interest or yield to the Affiliate or related third party; and (B) the Affiliate [122] or related third party (or Affiliate of such related third party) has a contract, agreement, or

[113] 12 U.S.C. 5903(a)(2).

[114] 12 U.S.C. 5903(a)(9).

[115] 12 U.S.C. 5903(e).

[116] 12 U.S.C. 5903(a)(11).

[117] 12 U.S.C. 5903(a)(9).

[118] 12 U.S.C. 5903(a)(9).

[119] 12 U.S.C. 5903(e).

[120] 12 U.S.C. 5903(a)(11).

[121] Section 4(h) of the GENIUS Act provides that the NCUA and other stablecoin regulators may issue regulations to ''carry out the requirements of this section, including to establish conditions, and to *prevent evasion thereof.*''12 U.S.C. 5903(h) (emphasis added).

[122] A Person would not be included within this second prong solely because the Person is an Affiliate of an Affiliate of the issuer.

other arrangement to pay interest or yield (whether in cash, tokens, or other consideration) to a holder of any Payment Stablecoin issued by the NCUA-Licensed PPSI solely in connection with the holding, use, or retention of such Payment Stablecoin. To the extent that the Person, or an Affiliate of the Person with whom the NCUA-Licensed PPSI has a contract, agreement, or other arrangement to pay interest or yield is a related third party of the NCUA-Licensed PPSI because the NCUA-Licensed PPSI issues Payment Stablecoins on the related third party's behalf or under the related third party's branding, the arrangement between the related third party and the holder of the Payment Stablecoin would consider the holder of the Payment Stablecoin to be the holder of the Payment Stablecoin issued by the NCUA-Licensed PPSI on the related third party's behalf or under the related third party's branding. That is to say, with respect to a white-label relationship, the presumption would be triggered only to the extent the Payment Stablecoin holder is a holder of the related third party's white-labeled stablecoin (as opposed to other Payment Stablecoins issued by the NCUA-Licensed PPSI).

Related third parties would be defined to include any Person paying interest or yield to Payment Stablecoin holders as a service (*i.e.,* on behalf of the NCUA-Licensed PPSI) and any Person that the issuer issues Payment Stablecoins on behalf or under the branding of (*i.e.,* persons that have entered white-label relationship with the issuer). The NCUA believes that the close nexus to the issuer's payments and payments to the Payment Stablecoin holder as well as the close contractual or control relationship between the issuer and the other party would make it highly likely that the issuer's payments of yield or interest would be made to the holder through an intermediary or an attempt the evade the GENIUS Act's prohibition on interest and yield payments. Nonetheless, the NCUA would permit the issuer to rebut the presumption given the issuer provides sufficient evidence to the contrary. Specifically, an NCUA-Licensed PPSI may rebut the presumption by submitting written materials that, in the NCUA's judgment, demonstrate that the contract, agreement, or other arrangement is not prohibited under paragraph (c)(4) and is not an attempt to evade the prohibition.

Other arrangements that are not captured by the presumption may also violate the statutory prohibition or constitute an evasion thereof. The NCUA would assess those arrangements on a case-by-case basis but does not believe that it is necessary to include other arrangements within the rebuttable presumption at this time. The prohibition is not intended to prevent a merchant from independently offering a discount to a Payment Stablecoin holder for using Payment Stablecoins. The prohibition is also not intended to prevent an NCUA-Licensed PPSI from sharing in the profits derived from the Payment Stablecoin with a non-Affiliate partner in a white-label arrangement.

In proposed § 706.201(c)(5), the NCUA proposes to include the language from section 4(a)(2) of the GENIUS Act[123] that prohibits PPSIs from pledging, rehypothecating, or reusing any Reserve Assets required under section 4(a)(1),[124] except for the purposes listed in section 4(a)(2). Thus, consistent with the statute, an NCUA-Licensed PPSI may not pledge, rehypothecate, or re-use any Reserve Assets, either directly or indirectly (*e.g.,* through a third-party custodian of the Reserve Assets), except for the purpose of: (i) satisfying margin obligations in connection with investments in permitted reserves under proposed § 706.202(b)(4) or (5); (ii) satisfying obligations associated with the use, receipt, or provision of standard custodial services; [125] or (iii) creating liquidity to meet reasonable expectations of requests to redeem Payment Stablecoins, such that reserves in the form of Treasury bills with a maturity of 93 days or less may be sold as purchased securities in repurchase agreements,[126] provided that either: (A) the repurchase agreements are cleared by a clearing agency registered with the Securities and Exchange Commission; or (B) the NCUA-Licensed PPSI receives prior approval from the NCUA. By including the phrase ''directly or indirectly'' in the prohibition, it is clear that Congress intended that a custodian that holds the reserves on behalf of a PPSI also may not pledge, rehypothecate or reuse any of the Reserve Assets, other than with respect to the limited exceptions discussed in proposed § 706.201(c)(5). To the extent that a custodian holding the Payment Stablecoin reserves were allowed to bypass this prohibition, it would undermine the relatively safe nature of the Reserve Assets and the confidence that Payment Stablecoin holders have that the Payment Stablecoin will hold its peg.

The NCUA will deem any repurchase agreement approved under this section and section 4(a)(2)(C) of the GENIUS Act, provided that the Treasury bills sold as purchased securities have a maturity of 93 days or less, consistent with the requirement that Treasury bills held as Reserve Assets must have a maturity of 93 days or less, and the liquidity obtained through repurchase borrowings is not being obtained solely for purposes other than meeting redemption requests or compliance with the requirements of this proposed rule. The NCUA believes that providing this prior approval by rule will enhance the ability of NCUA-Licensed PPSIs to obtain liquidity quickly (through outright sales or repurchase agreements) and thereby facilitate the timely redemption of Payment Stablecoins. It is clear from section 4(a)(1)(A) of the Act that PPSIs may maintain identifiable reserves comprising of Money received under certain repurchase agreements.[127] It would frustrate section 4(a)(1)(A)(iv)'s clear permission to maintain such Reserve Assets if PPSIs could only engage in repurchase borrowing transactions upon the completion of cumbersome procedures and one-off supervisory approvals. The ability to obtain immediate liquidity through repurchase borrowings is useful and supplements a PPSI's ability to access immediate liquidity via other means (for example, the maintenance of deposits and Share Accounts at IDIs or actual sales of securities). The prohibition on rehypothecation in proposed § 706.201(c)(5) would, consistent with section 4(a)(2)(C) of the GENIUS Act, prohibit rehypothecation except for the purpose of creating liquidity to meet reasonable expectations of requests for redemption. However, given the fungibility of Money, the NCUA will not scrutinize the exact uses to which repurchase borrowing proceeds are put. The limited circumstances in which the NCUA would not consider rehypothecation permissible would be if repurchase borrowings are obtained solely for some purpose other than obtaining liquidity to meet redemption requests or compliance with the rule—

[123] 12 U.S.C. 5903(a)(2).

[124] 12 U.S.C. 5903(a)(1).

[125] The NCUA interprets this exception, codified in 12 U.S.C. 5903(a)(2)(B), as being related solely to the purposes specified in 12 U.S.C. 5909(c)(2)(B).

[126] Section 4(a)(2)(C) of the Act (12 U.S.C. 5903(a)(2)(C)) states that reserves in the form of Treasury bills may be sold as purchased securities for repurchase agreements with a maturity of 93 days or less if certain conditions are met. The NCUA proposes to clarify, consistent with section 4(a)(1)(iv) of the Act (12 U.S.C. 5903(a)(1)(iv)), that the Treasury bills sold under the repurchase agreement must have a maturity of 93 days or less. Consistent with this clarification and the NCUA's proposed approval of repurchase agreements under section 4(a)(2)(C) of the Act, discussed below, the maturity of the repurchase agreement would be overnight.

[127] 12 U.S.C. 5903(a)(1)(A).

for example, if repurchase proceeds are to be used solely for paying dividends to a PPSI (*i.e.,* removing excess Reserve Assets above the required minimum).

Section 4(h)(1) of the GENIUS Act provides that the NCUA may issue regulations to ''carry out the requirements of this section . . . and to prevent evasion thereof .'' [128] In proposed § 706.201(c)(6), consistent with this statutory authority, the NCUA proposes language that provides that an NCUA-Licensed PPSI must not engage in any activity that the NCUA determines is an evasion of the requirements of section 4 of the GENIUS Act [129] or Part 706.

In proposed § 706.201(b)(7), the NCUA is proposing to prohibit an NCUA-Licensed PPSI from providing credit to its Customers to purchase Payment Stablecoins. The NCUA interprets the GENIUS Act's requirements that a PPSI maintain Reserve Assets consisting of a narrow set of highly liquid assets and that a PPSI engage in a narrow set of activities to be crucial in ensuring a PPSI is able to satisfy redemption requests. If a PPSI lends funds to Customers to enable Customers to purchase Payment Stablecoins, or were to otherwise issue Payment Stablecoins to Customers on credit extended by the PPSI, the PPSI would then, in effect, need to access separate funding to acquire and maintain identifiable Reserve Assets to back the Payment Stablecoins issued on credit. This could result in a highly leveraged balance in which the Reserve Assets do not provide the intended resiliency. The NCUA seeks comment on whether this is an appropriate prohibition, and whether other alternatives would better achieve the statute's objectives.

The NCUA has considered and is requesting comment on whether to prohibit an NCUA-Licensed PPSI from issuing more than one brand of Payment Stablecoin (*i.e.,* more than one set of Payment Stablecoins marketed under the same name). The NCUA recognizes that there are advantages and disadvantages associated with permitting an NCUA-Licensed PPSI to issue multiple brands of Payment Stablecoins that may be co-branded with a named partner in a white-label arrangement. These arrangements can allow parties to leverage the experience and expertise of an NCUA-Licensed PPSI and facilitate a broader range of Payment Stablecoins in the market. However, they may also foster uncertainty about Reserve Assets and encourage contagion and run risk among brands of Payment Stablecoins, including but not limited to brands issued by one issuer. One possibility that the NCUA has considered and is requesting comment on is to restrict each NCUA-Licensed PPSI to issuing only one brand of Payment Stablecoin but to streamline the process for approving applications to become an NCUA-Licensed PPSI if an Affiliate has already been approved. Under this approach, multiple NCUA-Licensed PPSIs could share certain services and back-office functions with each other and might operate under a common risk management framework, but each issuer would be legally separate. This approach would allow an entity to leverage its experience and expertise but may provide more certainty with respect to the rights of Payment Stablecoin holders in the event that an NCUA-Licensed PPSI becomes insolvent.

The NCUA has also considered and is requesting comment on whether to include a provision explicitly prohibiting an NCUA-Licensed PPSI from engaging in unsafe or unsound practices. Pursuant to section 6(a)(3) of the GENIUS Act,[130] the NCUA has the ability to examine NCUA-Licensed PPSIs for risks that may pose a threat to safety and soundness. Further, section 5(a)(1)(B) of the GENIUS Act requires the NCUA to ''establish a process and framework for the licensing, regulation, examination, and supervision of [PPSIs] that prioritizes the safety and soundness of such entities.'' [131] It follows that NCUA-Licensed PPSIs should not be allowed to engage in practices that are unsafe or unsound. Explicitly prohibiting such activities may help the NCUA to address practices that could undermine public confidence in PPSIs and the financial system more generally.

c. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 23:* Are there activities not contemplated in proposed § 706.201 that PPSIs must be able to engage in for purposes of the GENIUS Act? If so, please describe them and any appropriate limits for these additional activities.

*Question 24:* Should the NCUA clarify that a PPSI may retain an asset manager under a separately managed account under proposed § 706.201(a)(8)?

*Question 25:* Are there other limits or conditions the NCUA should consider with respect to PPSIs acting as principal or agent with respect to any Payment Stablecoin? Should the NCUA specify the activities contemplated under the GENIUS Act for which a PPSI may act as principal or agent in Payment Stablecoins under section 16(b) of the Act? [132]

*Question 26:* Do PPSIs need to hold crypto-assets other than Payment Stablecoins for other purposes beyond paying transaction fees or testing a Distributed Ledger? If so, under what circumstances would a PPSI need to hold such assets?

*Question 27:* Should the final rule include specific provisions addressing an issuer's holding of non-Payment Stablecoin crypto-assets to pay transaction fees, such as limitations on the amount of non-Payment Stablecoin crypto-assets that a PPSI may hold at any time? If so, how should those limits be calibrated? Should any limit be based on anticipated fees, a percentage of assets, or be set at a certain value threshold?

*Question 28:* Should there be any limit on what methods of payment a PPSI can accept when assessing fees, including fees associated with the purchasing or redeeming of Payment Stablecoins? Should the final rule include provisions addressing a PPSI's potential assessment of fees in crypto-assets other than Payment Stablecoins and how long issuers can hold onto such crypto-assets? Are there specific forms of payment outside of fiat and Payment Stablecoin that PPSIs will need to accept that the NCUA should provide additional clarity on?

*Question 29:* Should the NCUA include an approval process for the activities listed in the Section 4(a)(7)(B) of the GENIUS Act, including Digital Asset service provider activities and activities incidental to Payment Stablecoin activities or Digital Asset service provider activities? [133]

*Question 30:* Should the NCUA clarify proposed § 706.201(a)(8) by providing specific examples of activities that directly support the activities in proposed § 706.201(a)(1) through (4)? Are there specific examples of activities that directly support the activities in proposed § 706.201(a)(1) through (4) that should be clarified? Should the NCUA distinguish between what it means for an activity to directly support the activities in proposed § 706.201(a)(1) through (4), and therefore, satisfy the test in proposed § 706.201(a)(8) as opposed to what it means for an activity to be incidental to the activities in proposed § 706.201(a)(1) through (7) provided in

[128] 12 U.S.C. 5903(h)(1).

[129] 12 U.S.C. 5903.

[130] 12 U.S.C. 5905(a)(3).

[131] 12 U.S.C. 5904(a)(1)(B).

[132] 12 U.S.C. 5915(b).

[133] 12 U.S.C. 5903(a)(7)(B).

section 4(a)(7)(B) of the GENIUS Act? Should the NCUA provide an approval process related to Digital Asset service provider activities and/or incidental activities?

*Question 31:* The proposed rule would permit a PPSI to hold non-Payment Stablecoin crypto-assets to pay certain fees (*e.g.,* network fees). Should the rule include an express limitation on the amount of such crypto-assets that the PPSI may hold? For example, the rule could provide that the amount of such crypto-assets may not exceed reasonably expected near-term demand.

*Question 32:* Could the prohibition against paying interest or yield solely in connection with the holding or use of a permitted Payment Stablecoin be clarified? If so, how? Would it be helpful to include a *de minimis* exception to the prohibition to provide certainty with respect to arrangements that are not designed to violate the prohibition and that do not have a meaningful economic impact? If so, is there any specific guidance the NCUA should provide on what *de minimis* means?

*Question 33:* Does the presumption with respect to the prohibition against paying interest or yield solely in connection with the holding, use, or retention of a permitted Payment Stablecoin appropriately address concerns relating to evasion? Is the presumption with respect to the prohibition against paying interest or yield solely in connection with the holding, use, or retention of a permitted Payment Stablecoin appropriately scoped? Is the presumption sufficiently clear? How could the presumption be clarified? Should the NCUA clarify the standard of review under which it would consider written materials to rebut the presumption related to interest or yield and specify whether the NCUA's determination is appealable? Should the NCUA propose any safe harbor for arrangements that the NCUA believes do not violate the statutory prohibition?

*Question 34:* Should the prohibition on interest and yield in proposed § 706.201(c)(4) be broader to prevent issuers from directly or indirectly paying interest or yield to Payment Stablecoin holders (rather than presuming that certain arrangements with Affiliates or related third parties violate the prohibition)? Are there examples of potentially evasive behavior that the NCUA should expressly include in a prohibition? If the NCUA were to expand the prohibition, are there activities that should be expressly carved out of such an expansion?

*Question 35:* Should the prohibition on interest and yield in proposed § 706.201(c)(4) clarify the terms ''pay,'' ''interest,'' ''yield,'' ''solely,'' or any other terms? If so, what clarifications would be helpful? What types of rewards, if any, should be subject to the prohibition?

*Question 36:* What would the economic impact of a narrow prohibition on paying interest or yield solely in connection with the holding, use or retention of a Payment Stablecoin be relative to a broader prohibition (*i.e.,* one that includes relationships with Affiliates or third parties)? What impact would either prohibition have on deposits and funds placed in Share Accounts?

*Question 37:* Is the scope of the prohibition against pledging, rehypothecating, or reusing Reserve Assets sufficiently clear? Are there specific types of transactions, relationships, or structures for which it would be helpful to clarify whether the prohibition applies? For example, should the NCUA clarify whether the prohibition would prevent establishing a collateral trustee that would hold a security interest in Reserve Assets for the benefit of Payment Stablecoin holders? What arguments weigh for and against finding that the prohibition would prohibit these arrangements? If a PPSI sets up a collateral trustee arrangement where the issuer grants a security interest in the Reserve Assets, does this arrangement sufficiently protect the Reserve Assets in the event of insolvency or bankruptcy? Should a PPSI be required to make particular disclosures if it uses such an arrangement? What should those disclosures include?

*Question 38:* Should the NCUA specify what ''creating liquidity to meet reasonable expectations of requests to redeem Payment Stablecoins'' means under proposed § 706.201(c)(5)(iii)? Should the NCUA pre-approve repurchase agreements by rule as proposed in § 706.205(c)(5)(iii)(B)? Alternatively, should the NCUA allow for broad and open-ended approvals of the sale of reserves as purchased securities in repurchase agreements or should approvals be limited to specific types of transactions? What factors should the NCUA consider prior to granting approval of the sale of reserves as purchased securities in repurchase agreements under proposed § 706.201(c)(5)(iii)(B)?

*Question 39:* Should PPSIs be required to provide disclosures stating that Payment Stablecoins are not legal tender, issued by the United States, or guaranteed or approved by the United States? If so, should the NCUA impose any requirements on the manner in which disclosures are made? For example, should the NCUA require that disclosures be made on the PPSI's website, at point of direct sale by the issuer, alongside other types of disclosures, or in some other manner?

*Question 40:* Is any further clarity needed regarding the prohibition on the use of deceptive names, marketing, and representations in proposed § 706.201(c)(1) through (3)? For example, should the NCUA specify what kind of images or branding are likely to violate the prohibition? Should the NCUA require PPSIs to affirmatively state that Payment Stablecoins are not legal tender, issued by the United State, or guaranteed or approved by the Government of the United States? Should the NCUA explicitly require PPSIs to disclose that Payment Stablecoins are not subject to deposit or share insurance?

*Question 41:* Is the proposed prohibition on providing credit to Customers to purchase Payment Stablecoins appropriate? If so, should the prohibition be modified in any way? Should it be narrower or broader? If not, are there alternatives to achieve the intended objective or ensuring Reserve Assets achieve the intended resiliency? Are there any other activities that the NCUA should expressly prohibit as not being permissible and not in direct support of issuance, redemption, managing reserves, and providing certain safekeeping and custody services?

2. § 706.202. Reserve Assets

a. Proposed § 706.202

Proposed § 706.202 contains requirements applicable to Reserve Assets. Section 4(a)(1)(A) of the Act provides that a PPSI must maintain identifiable reserves backing the outstanding Payment Stablecoins of the PPSI on an at least one-to-one basis and specifies the eight permissible Reserve Asset types.[134] The one-to-one backing requirement applies at the PPSI level. A PPSI would not comply with this requirement if it did not maintain Reserve Assets sufficient to meet the one-to-one backing requirement. A PPSI may maintain Reserve Assets through a custodian, including an Affiliate acting as a custodian, as long as the custodian qualifies as an Eligible Financial Institution.

Proposed § 706.202(a)(1) would require that an NCUA-Licensed PPSI maintain Reserve Assets that: (i) are

[134] 12 U.S.C. 5903(a)(1)(A).

identifiable; (ii) are segregated from and not commingled with other assets owned or held by the NCUA-Licensed PPSI; (iii) at all times have a total Fair Value that equals or exceeds the Outstanding Issuance Value of the NCUA-Licensed PPSI; and (iv) are either held directly by the NCUA-Licensed PPSI or within the custody of an Eligible Financial Institution. In order to maintain Reserve Assets that are ''identifiable'' and comply with proposed § 706.202(a)(1)(i), NCUA-Licensed PPSIs must maintain appropriate records to ensure documented ownership and legal entitlement to individual Reserve Assets. Similarly, any ownership arrangements, including ownership via custodians, must comply with applicable laws and regulations, for example, requirements applicable to Customer securities owned through the Fedwire Securities Service. The NCUA generally anticipates that Reserve Assets will be recorded on the NCUA-Licensed PPSI's balance sheet under GAAP and be included in the quarterly reports required under proposed § 706.205(i). An NCUA-Licensed PPSI must maintain the appropriate operational capabilities, internal controls, policies, and safeguards to ensure that Payment Stablecoins are always backed by reserves on an at least a one-to-one basis. Among other things, safeguards may include mechanisms to prevent the issuance of abnormally large amounts of new Payment Stablecoins without additional approvals.[135]

To comply with the requirement in proposed § 706.202(a)(1)(iii), an NCUA-Licensed PPSI must ensure that the Fair Value of Reserve Assets equal or exceed the Outstanding Issuance Value of the outstanding Payment Stablecoins issued by the NCUA-Licensed PPSI at all times. Valuing Reserve Assets at Fair Value (*i.e.,* market value), rather than another measure, such as amortized cost, will help ensure that the Reserve Assets maintained by the NCUA-Licensed PPSI reflect current prices and will be monetizable at a value sufficient to meet any redemption requests at par value. Notably, the Outstanding Issuance Value is based on the total consolidated par value of all of an NCUA-Licensed PPSI's Payment Stablecoins rather than on the Fair Value of the outstanding issued Payment Stablecoin. Thus, if the Fair Value of the Payment Stablecoin decreased (*i.e.,* if the Payment Stablecoin de-pegged in the secondary market), the NCUA-Licensed PPSI would nevertheless be obligated to retain a stock of Reserve Assets, the Fair Value of which equals or exceeds the par value of outstanding Payment Stablecoins. This approach is intended to ensure that the NCUA-Licensed PPSI is able to credibly meet redemption requests, including in adverse circumstances. To take a contrary approach (*e.g.,* basing the Outstanding Issuance Value on the Fair Value of Payment Stablecoins) could allow NCUA-Licensed PPSIs to inappropriately remove assets from the required stock of Reserve Assets when stablecoins de-peg (as Reserve Asset requirements decline, along the with the secondary market price of the Payment Stablecoin), rather than maintaining the Reserve Assets on behalf of Payment Stablecoin holders, which may in turn exacerbate run risk for an NCUA-Licensed PPSI.

Proposed § 706.202(a)(1)(iv) provides that the Reserve Assets must either be held directly by the NCUA-Licensed PPSI or within the custody of an Eligible Financial Institution, which is defined in proposed § 706.2.

Proposed § 706.202(a)(2) would require that an NCUA-Licensed PPSI demonstrate the operational capability to access and monetize the identifiable Reserve Assets, commensurate with the NCUA-Licensed PPSI's risk profile and business model. The NCUA-Licensed PPSI must be able to monetize the Reserve Assets, potentially quickly and at short notice, in order to meet redemption requests. The inability to quickly monetize Reserve Assets would undermine the ability of a PPSI to maintain the stable value of its Payment Stablecoin.

To comply with proposed § 706.202(a)(2), an NCUA-Licensed PPSI must be able to demonstrate the ability to monetize all types of Reserve Assets it maintains. Depending on an NCUA-Licensed PPSI's size, risk profile, business model, activities, and operations, a PPSI may be able to demonstrate monetization in different ways. For example, it may be sufficient for some NCUA-Licensed PPSIs to demonstrate the ability to monetize Treasury bills they hold as Reserve Assets by establishing that they maintain appropriate repurchase arrangements through which they can quickly sell Treasury bills and receive liquid funds with which they can satisfy redemption requests. For other NCUA-Licensed PPSIs, for example, larger issuers or those with more complicated operations, additional measures may be appropriate to demonstrate the operational capability to monetize. It may be appropriate for such NCUA-Licensed PPSIs to maintain multiple alternative methods of monetization (for example, multiple repurchase agreement lines or repurchase agreement lines plus arrangements allowing outright sales of Treasury securities) in order to satisfactorily demonstrate the ability to monetize their Reserve Assets. Such redundant arrangements may be necessary if an NCUA-Licensed PPSI maintains a sufficiently large Treasury position that it could be difficult to monetize the entire position through transactions with a single repo counterparty or if an issuer maintains concentrated positions in particular types of Reserve Assets. The availability of multiple monetization channels helps ensure that an NCUA-Licensed PPSI is not required to monetize assets at reduced or ''fire sale'' prices. Having alternative monetization channels reduces the risk that an issuer would be obliged to accept unfavorable pricing when monetizing Reserve Assets under stress.

For certain NCUA-Licensed PPSIs, it may be necessary to periodically conduct actual monetization transactions (that is, actual outright sales or repurchase transactions) in order to demonstrate the ability to monetize. Actual transactions can more fully confirm that monetization capabilities exist. In the absence of actual test transactions, potential barriers to monetization may still exist. NCUA-Licensed PPSIs may lack the procedures and systems to monetize assets at any time in accordance with standard settlement periods and processes. For example, borrowing agreements may name authorizing officials that are unavailable or inappropriate. Actual monetization transactions may be necessary, for example, for issuers with unusually complicated operations or organizational structures, or for issuers that are particularly dependent on certain monetization channels or the ability to monetize particular assets. Periodic actual monetization transactions can minimize the risk of negative signaling during financial stress. If an NCUA-Licensed PPSI begins using a monetization channel that it has not regularly used in the past, that may spark concerns about the financial health of the issuer. For example, if an NCUA-Licensed PPSI has pre-established a repurchase agreement with a bilateral counterparty but never utilized it, sudden utilization of the repurchase agreement may generate

[135] *C.f.,* Dylan Butts, ''PayPal's crypto partner mints a whopping $300 trillion worth of stablecoins in 'technical error,'" CNBC (Oct. 16, 2025), *https://www.cnbc.com/2025/10/16/paypals-crypto-partner-mints-300-trillion-stablecoins-in-technical-error.html* (describing a technical error leading to the minting of a large amount of new stablecoins).

concerns that the issuer is experiencing a run on its Payment Stablecoins. Periodic test transactions using multiple monetization channels can mitigate such concerns. NCUA-Licensed PPSIs may be able to demonstrate the ability to execute actual monetization transactions in the ordinary course of their business (for example, redeeming Payment Stablecoins) and would not necessarily be required to engage in additional test transactions.

Proposed § 706.202(a)(3) would include requirements for when NCUA-Licensed PPSIs could withdraw Reserve Assets in excess of Outstanding Issuance Value. In order to ensure that sufficient Reserve Assets are maintained to back outstanding Payment Stablecoin issuance, NCUA-Licensed PPSIs would be able to withdraw excess Reserve Assets only after the monthly examination and certification required by section 4(a)(3) of the GENIUS Act [136] and provided for in proposed § 706.202(e) and (f). Specifically, NCUA-Licensed PPSIs would be able to withdraw any surplus Reserve Assets in excess of Outstanding Issuance Value, calculated and reported as of the last day of the previous month, only upon the publication of that month's public disclosure, due at the end of the subsequent month. Only permitting an issuer to withdraw surplus Reserve Assets after examination and certification will promote public confidence about the integrity of the handling of Reserve Assets. Permitting withdrawal of excess Reserve Assets at other intervals would significantly undermine the purpose of examination and certification. If NCUA-Licensed PPSIs were able to withdraw excess Reserve Assets at any time, based only upon their own internal calculations, that could undermine confidence and even create concerns about misconduct, for example if an issuer might make its own bad faith and un-validated determination that an excess existed in order to justify a withdrawal. Proposed § 706.202(a)(3) would also require that, while withdrawals would be based on calculations as of the end of the previous month, an NCUA-Licensed PPSI could only make withdrawals if the remaining Reserve Assets remained at least equal to the current Outstanding Issuance Value, calculated as of the day of withdrawal.

Under proposed § 706.202(b), reserve assets must only comprise: (1) United States coins and currency (including Federal Reserve notes) or Money standing to the credit of an account with a Federal Reserve Bank; (2) funds held as deposits or in Share Accounts [137] that are payable upon demand at an IDI (including any foreign branches or agents, including correspondent banks, of an IDI), subject to any limitation established by the FDIC and the NCUA, as applicable, pursuant to section 4(a)(1)(A)(ii) of the GENIUS Act to address safety and soundness risks of such IDI; [138] (3) Treasury bills, Treasury notes, or Treasury bonds with a remaining maturity of 93 days or less; [139] (4) Money received under repurchase agreements, with the NCUA-Licensed PPSI acting as a seller of securities and with a no longer than overnight maturity, that are backed by Treasury bills with a maturity of 93 days or less; [140] (5) reverse repurchase agreements, with the NCUA-Licensed PPSI acting as a purchaser of securities and with a no longer than overnight maturity, that are collateralized by Treasury bills, Treasury notes, or Treasury bonds on a no longer than overnight basis, subject to overcollateralization in line with standard market terms, that are: (i) tri-party; (ii) centrally cleared through a clearing agency registered with the Securities and Exchange Commission; or (iii) bilateral with a counterparty that the issuer has determined to be adequately creditworthy even in the event of severe market stress; (6) securities issued by an investment company registered under section 8(a) of the Investment Company Act of 1940,[141] or other registered Government money market fund, and that are invested solely in underlying assets described in proposed § 706.202(b)(1) through (5); [142] (7) any other similarly liquid Federal Government-issued asset approved by the NCUA; or (8) any reserve described in proposed § 706.202(b)(1) through (3), (6), or (7), in tokenized form, provided that such reserves comply with all applicable laws and regulations.

The NCUA encourages any NCUA-Licensed PPSI that seeks clarity on whether a specific tokenized asset qualifies as a permissible Reserve Asset under proposed § 706.202(b)(8) to discuss with the NCUA whether the asset qualifies. To the extent feasible, the NCUA is considering publishing a list of, or otherwise making public, the acceptable tokenized Reserve Assets for the sake of transparency. In determining whether a potential Reserve Asset qualifies as ''any other similarly liquid Federal Government-issued asset,'' under proposed § 706.202(b)(7) the NCUA will consider, among other relevant factors, whether: (i) the asset has liquidity characteristics, including during times of stress, comparable to the other Reserve Assets allowed under proposed § 706.202(b); (ii) NCUA-Licensed PPSIs will be operationally capable of monetizing the asset to meet redemption requests, including sudden and high-volume requests; (iii) the asset poses levels of risk comparable to the assets allowed under proposed § 706.202(b), including interest rate risk and counterparty credit risk; and (iv) whether the asset introduces additional risks that may be difficult for NCUA-Licensed PPSIs to manage.

Section 4(a)(4)(A)(iii) of the GENIUS Act requires the NCUA to issue regulations implementing Reserve Asset diversification, including deposit concentration at banking institutions and interest rate risk management standards that (1) are tailored to the business model and risk profile of PPSIs and (2) do not exceed standards that are sufficient to ensure the ongoing operations of PPSIs.[143] As discussed

[136] 12 U.S.C. 5903(a)(3).

[137] Section 4(a)(1)(A)(ii) of the GENIUS Act refers to reserves comprising ''funds held as demand deposits (or other deposits that may be withdrawn upon request at any time) or insured shares at an insured depository institution. . . .'' For the reasons expressed in the sections (section IV.B) of this preamble proposing the defined terms ''Monetary Value'' and ''Share Account), the NCUA is proposing to use the defined term ''Share Account.'' The NCUA believes this approach is clearer than utilizing the undefined term ''insured shares'' from the Act. The proposed rule would also simplify and clarify the GENIUS Act's text by limiting deposits and funds in Share Accounts than can be reserves to those that are ''payable upon demand'' at an IDI. The GENIUS Act refers to ''demand deposits (or other deposits that may be withdrawn upon request at any time). . . .'' The NCUA believes this construction can be more simply stated as proposed without any substantive change.

[138] 12 U.S.C. 5903(a)(1)(A)(ii).

[139] The GENIUS Act permits the inclusion of Treasury bills, notes, or bonds ''(I) with a remaining maturity of 93 days or less; or (II) issued with a maturity of 93 days or less.'' The proposed rule would combine these categories since the former category includes the latter, at least for purposes of complying with the requirements of proposed § 706.202. NCUA-Licensed PPSIs may choose to categorize these assets separately for other reasons, for example, accounting or risk management purposes.

[140] The proposed rule would clarify that a repurchase agreement or reverse repurchase agreement with an intraday maturity could qualify as a permitted reserve asset. Section 4(a)(1)(A)(iv) and (v) of the Act (12 U.S.C. 5903(a)(1)(A(iv) and (v))) specifically refers to repurchase agreements and reverse repurchase agreements with an overnight maturity. The NCUA believes that this provision is intended to permit repurchase agreements and reverse repurchase agreements with a maturity no longer than overnight. Thus, the proposed rule would explicitly permit the use of intraday repurchase agreements and reverse repurchase agreements.

[141] 15 U.S.C. 80a–8(a).

[142] A money market fund that invests in any other assets, including in Treasury securities with a remaining maturity longer than 93 days, would not be eligible to be held as a Reserve Asset.

[143] 12 U.S.C. 5903(a)(4)(A)(iii).

throughout this preamble, the GENIUS Act regularly uses banking-specific terminology. The NCUA interprets ''deposit concentration at banking institutions'' to include deposits and funds in Share Accounts at all IDIs.

In proposing regulations to implement the Reserve Asset diversification requirement, the proposed rule includes two alternative options in proposed § 706.202(c), only one of which would be selected in the final rule. ''Option A'' would include a principles-based general requirement with an optional safe harbor containing quantitative requirements. ''Option B'' would make the quantitative requirements mandatory for all NCUA-Licensed PPSIs. Option A's principle-based general requirement would require an NCUA-Licensed PPSI to maintain Reserve Assets that are sufficiently diverse to manage potential credit, liquidity, interest rate, and price risks. In addition, the principles-based requirement in Option A in proposed § 706.202(c) would require an NCUA-Licensed PPSI to measure and manage the risk that concentrating Reserve Assets at one Eligible Financial Institution or a small number of Eligible Financial Institutions may impair the ability of an NCUA-Licensed PPSI to satisfy redemption demands if individual Eligible Financial Institutions are unable to return, or if there is a delay in returning, Reserve Assets placed by an NCUA-Licensed PPSI.[144] The proposed rule's diversification and concentration requirements would apply to custodial relationships, including sub-custodial arrangements. NCUA-Licensed PPSIs would be expected to ''look through'' any sub-custodial relationships to ensure that Reserve Assets are custodied at the sufficiently diverse number of Eligible Financial Institutions needed to comply with the proposed rule's requirements. Without this requirement, a PPSI might supposedly have its stock of Treasury securities custodied at multiple Eligible Financial Institutions, but sub-custodial relationships could result in the entire stock being custodied at only a single Eligible Financial Institution.

NCUA-Licensed PPSIs with less complex business models and lower risk profiles may be able to maintain a less diverse stock of Reserve Assets than NCUA-Licensed PPSIs with more complex business models or higher risk profiles. However, the NCUA interprets section 4(a)(4)(A)(iii) of the GENIUS Act as mandating some Reserve Asset diversification for all PPSIs,[145] both in types of Reserve Assets maintained and in the number of Eligible Financial Institutions holding a PPSI's Reserve Assets.[146] The NCUA expects that it would be unlikely, for example, that an NCUA-Licensed PPSI, even one with a simple business model and low risk profile, could satisfy the requirements in proposed § 706.202(c) by placing all its Reserve Assets at a single Eligible Financial Institution. Such a reliance on a single third-party location of Reserve Assets could expose the NCUA-Licensed PPSI to the unnecessary risk that its Reserve Assets, or some portion of them, could be unavailable to meet redemption requests. Similarly, the NCUA expects that all NCUA-Licensed PPSIs will need to maintain multiple Reserve Asset types, if only to serve as a back-up to what is otherwise a PPSI's primary Reserve Asset. Some NCUA-Licensed PPSIs may need to maintain more robustly diverse stocks of Reserve Assets to satisfy proposed § 706.202(c), depending on their business model, risk profile, and other relevant factors. For example, a large NCUA-Licensed PPSI with complex operations may need to maintain deposits and/or Share Accounts) with multiple Eligible Financial Institutions, as well as a stock of Treasury bills, potentially custodied with more than one Eligible Financial Institution in order to ensure they are capable of being monetized during periods of financial stress. Factors such as the number of parties that redeem directly with the NCUA-Licensed PPSI, the volume of redemptions (and volatility with respect to such volume), and the number and nature of the blockchains on which a Payment Stablecoin is traded could all increase the complexity of the PPSI's operations and weigh in favor of maintaining multiple different pools of Reserve Assets. NCUA-Licensed PPSIs may be able to comply with this requirement by maintaining multiple deposit accounts and/or Share Accounts, or through deposit or share placement services, as they can comply with the requirement in proposed § 706.202(a)(2) to demonstrate the operational capability to access and monetize the Reserve Assets.

Option A contains a safe harbor under which an NCUA-Licensed PPSI would be deemed to satisfy proposed § 706.202(c) if the PPSI maintains on each business day: (i) at least 10 percent of its required Reserve Assets as deposits and/or funds in Share Accounts payable upon demand at IDIs or Money standing to the credit of an account with a Federal Reserve Bank; (ii) at least 30 percent of its Reserve Assets as deposits and/or funds in Share Accounts payable upon demand at IDIs, Money standing to the credit of an account with a Federal Reserve Bank, or amounts receivable and due unconditionally within five business days on pending sales of Reserve Assets, maturing Reserve Assets, or other maturing transactions (*e.g.,* reverse repurchase agreements); (iii) no more than 40 percent of its Reserve Assets at any one Eligible Financial Institution, whether as deposits and/or funds in Share Accounts payable upon demand at any one IDI, securities custodied at any one Eligible Financial Institution, bilateral reverse repurchase agreements with any counterparty, or through other exposures; (iv) no more than 50 percent of the amount provided in proposed § 706.202(c)(2)(i) at any one Eligible Financial Institution; and (v) Reserve Assets with a weighted average maturity of no more than 20 days.

Weighted average maturity is computed as the sum of the product of each Reserve Asset's (1) remaining maturity and (2) percentage of the total pool of Reserve Assets (based on principal value). Deposits or Share Accounts payable upon demand would have a weighted average maturity of zero. The NCUA invites comments on whether the proposed rule should include an express definition of weighted average maturity, particularly whether the NCUA should adopt the same definition used in SEC Rule 2a–7 (17 CFR 270.2a–7). Paragraph (i) of SEC

[144] Eligible Financial Institutions that hold Reserve Assets in custody or safekeeping must be subject to supervision and comply with the requirements set forth in section 10 of the GENIUS Act (12 U.S.C. 5909). Institutions subject to NCUA supervision would need to comply with the requirements set forth in proposed subpart C of part 706.

[145] 12 U.S.C. 5903(a)(4)(A)(iii).

[146] An NCUA-Licensed PPSI that maintains ownership and control of all of its own Reserve Assets, rather than relying on separate Eligible Financial Institutions, may be able to satisfy the principles-based general diversification and concentration requirement in Option A, depending on the PPSI's particular circumstances. While explicitly requiring all NCUA-Licensed PPSIs to maintain some Reserve Assets at a third-party Eligible Financial Institution may help promote confidence that an issuer's Reserve Assets are diversified across multiple Eligible Financial Institutions, such a requirement may be unnecessary if the PPSI is able to establish its own secure control over the Reserve Assets. Any NCUA-Licensed PPSI maintaining direct ownership and control of Reserve Assets would still be subject to all requirements in proposed § 706.202, notably the requirement in proposed § 706.202(a)(2) under which the PPSI must demonstrate the operational capability to access and monetize Reserve Assets. An NCUA-Licensed PPSI that maintains ownership and control of its own assets may fail to satisfy this requirement, or the diversification and concentration requirements in proposed § 706.202(c), if the PPSI, for example, relies exclusively on arrangements with a single Eligible Financial Institution to monetize its Reserve Assets.

Rule 2a–7 provides that, for certain securities and transactions, maturity should not necessarily be the time remaining until ultimate repayment of principal but instead should be based on other characteristics (for example, the time until an interest rate reset or until demand repayment options can be exercised). The NCUA invites comment on whether this proposed rule should include these same maturity assumptions for certain Reserve Assets. The proposed rule does not include these maturity assumptions since they should not be relevant for most or all permissible Reserve Assets. Even if the maturity assumptions are relevant for certain Reserve Assets that might be permissible (for example, Floating Rate Treasury Notes), the NCUA expects that the limited maturity of Reserve Assets (93 days or less) will diminish the value of applying maturity assumptions. Accordingly, under the proposed rule, the NCUA expects that the maturity of all Reserve Assets, for purposes of calculating weighted average maturity, will be the time remaining until the repayment of principal.

This safe harbor would give NCUA-Licensed PPSIs a transparent and standardized target for achieving compliance with Reserve Asset diversification requirements.[147] However, under Option A, meeting the safe harbor is not the only means to comply with proposed § 706.202(c). Some issuers, particularly smaller and less complex issuers, may be able to comply with § 706.202(c) without meeting the minimum levels in the safe harbor. For example, if a smaller NCUA-Licensed PPSI with a comparatively simple business model and lower risk profile finds it commercially useful to maintain more of its Reserve Assets as deposits and/or funds in Share Accounts payable upon demand, the PPSI may be able to satisfy proposed § 706.202(c) even if the PPSI maintains more than 10 percent of its Reserve Assets as Deposits and/or funds in Share Accounts at one Eligible Financial Institution, depending on particular facts and circumstances. This flexibility is consistent with the GENIUS Act's requirements that the proposed asset diversification requirements be ''tailored to the business model and risk profile of permitted payment stablecoin issuers.'' [148]

The safe harbor's requirement that an NCUA-Licensed PPSI maintain at least 10 percent of its Reserve Assets as ''daily liquidity'': deposits and/or funds in Share Accounts payable upon demand or Money standing to the credit of an account with a Federal Reserve Bank would help ensure that a PPSI has readily available funds necessary to meet redemption requests. While all of the proposed Reserve Assets should be liquid and easily monetizable, the requirement to have some minimum level of immediately liquid funds is additional protection against the risk that a PPSI would be unable to meet redemption requests in a timely manner, which is critical to avoid in order to maintain confidence in the PPSI and the Payment Stablecoin industry as a whole. A minimum requirement of 10 percent would be in line with the largest 1-day redemption events experienced by stablecoin issuers.[149] The NCUA invites comment on whether an alternate minimum is appropriate.

Including a baseline requirement to maintain a minimum percentage of liquidity that is immediately available (without the need to sell any assets, even highly liquid assets like Treasury securities) will help ensure an NCUA-Licensed PPSI's ability to meet redemption requests. The NCUA invites comments on these and other considerations, particularly on whether conservative liquidity requirements are necessary. The proposed rule includes robust liquidity requirements but does not include capital-based overcollateralization or Reserve Asset buffer requirements. An alternative possibility would be to remove some of the proposed liquidity requirements, though this may warrant increased capital or buffer requirements.

The safe harbor would also require that an NCUA-Licensed PPSI maintain at least 30 percent of its Reserve Assets as deposits and/or funds in Share Accounts payable upon demand, Money standing to the credit of an account with a Federal Reserve Bank, or amounts receivable and due unconditionally within five business days on pending sales of Reserve Assets, maturing Reserve Assets, or other maturing transactions. This ''weekly'' liquidity would help ensure that an NCUA-Licensed PPSI is able to meet a series of redemption requests that takes place over multiple days. It will also help prevent issuers from meeting the ''daily'' liquidity requirement but otherwise maintaining a stock of assets that are less readily monetizable. A minimum requirement of 30 percent ''weekly'' liquidity would protect issuers against redemption runs that take place over multiple days, a phenomenon experienced by stablecoin issuers in the past, and a 30 percent minimum requirement would exceed the redemption volumes seen during these redemption runs. In the absence of a minimum ''weekly'' (or other multi-day) requirement, an issuer might only have its stock of 10 percent immediately available liquidity plus owned securities that it would have to actually sell in order to monetize and meet redemption requests. While NCUA-Licensed PPSIs must be prepared to monetize any such securities, it would be safer to have a stock of liquid funds that will automatically become available over the next several days as a first line of defense against multi-day redemption runs.

The safe harbor would also require that an NCUA-Licensed PPSI maintain no more than 40 percent of its Reserve Assets at any one Eligible Financial Institution, whether as Deposits and/or funds in Share Accounts payable upon demand at any one IDI, securities custodied at any one Eligible Financial Institution, bilateral reverse repurchase agreements with any counterparty, or through other exposures. This requirement would prevent an issuer from being overly exposed to any One Eligible Financial Institution. While this requirement would not eliminate the chance of losing Reserve Assets because of distress at an Eligible Financial Institution holding Reserve Assets—or temporarily losing access to Reserve Assets—this requirement would ensure that NCUA-Licensed PPSIs have other stocks of Reserve Assets available to satisfy redemption requests. This requirement is meant to capture all potential exposures to a counterparty. An NCUA-Licensed PPSI could maintain deposits and/or funds in Share Accounts payable upon demand at an IDI while at the same have an Affiliate of that IDI maintain custody of the issuer's securities or serve as a counterparty in repurchase or reverse repurchase transactions. All of these transactions could expose an NCUA-Licensed PPSI's Reserve Assets to the health of a single Eligible Financial Institution. Accordingly, this requirement would aggregate exposures to prevent excessive exposure to any

[147] The NCUA recognizes that, as an NCUA-Licensed PPSI sells more liquid assets to meet redemption requests in times of stress, it may temporarily fail to satisfy the terms of the proposed safe harbor. An NCUA-Licensed PPSI should appropriately diversify its Reserve Assets as soon as practicable following such an event. However, at no point, can an NCUA-Licensed PPSI's Reserve Assets be less than the Fair Value of the Outstanding Issuance Value of the PPSI as required in proposed § 706.202(a)(1)(iii).

[148] 12 U.S.C. 5903(a)(4)(A)(iii)(I).

[149] Although the NCUA referenced SEC Rule 2a–7 when drafting these requirements due to certain similarities between money market funds and PPSIs, the proposed requirements diverge in certain respects based on inherent differences between the two (*e.g.,* Reserve Asset composition).

one Eligible Financial Institution. The phrase ''or other exposures'' is meant to capture any other exposure that creates a similar risk. The NCUA invites comments on alternate minimums besides 40 percent; the 40 percent measure would ensure that no one Eligible Financial Institution would have a majority of an NCUA-Licensed PPSI's Reserve Assets and that issuers spread relationships and operational capabilities across multiple Eligible Financial Institutions in a way that prevents a PPSI coming to rely excessively on one Eligible Financial Institution.

The safe harbor would also require that an NCUA-Licensed PPSI maintain no more than 50 percent of the required daily liquidity specified under proposed paragraph (c)(2)(i) at any one Eligible Financial Institution. This requirement would guard against the risk that problems at one Eligible Financial Institution prevent a PPSI from accessing its Reserve Assets. If an NCUA-Licensed PPSI is dependent on one Eligible Financial Institution to maintain all or a large portion of its Reserve Assets, the PPSI may be excessively exposed to, for example, operational concerns at that Eligible Financial Institution or even the risk of the institution's failure.

Proposed § 706.202(c)(2)(i) is designed to ensure that NCUA-Licensed PPSIs have a sufficient minimum amount of readily available funds to meet redemption requests. However, if that entire amount consists of deposits and/or funds in Share Accounts at one IDI, the PPSI is exposed to the risk that problems at that IDI could wholly prevent the PPSI from accessing its readily available funds. Having at least one other stock of readily available funds as part of a PPSI's Reserve Assets would help ensure that some readily available funds are accessible in order to meet redemption requests. Placing deposits and/or funds in Share Accounts payable upon demand at multiple IDIs, whether directly or through deposit/share placement services, would mitigate the risk of over-exposure to one particular IDI.

Proposed § 706.202(c)(2)(v) would also require, to qualify for the safe harbor, that an NCUA-Licensed PPSI's Reserve Assets have a weighted average maturity of no more than 20 days. This would serve as a backstop against potential losses due to interest rate increases. While PPSIs may permissibly hold Reserve Assets with a maturity of up to 93 days, holding a portfolio of Reserve Assets concentrated at the outer end of that maturity limit exposes the issuer's Reserve Assets to losses due to interest rate increases.[150] Even small losses could undermine confidence in a Payment Stablecoin given the importance of maintaining par and ensuring a stable value. A limit on weighted average maturity imposed across the entire portfolio of an NCUA-Licensed PPSI's Reserve Assets would allow the issuer to hold the entire range of permissible assets while ensuring that the portfolio in aggregate does not have excess exposure to interest rate risk. A limit of 20 days would still allow NCUA-Licensed PPSIs the full range of permissible Reserve Assets (for example, newly issued 3-month Treasury bills) while ensuring that Reserve Assets are not overly concentrated in longer-dated issuances. The NCUA invites comment on whether a weighted average maturity limit of 20 days is appropriate, including whether it would represent a binding constraint for current stablecoin issuers and the desirability of higher or lower limits. The NCUA additionally invites comment on whether the weighted average maturity requirement for a large issuer should differ from that for a smaller issuer (*e.g.,* by allowing smaller issuers to have a longer weighted average maturity such as 30 or 40 days).

As an example, an NCUA-Licensed PPSI with $20 billion of Outstanding Issuance Value could meet the safe harbor by depositing at least $1 billion each at two IDIs. This would meet the requirement in proposed § 706.202(c)(2)(i) that the NCUA-Licensed PPSI maintain at least 10 percent ($2 billion in this example) of its required Reserve Assets as readily available funds as well as the requirement in proposed § 706.202(c)(2)(iv) that the NCUA-Licensed PPSI maintain no more than 50 percent of its readily available funds at any one Eligible Financial Institution ($1 billion in this example). In order to qualify for the safe harbor, the NCUA-Licensed PPSI would still need to satisfy proposed § 706.202(c)(2)(iii), under which an issuer could not maintain more than 40 percent of its Reserve Assets at any one Eligible Financial Institution and proposed § 706.202(c)(2)(ii), under which an NCUA-Licensed PPSI must maintain at least 30 percent of its Reserve Assets as deposits and/or funds in Share Accounts payable upon demand at IDIs, Money standing to the credit of an account with a Federal Reserve Bank, or amounts receivable and due conditionally within five business days on pending sales of Reserve Assts, maturing Reserve Assets, or other maturing transactions. In this example, the NCUA-Licensed PPSI could not keep more than $8 billion in Reserve Assets at any one institution (for instance, invested in a single investment fund) and would also need to maintain at least $6 billion as deposits and/or funds in Share Accounts payable upon demand at IDIs, Money standing to the credit of an account with a Federal Reserve Bank, or amounts receivable and due unconditionally within five business days on pending sales of Reserve Assets or other maturing transactions. The issuer would also need to ensure that its entire stock of Reserve Assets ($20 billion) complied with the requirement to have a weighted average maturity of no more than 20 days. While compliance with the diversification safe harbor would establish compliance with proposed § 706.202(c), it would not relieve an NCUA-Licensed PPSI of its obligations under proposed § 706.202(a). Notably, an NCUA-Licensed PPSI would still be required to maintain and demonstrate the operational capability to monetize its Reserve Assets.

Option B would impose the same quantitative standards as mandatory requirements, rather than an optional safe harbor. Option B would not include the baseline principles-based requirement. While Option B would remove flexibility, it would create a more transparent and readily comprehensible set of requirements. NCUA-Licensed PPSIs, Payment Stablecoin holders, and other parties would be able to discern what requirements NCUA-Licensed PPSIs must adhere to with respect to the Reserve Assets.

Proposed § 706.202(d) would require an NCUA-Licensed PPSI with an Outstanding Issuance Value of $25 billion or more to, on each business day, maintain at least 0.5 percent of its Reserve Assets in the form of deposits and/or funds in Share Accounts at IDIs in amounts that are fully insured by the FDIC and/or NCUA, up to a cap of $500 million. While it may not be practicable to maintain all deposits and/or funds in Share Accounts so that they are fully insured by the FDIC and/or NCUA, having some minimum amount of fully insured deposits and/or funds in Share Accounts will provide an additional measure of security for Reserve Assets

[150] During the rapid increases in interest rates in the early 1980s, 3-month Treasury Bill secondary market rates increased from 12.05 percent to 15.37 percent over the period of a month. *See* Fed. Reserve Econ. Data, ''Table Data—3-Month Treasury Bill Secondary Market Rate, Discount Basis,'' *https://fred.stlouisfed.org/data/WTB3MS* (including Treasury Bill secondary market rates for February 8, 1980, and March 7, 1980). A change of this magnitude would result in a 90-day security losing approximately 0.79 percent of its value.

and can promote market and holder confidence about the integrity of Reserve Assets. Though the required minimum amount is not a large percentage, it would ensure that large NCUA-Licensed PPSIs have some stock of extremely safe and liquid assets: deposits and/or funds in Share Accounts that are fully insured and can be withdrawn freely and that are not exposed to risks like interest rate risk. Having Reserve Assets diffused through the banking system (including the credit union system) may promote confidence by virtue of having at least some Reserve Assets held in traditional IDIs with which holders are already familiar (for example, nearby community banks and FICUs). Payment Stablecoin holders may be reassured by knowing that a minimum portion of Reserve Assets is maintained as deposits and/or funds in Share Accounts that are fully insured, and the diffusion of Reserve Assets may mitigate fears or contagion risks associated with rumors about the health of particular IDIs.

In theory, it would be ideal from the perspective of the safety and soundness of the NCUA-Licensed PPSI if PPSIs would be able to place all deposits and/or funds in Share Accounts, so they are covered by applicable deposit/share insurance limits. However, current deposit/share insurance requirements may make this impossible for larger PPSIs. While NCUA-Licensed PPSIs may use services, such as deposit/share brokers, to distribute deposits and/or funds in Share Accounts across Eligible Financial Institutions—as long as NCUA-Licensed PPSIs are able to maintain the operational capability to access and monetize these deposits and/or funds in Share Accounts—the finite number of Eligible Financial Institutions plus deposit/share insurance limits may render it impossible for larger PPSIs to insure more than a portion of their deposits and/or funds in Share Accounts. The NCUA may revisit this issue if deposit/share insurance requirements change, and the NCUA invites comments about alternative ways to address deposit/share insurance of Reserve Assets held as deposits and/or funds in Share Accounts. The NCUA recognizes the additional security that deposit/share insurance would provide for Payment Stablecoin holders and also recognizes the value of spreading deposits and/or funds in Share Accounts around a broad range of IDIs, rather than potentially having PPSI deposits and/or funds in Share Accounts concentrated at a small number of IDIs. Holding reserves at a very large number of institutions, could, however, introduce additional operational risk that a PPSI would need to manage. The thresholds in proposed § 706.202(d) balance the value and security of spreading Reserve Assets across multiple Eligible Financial Institutions, the capacity of the banking system (and the credit union system) to hold deposits and/or funds in Share Accounts) from any one single depositor, and the operational complexity numerous depository relationships would entail.

Proposed § 706.202(e) would require the NCUA-Licensed PPSI to publish on its website by noon on the last day of each month the composition of the issuer's reserves held pursuant to the GENIUS Act as of the last day of the prior month, using a format substantially similar to the template provided in table 1 to proposed § 706.202(e). The report must contain the total number of outstanding Payment Stablecoins issued by the issuer and the amount (Fair Value) and composition of the reserves, including the average tenor and geographic location of custody of each category of reserve instruments. The information in the report, including the value of Reserve Assets, should be as of the end of the previous month. This implements the requirement in section 4(a)(1)(C) of the GENIUS Act.[151] To satisfy the geographic location requirement, the NCUA expects that it will generally be sufficient for NCUA-Licensed PPSIs to disclose the jurisdiction where Reserve Assets are custodied or located.

Proposed § 706.202(f) implements the applicable requirements of section 4(a)(3) of the GENIUS Act.[152] This provision requires PPSIs to, each month, have the information disclosed in the previous month-end report examined by a Registered Public Accounting Firm. Proposed § 706.202(f)(1) would require the examination of the previous month-end report to occur by noon on the last day of each month and would require the report to be published on the NCUA-Licensed PPSI's website at the same time as the monthly report required under proposed § 706.202(e). Consistent with the GENIUS Act, proposed § 706.202(f)(2) would require the Chief Executive Officer and Chief Financial Officer (or the Persons performing the equivalent functions) of the NCUA-Licensed PPSI to submit a certification as to the accuracy of the monthly report to the NCUA. Under section 4(a)(3)(C) of the Act,[153] any Person who submits this required certification knowing that such certification is false shall be subject to the same criminal penalties as those set forth under 18 U.S.C. 1350(c).

Proposed § 706.202(g) provides for the consequences and remedial measures if an NCUA-Licensed PPSI does not comply with the requirements of § 706.202. Proposed § 706.202(g)(1) would provide that an NCUA-Licensed PPSI must notify the NCUA on any day in which its Reserve Asset amount has fallen below the required minimum in proposed § 706.202(a). Proposed § 706.202(g)(2) would provide that an NCUA-Licensed PPSI falling below the required minimum would be barred from issuing new Payment Stablecoins until it had remediated the shortfall except as necessary to facilitate a transfer of Payment Stablecoins from one Distributed Ledger to another and provided that the net Outstanding Issuance Value does not increase. Proposed § 706.202(g)(3) would provide that, if an NCUA-Licensed PPSI fails to meet its Reserve Asset requirement for 15 consecutive business days, it must begin liquidation of Reserve Assets and redemption of outstanding Payment Stablecoins consistent with § 706.203 and may not charge Customers a fee to redeem their Payment Stablecoins at any time during the liquidation. The NCUA may extend the time period under proposed § 706.202(g)(3) in its sole discretion. Because of the importance of maintaining minimum Reserve Asset levels, the proposed rule would include automatic consequences for any non-compliance intended to prevent any concerns from developing further. This provision is intended to prevent chronic non-compliance with minimum Reserve Asset requirements. The NCUA expects to ensure compliance with other requirements in the proposed rule using traditional supervisory methods, namely having examiners identify concerns that can be escalated into enforcement actions, if necessary. Accordingly, proposed § 706.202(g)(4) provides that if at any point the NCUA determines that an NCUA-Licensed PPSI has not demonstrated that it meets the Reserve Asset requirements in proposed § 706.202(a), (b), (c), or (d), the NCUA may require the issuer to submit a plan describing how the PPSI will attain compliance and the timeline for the plan. If the NCUA determines, either before or after the submission of a plan, that an NCUA-Licensed PPSI faces a significant risk of being unable to attain compliance with the reserve requirements in proposed § 706.202(a), (b), (c), or (d) within a reasonable period, the NCUA may order the issuer

[151] 12 U.S.C. 5903(a)(1)(C).

[152] 12 U.S.C. 5903(a)(3).

[153] 12 U.S.C. 5903(a)(3)(C).

to initiate redemption of all outstanding Payment Stablecoins. Proposed § 706.202(g)(4) also states that the NCUA's authority to require a compliance plan or order redemption does not limit the NCUA's authority to pursue other measures, including enforcement actions, if appropriate.

b. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 42:* Section 4(a)(1)(A)(vi) of the GENIUS Act includes ''securities issued by an investment company registered under section 8(a) of the Investment Company Act of 1940,[154] or other registered Government money market fund, and that are invested solely in underlying assets described in clauses (i) through (v)'' as eligible Reserve Assets for Payment Stablecoins issued by PPSIs. However, many or all Government money market funds are investment companies registered under section 8(a) of the Investment Company Act of 1940. Should the provision relating to securities issued by investment companies registered under section 8(a) of the Investment Company Act, or other registered Government money market funds, be clarified? Does section 4(a)(1)(A)(vi) permit securities issued by investment companies registered under section 8(a) of the Investment Company Act of 1940 that are not Government money market funds to be Reserve Assets for Payment Stablecoins issued by PPSIs? Are there any registered Government money market funds that are not investment companies registered under section 8(a) of the Investment Company Act? Does section 4(a)(1)(A)(vi) permit securities issued by registered Government money market funds that are not registered under section 8(a) of the Investment Company Act to be Reserve Assets for Payment Stablecoins issued by PPSIs?

*Question 43:* Should the provisions relating to repurchase agreements and reverse repurchase agreements be clarified? For example, should the NCUA provide that deposits and funds in Share Accounts can serve as collateral for repurchase agreements? If so, what limitations, if any, should the NCUA include with respect to the use of deposits and funds in Share Accounts as collateral?

*Question 44:* Should the proposed rule require a buffer or impose haircuts on certain Reserve Assets to ensure that Reserve Asset values do not fall below Outstanding Issuance Values? The GENIUS Act requires PPSIs to maintain identifiable reserves ''on an at least 1 to 1 basis.'' What measures should the proposed rule include to ensure that issuers are able to maintain this minimum? Without a buffer or other measures, the Fair Value of a PPSI's Reserve Assets could fall below the required minimum if there are, for example, sudden increases in interest rates. While proposed § 706.204(a)(3)(i) would include a requirement to manage interest rate risk, should there be a more express requirement for a buffer (for example, 1% of Reserve Assets)? For example, the proposed rule could require PPSIs to maintain an amount of Reserve Assets sufficient to stay above the Outstanding Issuance Value in light of risks facing the PPSI, including interest rate risk and risks associated with the capability to access and monetize Reserve Assets. Are there other considerations the NCUA should take into account if it chose to calibrate such a buffer? As an alternative to requiring such a buffer, should the NCUA provide guidance on what level of buffer is generally appropriate as a matter of prudent risk management?

*Question 45:* Should the NCUA expressly require that a certain percentage of Reserve Assets be held in custody either at an Affiliate or at a third party? What are the potential costs and benefits of this approach, including with respect to operational risk?

*Question 46:* Is the term ''deposits and/or funds in Share Accounts payable upon demand'' sufficiently clear? If not, how should the NCUA clarify the term (*i.e.,* what types of accounts should expressly be included within the term)?

*Question 47:* Should the proposed rule define ''reserve in tokenized form'', to enhance clarity regarding proposed § 706.202(b)(8)? If so, should the NCUA define ''reserve in tokenized form'' to refer to a Digital Asset, as defined in proposed § 706.2, that represents another asset and provides full legal rights to that underlying asset? What modifications to this definition or the rule's related terminology would enhance clarity?

*Question 48:* In the provision in proposed § 706.202(b)(5) regarding reverse repurchase agreements, is the proposed rule sufficiently clear in its reference to ''overcollateralization in line with standard market terms?'' If not, what clarifications would be appropriate?

*Question 49:* Should the NCUA provide additional detail on what securities could be in scope for ''any other similarly liquid Federal Government-issued asset'' under § 706.202(b)(7)? For example, should Treasury securities with remaining maturity of two years or less be permitted under § 706.202(b)(7)? What would be the implications for liquidity or interest rate risk of allowing these types of securities to be held as Reserve Assets? If the NCUA were to permit two-year Treasury securities to be used as Reserve Assets, should the NCUA impose any additional requirements, such as requiring the weighted average maturity of Treasury securities held as reserves to be no more than 93 days (or some shorter timeframe) or requiring additional Reserve Asset diversification requirements (*e.g.,* minimum amount of Reserve Assets held as deposits and/or funds in Share Accounts or minimum number of Eligible Financial Institutions holding the PPSI's Reserve Assets) for PPSIs that hold Treasury securities with a remaining maturity between 94 days and two years?

*Question 50:* Should the proposed rule clarify that Treasury Floating Rate Notes (FRNs) and Treasury Inflation-Protected Securities (TIPs) be included as permissible Reserve Assets, assuming they otherwise meet the requirements of the proposed rule, including maturity requirements? Is there any reason these securities should be excluded? Should Treasury Separate Trading of Registered Interest and Principal of Securities (STRIPS) be included? Are there other instruments that should be considered as included within the GENIUS Act's phrase ''Treasury bills, notes, or bonds''? If these securities are included, should there be additional requirements—for example, both weighted average life and weighted average maturity limits to accommodate interest rate resets in FRNs?

*Question 51:* Should the proposed rule's requirements for Reserve Assets incorporate requirements to reflect potential interactions with the larger market for Treasury securities? For example, should the proposed rule include requirements to prevent any disruptive or negative effects that the management or liquidation of Treasury Reserve Assets might have on markets?

*Question 52:* The proposed rule would, consistent with the GENIUS Act, allow as Reserve Assets funds held as deposits and/or in Share Accounts) that are payable upon demand at an IDI (including any foreign branches or agents, including correspondent banks). Should the proposed rule add definitions for these terms to make them clearer or impose restrictions on the use of foreign branches or agents and correspondent banks? For example, should the proposed rule require that Payment Stablecoins denominated in United States dollars only be backed by deposits and/or funds in Share Accounts that are payable upon demand

[154] 15 U.S.C. 80a-8(a).

at U.S.-based IDIs (*i.e.,* Reserve Assets could not include Eurodollar deposits)? Should the NCUA include any additional requirements with respect to Reserve Assets held abroad, such as applying a haircut to the reserve assets, imposing a capital charge, or including additional policies and procedures to manage the risks associated with holding Reserve Assets abroad?

*Question 53:* Should the NCUA develop a formal process to consider and approve securities under § 706.202(b)(7)? Should the NCUA allow PPSIs or other parties to request that the NCUA consider a specific type of security? Should any determinations on additional securities approved under this authority be made public?

*Question 54:* The proposed rule would require a PPSI to maintain Reserve Assets, the Fair Value of which must equal or exceed the Outstanding Issuance Value at all times. Should the NCUA impose a different standard, such as requiring the Fair Value of Reserve Assets to equal or exceed the Outstanding Issuance Value at the end of each day or at the end of each business day?

*Question 55:* The proposed rule's requirements for Reserve Asset diversification and concentration include two options: (1) a flexible, principles-based baseline requirement plus a quantitative safe harbor or (2) quantitative requirements applicable to all PPSIs. Which option is more appropriate? How should either option, including the quantitative limits included in each option, be modified? For example, should the requirement or safe harbor's provision regarding holding Reserve Assets as deposits and/or funds in Share Accounts payable upon demand or Money standing to the credit of an account with a Federal Reserve Bank be set at five percent, 10 percent, 15 percent or 20 percent? Should this requirement be set at a different percentage (*e.g.,* 10 percent) for small issuers and a larger percentage (*e.g.,* 15 percent) for larger issuers? Should the requirement or safe harbor's provision regarding maintaining Reserve Assets as deposits and/or funds in Share Accounts payable upon demand, Money standing to the credit of an account with a Federal Reserve Bank, or amounts receivable and due unconditionally within five business days on pending sales of Reserve Assets or other maturing transactions be set at 20 percent, 25 percent, or 30 percent? Are the proposed maxima for various types of Reserve Assets that may be held at an Eligible Financial Institution appropriately calibrated? Would a shorter or longer weighted average maturity be appropriate? Should larger issuers have a shorter weighted average maturity requirement than smaller issuers? If the final rule includes quantitative requirements for all PPSIs, should there be additional risk management requirements to ensure that PPSIs appropriately manage diversification and concentration risk? In particular, the risk management requirements could include a requirement that PPSIs must measure and manage the risk that their gross exposure to any one institution or a small number of institutions may impair their ability to satisfy redemption demands.

*Question 56:* The Reserve Asset diversification and concentration limits in proposed § 706.202(c) would not distinguish reserve assets held at Federal Reserve Banks and would therefore include requirements (or conditions of a safe harbor) that would limit the reserve assets held at any one Federal Reserve Bank. In light of the low credit risk associated with Federal Reserve Banks, should the final rule eliminate these requirements or conditions? Specifically, should the NCUA exempt reserve assets held at a Federal Reserve Bank from the conditions in § 706.202(c)(2)(iii) and § 706.202(c)(2)(iv) of Option A and the requirements in § 706.202(c)(3) and § 706.202(c)(4) of option B?

*Question 57:* The Reserve Asset diversification and concentration limits in proposed § 706.202(c) would limit the Reserve Assets, including deposits and/or funds in Share Accounts payable upon demand, at any one Eligible Financial Institution. Should there be an exception to some or all of these requirements for a subsidiary of an NCUA-regulated FICU approved to be a PPSI if the NCUA-regulated FICU has less than a certain amount of total assets? Should the exception be limited to or tailored for Reserve Assets at a Parent Company FICU? For example, should a PPSI that is a subsidiary of an NCUA-regulated FICU Parent Company with less than a certain amount of total assets be permitted to hold a larger percentage, or all, of its Reserve Assets as deposits and/or funds in Share Accounts at the NCUA-regulated FICU Parent Company? Should any such exception be subject to any conditions? For example, should it only be available if the NCUA-regulated FICU is well-capitalized?

*Question 58:* Option A for proposed § 706.202(c) would require that a PPSI must maintain Reserve Assets that are sufficiently diverse to manage potential credit, liquidity, interest rate, or price risks. Are there other risks that should be added to this list, or removed from it? If the final rule adopts mandatory quantitative diversification and concentration requirements, should the requirement to monitor and manage these risks be codified as a separate risk management requirement?

*Question 59:* The NCUA invites comment on the extent to which additional diversification requirements are necessary. Is it necessary to require that PPSIs maintain more than one type of Reserve Asset? Would it be sufficient for the NCUA to require that PPSIs maintain only one secondary, backup Reserve Asset?

*Question 60:* To diversify the maturity profile of Reserve Assets, should PPSIs be required to maintain a minimum amount of their Reserve Assets in cash or equivalents or assets that can be converted more readily into short-term liquidity, for example within a daily or weekly timeframe, akin to the requirements for money market funds in SEC Rule 2a–7?

*Question 61:* Should the proposed rule include other measures to encourage Reserve Assets to be held in the form of fully insured deposits and/or Share Accounts? Proposed § 706.202(d) would include a requirement for larger PPSIs to maintain a minimum percentage of assets as fully insured deposits and/or Share Accounts. While it may be difficult for larger PPSIs to hold reserve assets as fully insured deposits and/or Share Accounts due to deposit and share insurance limits and the finite number of IDIs in the United States, should PPSIs be required to hold some minimum amount of reserves as fully insured deposits and/or Share Accounts) in order to provide extra protection for Payment Stablecoin holders? Should the thresholds in proposed § 706.202(d) be set at different levels: for example, apply to issuers with an Outstanding Issuance Value of $1 billion, $10 billion, $50 billion, or $100 billion or more? Should covered larger issuers be required to maintain a smaller or larger percentage of Reserve Assets as fully insured deposits and/or Share Accounts (for example, 0.1 percent, 0.25 percent, 1 percent, or 2 percent)? Should the cap be higher or lower (for example, $100 million, $250 million, or $1 billion)?

*Question 62:* How should the NCUA calibrate the fully insured deposit and/or Share Account) requirement for PPSIs? Should it be as a percentage of assets or an absolute number? If a percentage, what percentage should that be? If an absolute number, what should that be? Should there be a cutoff for PPSIs above or below a certain size

threshold that should be required to place fully insured deposits and/or Share Accounts? If so, why? What would be the implications of such a cutoff? What is the total amount of fully insured Payment Stablecoin deposits and/or funds in Share Accounts that the banking system in the United States can or should reasonably absorb? What is the total amount of fully insured deposits and/or funds in Share Accounts that an individual community bank or FICU is likely to hold?

*Question 63:* There are approximately 4,380 total insured banks and 4,287 FICUs in the United States. Should the proposed rule include other measures to spread insured Payment Stablecoin deposits and Share Accounts throughout the banking and credit union systems? If so, how broadly should insured deposits and funds in Share Accounts from PPSIs be distributed? For example, should the final rule be calibrated to maximize the number of banks and FICUs in the United States that could hold some amount of insured Deposits and Share Accounts from PPSIs if consistent with their risk appetite and risk management abilities? If so, why? If not, why not?

*Question 64:* Deposit/share placement services could be used to facilitate compliance with these diversification requirements, as long as PPSIs are able to maintain the operational ability to access the deposits and/or funds in Share Accounts, consistent with proposed § 706.202(a). Please describe any risks associated with using such services or other intermediaries and how PPSIs could best mitigate these risks.

*Question 65:* Could Reserve Asset diversification requirements that encourage diffusion of deposits and funds in Share Accounts cause risks to the banking and credit union systems (for example, increasing run risks at banks and FICUs or replacing more stable deposits and funds in Share Accounts with deposits and funds in Share Accounts that are more likely to be withdrawn quickly and in large volumes)? Could such diversification requirements raise operational risks for PPSIs, FICUs, or banks? How difficult would it be for PPSIs to liquidate such deposits and funds in Share Accounts in a stressed environment? If deposit and share insurance rules change, so that even larger PPSIs could be able to hold all their required deposits and or funds in Share Accounts as fully insured, should all deposits and funds in Share Accounts held as Reserve Assets be required to be insured?

*Question 66:* Should the proposed safe harbor (or alternatively, the liquidity requirements directly) require a PPSI to maintain at least 20 percent of required Reserve Assets at IDIs with less than $30 billion in total assets (either directly or indirectly through a deposit/share broker)? Would such an approach help ensure appropriate Reserve Asset diversification, particularly as these smaller IDIs are unlikely to be counterparties to the PPSI in repurchase agreements or reverse repurchase agreements?

*Question 67:* How would the proposed rule affect the amount of deposits and funds in Share Accounts maintained in the United States banking and credit union systems? Would the proposed rule reduce the number of deposits and funds in Share Accounts maintained in the United States banking and credit union system and therefore affect the ability of United States banks and credit unions to lend? What, if any, measures should the proposed rule include to mitigate such concerns? Should the proposed rule include a minimum percent of Reserve Assets as deposits and/or funds in Share Accounts in order to offset potential reductions in overall levels of deposits and funds in Share Accounts?

*Question 68:* One option in the proposed rule would include flexible baseline diversification and concentration requirements, coupled with an optional quantitative safe harbor. Should the default requirement for PPSIs include quantitative limits for Reserve Asset diversification? For example, the NCUA could impose quantitative limits on the maximum amount of uninsured deposits and/or uninsured funds in Share Accounts payable upon demand that PPSIs can maintain with a single IDI, in addition to any restrictions imposed by the FDIC and NCUA pursuant to separate authority under the GENIUS Act. PPSIs might be required to maintain no more than a specified percentage (for example, one percent, five percent, or 10 percent) as uninsured deposits and/or uninsured funds in Share Accounts payable upon demand at a single IDI. Examples of other quantitative limits could include the following.

- Minimum cash limits, such as a minimum amount of Money standing to the credit of an account of a Federal Reserve bank plus deposits and/or funds in Share Accounts payable upon demand as a percentage of operating expenses for a specific period, as a percentage of total Reserve Assets, or as a percentage of modeled stress cash outflows (for example, 10 percent or 15 percent);
- Minimum amount of assets maturing daily, weekly, or over some other time period (for example, assets available on demand or maturing weekly must constitute 20 percent of Reserve Assets);
- Counterparty diversification limits, such as maximum credit exposure to repo or reverse repo counterparties; and
- Limitations on tokenized forms of Reserve Assets under proposed § 706.202(b)(8), such as limiting the amount to no more than a certain percentage (*e.g.,* 20 percent) of a PPSI's total Reserve Assets.

What other limits should be considered? Such requirements could be tailored according to size; for example, larger and more complex PPSIs may be required to adhere to more stringent diversification and concentration requirements.

*Question 69:* Should the NCUA adopt the proposed safe harbor option (Option A) for proposed § 706.202(c)? Does the proposed safe harbor adequately address differences in business models, while addressing risks associated with asset concentration? Should the proposed safe harbor include different quantitative thresholds? What other features should the safe harbor incorporate, if adopted?

*Question 70:* Should the NCUA adopt any other restrictions on Reserve Asset concentration? If so, should they be based on gross exposures to particular counterparties? Or should the restrictions be more prescriptive? For example, should the rule prohibit a PPSI from entering into a reverse repurchase agreement with any counterparty that holds deposits and/or funds in Share Accounts that serve as Reserve Assets for the PPSI? Are the Reserve Asset concentration requirements appropriately calibrated? Should the NCUA require that no more than 5, 10, or 15 percent of a PPSI's Reserve Assets may be deposits or funds in Share Accounts at a single IDI?

*Question 71:* Should the NCUA's concentration requirements include requirements to not have more than a specified portion of Reserve Assets at a single custodian? Would this requirement impose undue burden? For example, would requiring the use of more than one Eligible Financial Institution as custodian of Treasury securities and collateral for reverse repurchase agreements impose undue burden or complexity on the management of Reserve Assets? What are the costs and benefits of such an approach, including from an operational risk perspective?

*Question 72:* Should the proposed rule include measures to ensure that a PPSI is not overly reliant on short-term lending transactions to meet immediate

liquidity needs? In the absence of such a restriction, a PPSI hypothetically might maintain a Reserve Asset portfolio entirely of Treasury securities and rely on overnight repo transactions to generate the daily liquidity amounts required by the proposed rule. This arrangement could leave the PPSI vulnerable to disruptions in repo markets. Should the proposed rule require excluding short-term repayment obligations from daily and weekly liquidity? For example, the proposed rule could require, for daily liquidity, deducting payments due on overnight borrowings and, for weekly liquidity, deducting any payments due within the next five business days? If such a restriction is included, should repayment deductions be offset by any expected inflows?

*Question 73:* Consistent with the GENIUS Act, the proposed rule would allow physical currency, including coins, to serve as Reserve Assets. Nevertheless, given the limitations on transferring physical currency, particularly difficulties that may arise in deploying physical currency quickly to meet sudden demands for redemptions, should the proposed rule impose limits on how much physical currency can serve as Reserve Assets? For example, the proposed rule could require that physical currency constitute no more than 5 percent or 10 percent of a PPSI's Reserve Assets. Should the proposed rule impose special requirements to make sure that physical currency is safeguarded (for example, against theft or fire)? For example, should there be periodic verification or inspection requirements for physical currency used as Reserve Assets?

*Question 74:* The proposed rule would generally require Reserve Assets to be valued at Fair Value for the purpose of determining compliance with the proposed rule's Reserve Asset requirements. Should United States coins and currency be required to be valued at par for purposes of the proposed rule's Reserve Asset requirements?

*Question 75:* Should the proposed rule include special limits on Treasury bonds and notes that may be more thinly traded and therefore more likely to sell at a discount? The GENIUS Act would allow PPSIs to hold as Reserve Assets Treasury notes and bonds so long as they have a maturity of 93 days or less. Older and off-the-run Treasury securities may be more difficult to sell and may only be marketable at a discount.[155] Should the proposed rule limit the portion of Reserve Assets that Treasury bonds and notes can comprise—for example, 20 percent of total Reserve Assets?

*Question 76:* Should the final rule specify the manner in which PPSIs must ''measure and manage'' credit, liquidity, interest rate, price risk, and concentration risk under proposed § 706.202(c)? For example, should the NCUA adopt related record retention or other requirements?

*Question 77:* Should the proposed rule include special measures to ensure that reverse repurchase agreements are appropriately overcollateralized? Proposed § 706.202(b)(5) would permit the inclusion, as Reserve Assets, of reverse repurchase agreements ''subject to overcollateralization in line with standard market terms.'' As one possibility, the proposed rule could include no special measures, and the examination and supervision process could be used to evaluate if particular PPSIs are failing to overcollateralize their reverse repurchase agreements in line with standard market terms. As another possibility, the proposed rule could include more express requirements, for example, that overcollateralization haircuts cannot be less than 0.5 percent.

*Question 78:* Should PPSIs be required to conduct stress tests, including stress tests to manage liquidity and interest rate risks? The GENIUS Act permits the inclusion of bilateral reverse repurchase agreements as Reserve Assets ''with [counterparties] that the issuer has determined to be adequately creditworthy even in the event of severe market stress.'' How should issuers evaluate the impact of ''severe market stress''? Should diversification requirements be based on the outcome of any stress tests? For example, PPSIs could be required to maintain a minimum amount of readily available Reserve Assets (for example, deposits and/or funds in Share Accounts that are payable upon demand and reserve balances) based on the results of liquidity stress tests? In particular, PPSIs could be required to maintain—or could elect to maintain as part of the proposed safe harbor—an amount of readily available Reserve Assets at least sufficient to meet outflow levels predicted by an internal liquidity stress test.

*Question 79:* Should PPSIs be required to adopt written plans or policies and procedures related to liquidity planning? For example, should PPSIs be required to adopt their own concentration restrictions, including limits on deposit and Share Account concentrations at IDIs, that are tailored to their own business model, operations, and risk profile? Similarly, should PPSIs be required to adopt liquidity management plans, which would include provisions to assign responsibility for liquidity risk management and address contingency funding needs?

*Question 80:* Subclause 4(a)(1)(A)(i) of the GENIUS Act provides that reserve assets can include ''money standing to the credit of an account with a Federal Reserve Bank.'' [156] Should diversification requirements include special measures for reserve bank balances if PPSIs are able to maintain them?

*Question 81:* Should the liquidity management standards in proposed part 706 change depending on the standards for timely redemption? For example, should the rule require less stringent liquidity standards (for example, less readily available funds required) if PPSIs have a longer time to redeem tendered Payment Stablecoins?

*Question 82:* Should the proposed rule include additional measures to address de-pegging in the secondary market? For example, should the proposed rule bar a PPSI from issuing new Payment Stablecoins if a PPSI's Payment Stablecoins trade in secondary markets at some price that is a set amount less than par (*e.g.,* trading at or below $0.99, $0.80 or some other amount) for some sustained period of time (*e.g.,* 24 hours)?

*Question 83:* For purposes of incorporating ''average tenor and geographic location of custody of each category of reserve instruments'' in the composition report required under § 706.202(e), what, if any, specific content and structure should the NCUA require? For example, should the report include information about deposit and Share Account concentration and CUSIPs of securities? Should the required content include the composition of the Reserve Assets by type of assets and maturities and by counterparty issuer? For purposes of stating the geographic location of custody, should it suffice to state the country of custody? Or should more granular information be required? Should the NCUA require that the composition report conform to the specified template? Are there specific methods for calculating tenor that the rule should require or explicitly permit?

[155] *See* Dimitri Vayanos & Jiang Wang, ''Market Liquidity—Theory and Empirical Evidence,'' National Bureau of Economic Research Working Paper 18251 (July 2012), *available at https://www.nber.org/system/files/working_papers/w18251/w18251.pdf.*

[156] 12 U.S.C. 5903(a)(1)(A)(i).

For example, should the rule define average tenor as the weighted average maturity or life of the asset? Should the monthly composition report require the issuer to distinguish between insured and uninsured deposits and funds in Share Accounts?

*Question 84:* Are there any additional steps that the NCUA should take to encourage transparency while minimizing burden with respect to the Reserve Asset composition report?

*Question 85:* What modifications to the reporting requirements, including the Reserve Asset composition report, would be appropriate for arrangements where one issuer issues multiple Payment Stablecoins under different brands (*e.g.,* white label arrangements), if that arrangement is permitted in the final rule? Are there any additional disclosures that the issuer should provide in order to ensure that the report is not misleading?

*Question 86:* Should the report be required to list and name any IDIs holding Reserve Assets? Should the report be required to list and name other Eligible Financial Institutions holding Reserve Assets? Should the proposed rule include additional measures to ensure that Reserve Assets are appropriately traceable and linked to their corresponding Payment Stablecoin so as to avoid any difficulties in resolving claims to Reserve Assets?

*Question 87:* For purposes of the composition report and reserves in tokenized form, should the PPSI be required to disclose the location of custody of both the reserve instrument in tokenized form on a ledger and any real-world asset that the reserve in tokenized form represents? What related reporting requirements would be appropriate?

*Question 88:* Should the values and information in the monthly report be required to be as of a particular date or time? Alternatively, should PPSIs publish on their websites a report showing the real-time values of the items required in the monthly composition report? Having the most recent information will make the more report more useful, and the NCUA invites comment on how much real-time reporting is feasible and whether it may only be feasible for certain items. Should the monthly report be required to include both month-end figures (for the previous month) and some information that can be presented in real-time (for example, the value of reserves or Outstanding Issuance Value)? Are there potential challenges in providing assurance over real-time information presented in a monthly report?

*Question 89:* Should the NCUA require PPSIs to publish the monthly certification on their websites, in addition to publishing the monthly Reserve Asset composition report? Should the NCUA specify the content and form of the certification?

*Question 90:* Should the monthly composition report be published at some point before the examination by a Registered Public Accounting Firm? For example, a PPSI could publish the report five days after the end of the previous month and have the report examined 30 days after the end of the previous month and disclose any discrepancies uncovered by the examination. Would the benefits of more timely availability of these reports outweigh the potential costs associated with the risk of subsequent changes as a result of the examination that would be completed at a later date?

*Question 91:* Is the requirement in proposed § 706.202(f) to have information disclosed in the previous month-end report examined by a Registered Public Accounting Firm sufficiently clear? If not, what additional clarity should the NCUA provide with respect to the examination by a Registered Public Accounting Firm? Should the examination be performed at the ''reasonable assurance'' level or at some other standard? What additional standards, if any, should the NCUA apply to ensure that the examination is accurate and appropriate? Should the engagement letter between the PPSI and the Registered Public Accounting Firm require the Registered Public Accounting Firm to attest to whether the PPSI is in compliance with the Reserve Asset requirements in § 706.202 (or a subset thereof), based on the information available to the Registered Public Accounting Firm? What criteria should be used for the examination? Would assurances from the management of the PPSI regarding the information in the issuer's weekly or monthly report be sufficient? If not, what other criteria should be included?

*Question 92:* Should PPSIs be required to monitor the financial condition of Eligible Financial Institutions holding Reserve Assets? Should the financial condition of an Eligible Financial Institution holding an issuer's Reserve Assets be considered in whether issuers have met their deposit and/or funds in Share Account concentration obligations?

*Question 93:* Are there additional considerations that the NCUA should take into account with respect to proposed § 706.202(g)(1), including whether it is appropriate that the PPSI must not issue new Payment Stablecoins until it remediates a shortfall in Reserve Assets? For example, should there be some period of time (*e.g.,* one or two days) where an issuer should be able to issue Payment Stablecoins despite a shortfall? Is the requirement in § 706.202(g)(3) set appropriately at 15 days or should the period be longer or shorter (*e.g.,* 5 days, 10 days, 20 days, 25 days, 30 days)?

*Question 94:* Should the proposed rule include restrictions on expenses that may be charged against Reserve Assets? Is it worth making clear that PPSIs may not charge general corporate expenses against Reserve Assets? While there may be a narrow set of expenses that can be paid from Reserve Assets (for example, interest on a repurchase agreement or fees paid to an investment company holding Reserve Assets), the NCUA expects that paying most other expenses from Reserve Assets would be inconsistent with the requirement for PPSIs to maintain identifiable Reserve Assets backing Outstanding Issuance Value on a 1 to 1 basis and the rehypothecation prohibitions.

3. § 706.203. Redemption

a. Proposed § 706.203

Section 706.203 of the proposed rule addresses redemption requirements imposed by section 4(a)(1)(B) of the GENIUS Act.[157] Consistent with the statute, under proposed § 706.203(a), an NCUA-Licensed PPSI must publicly disclose its current redemption policy.[158] The NCUA proposes that in disclosing its redemption policy, the NCUA-Licensed PPSI must include, at a minimum, certain information. Specifically, proposed § 706.203(a)(1) provides that the NCUA-Licensed PPSI must include a timeframe in which the PPSI will redeem Payment Stablecoins and the timeframe under which the issuer is required to redeem Payment Stablecoins (which, under proposed paragraph § 706.203(b)(1)(i) may not exceed two business days following the date of the requested redemption). In proposed § 706.203(a)(2), the NCUA proposes to require the issuer to include a statement consistent with proposed § 706.203(b)(1)(ii) that any discretionary limitations on timely redemptions can only be imposed by the NCUA. Proposed § 706.203(a)(3) requires that NCUA-Licensed PPSIs include in their redemption disclosures a statement

[157] 12 U.S.C. 5903(a)(1)(B).

[158] Under section 2(22) of the GENIUS Act (12 U.S.C. 5901(22)), the issuer of a Payment Stablecoin must be obligated to convert, redeem, or repurchase a Payment Stablecoin for a fixed amount of Monetary Value, not including a Digital Asset denominated in a fixed amount of Monetary Value.

explaining the scenarios when the redemption period may be extended as provided for in proposed § 706.203(c). Proposed § 706.203(a)(4) provides that the NCUA-Licensed PPSI must provide a statement with clear instructions on how a Payment Stablecoin holder can redeem a Payment Stablecoin, including a link to the website(s) where a Customer can redeem the Payment Stablecoin. Proposed § 706.203(a)(5) would require the issuer to specify the minimum number of Payment Stablecoins, if any, that the NCUA-Licensed PPSI will redeem, provided that the issuer must redeem any number greater than or equal to one Payment Stablecoin, subject to appropriate Customer screening and onboarding. In setting the requirement that an NCUA-Licensed PPSI must redeem any number greater than or equal to one Payment Stablecoin, the NCUA is relying on a natural reading of the definition of ''payment stablecoin.'' Specifically, section 2(22) of the GENIUS Act defines ''payment stablecoin'' as a Digital Asset that an issuer ''is obligated to convert, redeem, or repurchase for a fixed amount of monetary value.'' [159] Since ''payment stablecoin'' is singular, the statutory language suggests that while an issuer could set a minimum redemption threshold at a fraction of a Payment Stablecoin, an issuer must redeem any number greater than or equal to one Payment Stablecoin to comply with the GENIUS Act. Otherwise, the Payment Stablecoin would not be redeemable for a fixed amount of Monetary Value.

Proposed § 706.203(b)(1) provides that an NCUA-Licensed PPSI's redemption policy must provide clear and conspicuous procedures for timely redemption of outstanding Payment Stablecoins. In proposed § 706.203(b)(1)(i), the NCUA is proposing to define ''timely'' to mean that the NCUA-Licensed PPSI would have to redeem a Payment Stablecoin no later than two business days following the date of the requested redemption. The NCUA is proposing this two-business day time frame as an outer limit on when an NCUA-Licensed PPSI must redeem a Payment Stablecoin and understands that many issuers may choose a time frame that is less than two business days. The NCUA believes this time frame provides sufficient responsiveness to Payment Stablecoin holders who seek to redeem their Payment Stablecoins, while also ensuring that PPSIs can appropriately manage liquidity demands. Proposed § 706.203(b)(1)(ii), consistent with the statute, provides that discretionary limitations on timely redemptions can only be imposed by the NCUA.[160]

Proposed § 706.203(c)(1) would provide that the period for timely redemption is extended to seven calendar days if an NCUA-Licensed PPSI faces redemption demands in excess of 10 percent of its Outstanding Issuance Value in a single 24-hour period. The NCUA proposes to use a 24-hour period for this requirement in recognition of the likelihood that there may be significant demands to redeem Payment Stablecoins outside of normal business hours and outside of the hours when many Reserve Assets could be liquidated. As provided for in proposed § 706.203(c)(2), the extended redemption period applies to all redemption requests that are outstanding at the time the 10 percent threshold is met as well as any subsequent redemption requests following the time the threshold is met. Proposed § 706.203(c)(3) clarifies that the extension is non-discretionary and that an NCUA-Licensed PPSI may only redeem any of the outstanding or subsequent redemption requests prior to the seven calendar day period if the NCUA determines that the issuer has the ability to redeem sooner in an orderly fashion and through a fair and transparent process or the NCUA otherwise provides notice to the NCUA-Licensed PPSI that the extended redemption period no longer applies. The NCUA expects that the NCUA-Licensed PPSI seeking to redeem sooner than the seven calendar day period will engage with the NCUA to provide evidence that it can redeem in an orderly fashion and through a fair and transparent process that does not unfairly advantage some Payment Stablecoin holders relative to other Payment Stablecoin holders. Under proposed § 706.203(c)(4), an NCUA-Licensed PPSI that exceeds that 10 percent threshold would be required to provide notice to the NCUA within 24 hours. Using this 24-hour time period will provide appropriate notice to the NCUA and allow an appropriate amount of time to facilitate the orderly liquidation of Reserve Assets. These provisions are intended to facilitate the orderly liquidation of sufficient Reserve Assets in the event of a spike in redemption requests and would help ensure financial stability by lowering the potential price impact of a sudden liquidation of Reserve Assets. Proposed § 706.203(c)(5) provides that the NCUA, may in its discretion, extend timely redemption described in proposed § 706.203(b)(1) or (c)(1), as applicable, if the NCUA determines that the NCUA-Licensed PPSI poses a threat to safety and soundness, financial stability, or such an extension is otherwise in the public interest.

The requirements of this section apply only to the redemption of a Payment Stablecoin by the NCUA-Licensed PPSI (and any entity acting on behalf of the PPSI) and would not apply to secondary market trading. This section is not intended to prevent NCUA-Licensed PPSIs from establishing criteria related to the participants with which PPSIs will interact.

Proposed § 706.203(d)(1) provides that an NCUA-Licensed PPSI must also publicly, clearly, and conspicuously disclose in plain language and in format that is readily noticeable to Customers, readily understandable by Customers, and segregated from other information: (i) the name of the NCUA-Licensed PPSI that issues the Payment Stablecoin; (ii) that the NCUA-Licensed PPSI is the entity that is obligated to convert, redeem, or repurchase the Payment Stablecoin for a fixed amount of Monetary Value; (iii) the link to the monthly composition report of the relevant NCUA-Licensed PPSI's reserves as required under proposed § 706.202(e); and (iv) all fees associated with purchasing or redeeming Payment Stablecoins. The NCUA is including a requirement that the disclosures under proposed § 706.203(d)(1) are readily noticeable by Customers, readily understandable by Customers, and segregated from other information to

[159] 12 U.S.C. 5901(22).

[160] The NCUA notes that section 4(a) of the GENIUS Act (12 U.S.C. 5903(a)) establishes standards for the issuance of Payment Stablecoins applicable to all PPSIs. Section 4(a)(1)(B) requires all PPSIs to publicly disclose their redemption policy. Section 4(a)(1)(B)(i) requires that that redemption policy ''establish clear and conspicuous procedures for timely redemption of outstanding payment stablecoins[.]'' Section 4(a)(1)(B)(i) further provides that ''any discretionary limitations on timely redemptions can only be imposed by a State qualified payment stablecoin regulator, the Corporation, the Comptroller, or the Board, consistent with section 5906 of this title[.]'' The NCUA is not expressly listed in this list of regulators that can impose discretionary limitations on timely redemption. However, based on the structure of section 4, and 4(a)(1) in particular, the NCUA believes that a PPSI subject to the NCUA's jurisdiction must also be subject to any discretionary limitations on timely redemptions imposed by the NCUA. Further, section 5(c)(4) requires the NCUA to evaluate ''whether the redemption policy of the applicant meets the standards under section [4(a)(1)(B)] section 5903(a)(1)(B)'' in granting an NCUA PPSI license to an issuer. Finally, the NCUA also believes the NCUA's authority to impose such discretionary limitations on redemptions is inherently provided for by the NCUA's authority as a primary Federal payment stablecoin regulator of PPSIs that are FICU subsidiaries under section 2(25)(B) of the GENIUS Act (12 U.S.C. 5901(25)(B)) and the NCUA's supervision and enforcement authority over PPSIs that are FICU subsidiaries provided in section 6 of the GENIUS Act (12 U.S.C. 5905).

provide more certainty on what it means to ''publicly, clearly, and conspicuously disclose [the information] in plain language.'' [161] The NCUA is proposing to include the requirement that the disclosures be segregated from other information to ensure that the information in the disclosures is not combined with other non-relevant information that could obscure the importance of these disclosures. Although the NCUA-Licensed PPSI may include additional information beyond what is required in proposed § 706.203(d)(1) in the same disclosure, the information required under proposed § 706.203(d)(1) should be sufficiently separate and must meet the other requirements outlined, including that the information is readily noticeable and readily understandable by Customers. The NCUA believes that the disclosures required under proposed § 706.203(d)(1) are consistent with section 4(a)(1)(B) of the GENIUS Act [162] and are particularly important in the situation where an NCUA-Licensed PPSI issues more than one brand of Payment Stablecoin either directly or through an Affiliate (if the NCUA limits NCUA-Licensed PPSIs to issuing a single brand of Payment Stablecoin). The NCUA believes that these disclosures are necessary to prevent confusion and ensure that Payment Stablecoin holders understand who has the ultimate obligation to redeem their Payment Stablecoin.

Proposed § 706.203(d)(2) provides that an NCUA-Licensed PPSI must update the disclosures in proposed § 706.203(d)(1)(iv) if there are any changes in the fees associated with purchasing or redeeming Payment Stablecoins and provide Customers at least seven calendar days' prior notice of the change, including by securely delivering the notice to current Customers. Proposed § 706.203(d)(3) provides that an NCUA-Licensed PPSI must publish the disclosures in proposed § 706.203(d)(1) and any updates made in accordance with proposed § 706.203(d)(2) on the NCUA-Licensed PPSI's website. Proposed § 706.203(d)(4) provides that an NCUA-Licensed PPSI must include the disclosures in proposed § 706.203(d)(1) and any updates made in accordance with proposed § 706.203(d)(2) in any Customer agreements that it provides.

b. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 95:* Has the NCUA appropriately defined ''timely'' for purposes of redemption in proposed § 706.203(b)(1)(i) as not exceeding two business days? If not, what may be a more appropriate time frame? For example, should the NCUA consider other time frames ranging from one calendar day to seven calendar days timely? Should the NCUA consider some timeframe longer than seven calendar days timely? Should the NCUA define ''timely'' in a manner that scales with the liquidity of the underlying Reserve Assets or other factors? How should any definition of ''timely'' appropriately balance considerations of price stability and run risk?

*Question 96:* Should the NCUA include a safe harbor for failing to timely redeem a Payment Stablecoin in certain circumstances that may be outside of the PPSI's control (*e.g.,* disruptions to payment or banking systems for which the PPSI is not responsible)?

*Question 97:* Should the NCUA consider a longer redemption period ''timely'' in times of stress? If so, how long should the NCUA extend the redemption period and what metrics and data should the NCUA look to in order to determine whether an extension is warranted? For example, in the proposed rule, if a PPSI faced redemption demands in excess of 10 percent of its Outstanding Issuance Value over one day, the time period for timely redemption is generally extended to seven calendar days. Would other metrics be more appropriate? Should the NCUA automatically extend the time period for timely redemption in the event of a spike in redemption requests? Should the issuer be required to notify the NCUA if it exceeds the threshold for extending the redemption period, as proposed? Should the issuer be required to inform the public upon automatic extension of the time period? Should the extension of the time period to seven calendar days be such that notwithstanding a PPSI being able to demonstrate that it can redeem requests in an orderly fashion and through a fair and transparent process, the PPSI would not be able to redeem sooner than seven calendar days? Should the PPSI be able to make the determination that it can redeem through a fair and transparent process on its own without NCUA approval or should the standard otherwise be changed? Should the extended redemption time period apply to outstanding and subsequent redemption requests as proposed?

*Question 98:* Should the NCUA define ''redemption'' for purposes of the proposed rule? If so, should it be defined broadly to mean that, for example, the PPSI has initiated payment to the Payment Stablecoin holder in return for a tendered Payment Stablecoin? Are there reasons to define ''redemption'' more narrowly? For example, should the NCUA define redemption to mean that the PPSI's payment to a Payment Stablecoin holder in exchange for Payment Stablecoin has settled?

*Question 99:* Are there limitations that the NCUA should impose on redemption fees, *e.g.,* to discourage run risk or to encourage price stability?

*Question 100:* Should the NCUA require PPSIs to deliver notice to current Customers whenever they change fees, as proposed? Are there any specific methods or modes of communication that the NCUA should require? If so, which modes of communication would be most effective and appropriate? Should the notice be waived if the change is a decrease in fees?

*Question 101:* Should the NCUA include specific additional provisions regarding fee disclosures in the regulation text? If so, what additional requirements should be included? Should the NCUA specify how section 5 of the FTC Act relating to unfair or deceptive acts or practices could apply to how the NCUA evaluates the disclosures? [163] To whom should issuers have a responsibility to deliver disclosures regarding changes in fees? Should it be all Payment Stablecoin holders (*e.g.,* include retail holders who purchased from an exchange or secondary market), or should it be a narrower subset of holders (*e.g.,* only holders who purchased directly from the Payment Stablecoin issuer)? Are there obstacles that would make it impractical to deliver change in fee notices to all Payment Stablecoin holders?

*Question 102:* The NCUA has proposed several categories of disclosure in the proposed rule and requested comment as to whether it should propose additional categories. Taken collectively, would these disclosures provide potential Customers of PPSIs with the appropriate information to inform their use of Payment Stablecoins? Are there any steps the NCUA should take to ensure that potential Customers are not confused or overwhelmed by these disclosures, especially in light of the relative unfamiliarity many potential Customers may have with Payment Stablecoins? For example, should the NCUA take any steps to unify required

[161] 12 U.S.C. 5903(a)(1)(B)(ii).

[162] 12 U.S.C. 5903(a)(1)(B).

[163] 15 U.S.C. 45.

disclosures so that they are all provided to Customers at a specific point during the relationship? If so, how should the NCUA ensure that the most pertinent information is sufficiently emphasized? Is there anything else the NCUA should do to ensure that potential Customers are appropriately informed in regard to Payment Stablecoins issued by PPSIs? Are there any technical aspects of Distributed Ledgers or blockchain the NCUA should take advantage of in relation to disclosures? For example, should certain disclosures be automated through smart contracts, such as with wrappers or other techniques?

*Question 103:* Currently, many stablecoin issuers have issuance policies that may limit direct interaction with retail stablecoin holders. What are the potential impacts of these policies on retail stablecoin holders during a liquidity event? Should the NCUA explicitly require PPSIs to redeem Payment Stablecoins presented by any Payment Stablecoin holder that has undergone appropriate on-boarding including Customer screening, as proposed? Should the NCUA require PPSIs to redeem Payment Stablecoins presented by a Payment Stablecoin holder that has an account relationship at a regulated financial institution? Is additional clarity needed as to for whom a PPSI is obligated to redeem a permitted Payment Stablecoin? Should the NCUA impose any additional rules addressing minimum amounts for redemption? For example, should the NCUA prohibit redemption minimums or set the minimum at some point other than one Payment Stablecoin?

4. § 706.204. Risk Management

a. Proposed § 706.204

Section 4(a)(4)(A)(iv) of the GENIUS Act provides that the NCUA must issue regulations implementing appropriate operational, compliance, and information technology risk management principles-based requirements and standards, including Bank Secrecy Act and sanctions compliance standards, that are tailored to the business model and risk profile of NCUA-Licensed PPSIs and are consistent with applicable law.[164] Proposed § 706.204 addresses the requirements and standards required under section 4(a)(4)(A)(iv) of the GENIUS Act. Proposed § 706.204 also addresses interest rate risk management standards under section 4(a)(4)(A)(iii) of the GENIUS Act.[165]

The GENIUS Act requires that the regulation's requirements and standards be ''principles-based.'' Accordingly, the NCUA is proposing flexible standards in § 706.204 that scale based on the nature, scope, and risk of an NCUA-Licensed PPSI's activities. Most of the standards in proposed § 706.204 mirror the standards in the OCC Proposal. The standards in the OCC Proposal are adapted from relevant provisions of 12 CFR part 30, appendices A and B, which in turn implement 12 U.S.C. 1831p–1.[166] The OCC Proposal identified standards from appendices A and B of part 30 that fit the requirements of section 4(a)(4)(A)(iii) or 4(a)(4)(A)(iv) of the GENIUS Act and then, consistent with the statute, adapted and tailored those standards to the business models of PPSIs, as appropriate. The OCC Proposal also noted that the OCC issued a joint statement, together with the Federal Reserve and FDIC, on Risk Management Considerations for Crypto-Asset Safekeeping,[167] and that the standards in the OCC Proposal are consistent with the considerations described in the joint statement.[168] As noted throughout this preamble, the NCUA believes it is important to, where possible, provide consistent standards across the various primary Federal payment stablecoin regulators. The NCUA agrees with the approach taken in the OCC Proposal and feels that it appropriately implements the requirements and standards required under sections 4(a)(4)(A)(iii) and (iv) of the GENIUS Act.[169] As discussed more thoroughly below, the NCUA is proposing to largely mirror the OCC's approach.

Proposed § 706.204(a)(1) requires that an NCUA-Licensed PPSI have internal controls and information systems that are appropriate for the size and complexity of the PPSI and the nature, scope, and risk of its activities and that provide for: (i) an organizational structure with appropriate segregation of duties and an internal control structure that establishes clear lines of authority and responsibility for monitoring adherence to established policies; (ii) effective risk assessment; (iii) timely and accurate financial, operational, and regulatory reporting, including with respect to reports required under proposed part 706; (iv) adequate procedures to safeguard, manage, control, and monetize assets, including Reserve Assets; and (v) compliance with applicable laws and regulations. Internal controls refer to the systems, policies, procedures, and processes effected by the board of directors and other personnel to safeguard PPSI assets, limit or control risks, achieve PPSI objectives, and ensure compliance with applicable laws and regulations. Effective internal controls help the board of directors and management safeguard the NCUA-Licensed PPSI's resources and comply with laws and regulations, as well as reduce the possibility of significant errors and irregularities, and assist in their timely detection when errors and irregularities do occur. Internal controls must also include an effective risk assessment since a PPSI cannot effectively manage its risks without an understanding of its risk profile. The internal controls standards in proposed § 706.204(a)(1) align with those proposed in the OCC Proposal, which are modeled on the internal controls standards in 12 CFR part 30, with some adjustments to accommodate the particular activities and risks of PPSIs. For example, the procedures to safeguard, manage, control, and monetize assets will be expected to include measures to monitor and ensure the deposit and funds in Share Account concentration and diversification requirements are met on a daily basis.[170] Likewise, procedures will be expected to address potential vulnerabilities related to fraud and the theft of Payment Stablecoins or other assets.

The NCUA proposes that § 706.204(a)(2) requires NCUA-Licensed PPSIs have an internal audit system that is appropriate to the size and complexity of the PPSI and the nature, scope, and risk of its activities and that the audit system provides for (i) adequate monitoring of the system of internal controls through an internal audit function, or for an NCUA-Licensed PPSI whose size, complexity or scope of operations does not warrant a full scale internal audit function, a

[164] 12 U.S.C. 5903(a)(4)(A)(iv).

[165] 12 U.S.C. 5903(a)(4)(A)(iii).

[166] The standards listed in 12 U.S.C. 1831p–1 provide a useful reference point for standards that may be applicable to PPSIs. However, 12 U.S.C. 1831p–1 is not a source of authority for issuing these risk management requirements.

[167] *See* OCC, ''Agencies Issue Joint Statement on Risk-Management Considerations For Crypto-Asset Safekeeping'' (July 14, 2025), *available at https://www.occ.gov/news-issuances/news-releases/2025/nr-ia-2025-68.html.*

[168] Consistent with the recommendations in the Digital Financial Technology Report, the NCUA intends to continue to work to provide additional clarity with respect to Digital Asset activities undertaken by NCUA-supervised entities.

[169] 12 U.S.C. 5903(a)(4)(A)(iii)–(iv).

[170] In spring 2023, interest rate increases contributed to the failure of Silicon Valley Bank, which in turn caused the value of one stablecoin, USDC, to fall below $1 in the secondary market when it became evident that much of USDC's reserves were held at Silicon Valley Bank. This event illustrates the potential knock-on effects of changes in interest rates and the importance of continuous monitoring for Payment Stablecoins, particularly if acute stress creates situations where issuers are unable to access reserve assets.

system of independent reviews of key internal controls; (ii) independence and objectivity; (iii) qualified Persons responsible for the audit function; (iv) adequate independent testing and review of internal controls and information systems, verification of published information available to Customers, calculations for required reserves, and regulatory filings; (v) adequate documentation of tests and findings and any corrective actions; (vi) verification and review of management actions to address deficiencies; and (vii) review by the institution's audit committee or board of directors of the effectiveness of the internal audit system. Internal audit systems provide objective, independent reviews of PPSI activities, internal controls, and information systems to help the board of directors and management monitor and evaluate internal control adequacy and effectiveness. An internal audit system, among other items, is expected to independently test and review systems, as appropriate, related to (1) an NCUA-Licensed PPSI's compliance with the GENIUS Act and requirements in any final rules implementing the GENIUS Act; (2) payment systems; and (3) third-party risk management. Well-planned, properly structured audit programs are essential to effective risk management and internal control systems. Effective internal audit programs are a critical defense against fraud and provide vital information to the board of directors about the effectiveness of internal controls systems. An internal audit program's responsibilities include evaluating compliance systems, safeguards around use of payment systems, and risks posed by relationships with and dependence on third parties. While it is important that internal audit functions be conducted by qualified Persons with an appropriate level of independence from other business lines, the proposed rule would not mandate a particular organizational structure (for example, three lines of defense). Proposed § 706.204(a)(2) would not prescribe a one-size-fits-all approach to risk management. Smaller NCUA-Licensed PPSIs with a lower risk profile may be able to comply using a simpler, less delineated, organizational structure, or may be able to outsource certain functions such as the internal audit function, while larger NCUA-Licensed PPSIs, with higher risk-profiles, may require organizational structures with more clearly delineated risk management functions, including internal audit personnel.

Proposed § 706.204(a)(3) addresses interest rate risk and would require an NCUA-Licensed PPSI to (i) manage interest rate risk in a manner that is appropriate to the size and complexity of the PPSI and the complexity of its assets and liabilities and (ii) provide for periodic reporting to management and the board of directors regarding interest rate risk with adequate information for management and the board of directors to assess the level of risk. While PPSIs will hold Reserve Assets that may, depending on their type, have limited or no duration (*e.g.,* in the case of deposits and funds in Share Accounts that are payable upon demand), it is still important for NCUA-Licensed PPSIs to be mindful of this risk, particularly in light of the role of interest rate risk in the failures of previous money market funds, whose investments, like those of PPSIs, were supposed to be limited to short-duration safe assets.[171] Increases in interest rates, particularly in short time periods, can reduce the value of interest-sensitive Reserve Assets, potentially impacting their marketability and liquidity as well as their Fair Value. Similarly, changes in interest rates can affect the earnings of PPSIs since their earnings may rely in substantial part on interest earned on Reserve Assets. Likewise, increases in interest rates may reduce the demand for Payment Stablecoins, particularly since PPSIs are prohibited from paying interest to Payment Stablecoin holders solely in connection with the holding, use, or retention of Payment Stablecoins under proposed § 706.201(c)(4). The GENIUS Act explicitly authorizes interest rate risk management standards under section 4(a)(4)(A)(iii) [172] whereas section 4(a)(4)(A)(iv) [173] authorizes the other requirements and standards proposed in § 706.204. The NCUA proposes that interest rate risk management standards be included under proposed § 706.204 since it is a risk management standard like the other standards already included in proposed § 706.204.

[171] Mismanagement of interest rate risk was a leading cause of failure in two of the three money market funds in the United States in which the net asset value of the fund fell below $1 (also referred to as ''breaking the buck''), ultimately leading to liquidation. *See* In the Matter of John E. Backlund, et al., Investment Company Act Release No. 23639 (January 11, 1999) (SEC administrative order involving the Community Bankers U.S. Government Money Market Fund liquidated in 1994); In the Matter of First Multifund Advisory Corp. and Milton Mound, Initial Decision, File No. 3–5881 (December 29, 1982) (SEC initial decision involving the First Multifund for Daily Income liquidated in 1978).

[172] 12 U.S.C. 5903(a)(4)(A)(iii).

[173] 12 U.S.C. 5903(a)(4)(A)(iv).

The NCUA proposes that § 706.204(a)(4) require an NCUA-Licensed PPSI's asset growth to be prudent and commensurate with an NCUA-Licensed PPSI's risk management capabilities, operational capacity, and staffing. While there are no hard limits to how quickly NCUA-Licensed PPSIs may grow, NCUA-Licensed PPSIs must ensure that growth does not undercut the issuer's capabilities to comply with the requirements of this rule and other applicable law. For example, rapid issuance of new Payment Stablecoins would require rapid increase in reserves, and NCUA-Licensed PPSIs must ensure that they maintain the capabilities to maintain these reserves in compliance with proposed § 706.202 and maintain the ability to access and monetize the reserves in order to meet redemption requests.

The NCUA proposes that § 706.204(a)(5) requires that an NCUA-Licensed PPSI establish and maintain a risk management system that is commensurate with the PPSI's size and complexity and the nature and scope of its operations to evaluate and monitor earnings and ensure that earnings are sufficient to support operations and maintain the capital levels that would be required under subpart D of proposed part 706. To reflect the distinct characteristics of PPSIs as compared to other types of entities, the proposed standards on earnings in proposed § 706.204(a)(5) do not include all the listed elements in paragraph II.H in appendix A to 12 CFR part 30, from which the earnings standard in the OCC's Proposal (proposed § 15.13(a)(5)) and this proposal (proposed § 706.204(a)(5)) were adapted. Nevertheless, under this proposed rule, NCUA-Licensed PPSIs would be expected to comply with the overarching requirement to evaluate and monitor earnings. It may be particularly important for PPSIs to evaluate the volatility and sustainability of earnings, since changes in short-term interest rates could have sudden impacts on PPSI earnings.

Proposed § 706.204(a)(6) addresses Insider and Affiliate transactions and is intended to protect an NCUA-Licensed PPSI from entering into detrimental transactions with Insiders or Affiliates. Under proposed paragraph (a)(6)(i), an NCUA-Licensed PPSI would be required to ensure that transactions between the PPSI and Insiders or Affiliates: (1) are not excessive and do not pose significant risks of material financial loss; (2) are conducted on terms that are the same or at least as favorable to the PPSI as those prevailing at the time for

comparable transactions with or involving non-Insiders or non-Affiliates (or in the absence of comparable transactions, are offered on terms and under circumstances that, in good faith would be offered to, or would apply to non-Affiliates or non-Insiders); and (3) are appropriately documented and reviewed by the board of directors. Proposed paragraph (a)(6)(ii) would require an NCUA-Licensed PPSI to appropriately monitor and validate compliance with these requirements.

Proposed § 706.204(a)(7) would provide requirements for overseeing third-party service provider arrangements. Specifically, an NCUA-Licensed PPSI must (i) exercise appropriate due diligence in selecting its service providers; (ii) require its service providers by contract to implement appropriate measures designed to meet the requirements of part 706; and (iii) as appropriate, monitor its service providers to confirm they have satisfied their obligations under proposed part 706. As part of this monitoring, NCUA-Licensed PPSIs should review audits, summaries of test results, or other equivalent evaluations of its service providers.

Proposed § 706.204(a)(8) would require an NCUA-Licensed PPSI to (i) appropriately monitor and validate compliance with the requirements of § 706.202 and (ii) manage liquidity and concentration risk in a manner that is appropriate to the business model and risk profile of the PPSI.

Proposed § 706.204(b)(1) provides that an NCUA-Licensed PPSI must implement a comprehensive written information security risk and control framework, including a program that assesses and manages information technology and information security risks.

Under proposed § 706.204(b)(2), the board of directors of the NCUA-Licensed PPSI, or an appropriate board committee, must approve the information technology and security program. The board must oversee the development, implementation, and maintenance of the program, including the appointment of a qualified Information Technology and Security Officer. The oversight required of the board or committee includes assigning specific responsibility for program implementation and review of program-related reports.

Under proposed § 706.204(b)(3), an NCUA-Licensed PPSI's information technology and security program must include (i) an inventory and classification of assets, processes, and sensitivity of data; (ii) controls supporting and safeguarding sensitive information and processes; (iii) evaluation, validation, and reporting processes to ensure that key information technology systems and controls, including smart contracts, are operating as intended; (iv) periodic independent testing; and (v) a comprehensive and effective incident identification and assessment process and incident response program.

Under proposed § 706.204(b)(4), an NCUA-Licensed PPSI's information technology and security program must include administrative, technical, and physical safeguards designed to (i) ensure the security and confidentiality of records containing Nonpublic Personal Information about a Customer; (ii) protect against any anticipated threats or hazards to the security or integrity of such records; (iii) protect against unauthorized access to or use of such records that could result in substantial harm or inconvenience to any Customer; and (iv) ensure the proper disposal of such records.

Proposed § 706.204(b)(5) provides that an NCUA-Licensed PPSI must develop, implement, and maintain appropriate measures to ensure secure handling of Digital Assets, including Private Key management, backup, and recovery incorporating: (i) relevant technical, operational, strategic, market, legal, and compliance considerations relating to each Digital Asset and its underlying Distributed Ledger; and (ii) material developments specifically related to supported Digital Assets and their underlying Distributed Ledgers.[174]

Proposed § 706.204(b)(6) would require that an NCUA-Licensed PPSI monitor, evaluate, and adjust, as appropriate the information technology and security program in light of any relevant changes in technology, the sensitivity of its Customer information, internal or external threats, and the PPSI's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, third-party arrangements, and changes to applicable information systems.

Proposed § 706.204(b)(7) would provide that an NCUA-Licensed PPSI must conduct a reasonable investigation when it becomes aware of an incident of unauthorized access to sensitive Customer information, including a Customer's Private Key, to determine the likelihood that the information has been or will be misused. The requirements in proposed § 706.204(b)(7) mirror those in the OCC Proposal (proposed § 15.13(b)(7)), which are similar to the OCC's supplement A to appendix B to part 30[175] and the guidance for FICUs, currently located in NCUA's appendix B to part 748.[176] If the NCUA-Licensed PPSI determines that misuse of Customer information has occurred or is reasonably possible, the PPSI must notify the Customer or Customers affected or possibly affected as well as the NCUA as soon as possible. Customer notice must be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the NCUA-Licensed PPSI with a written request for the delay. If delayed by investigation, the NCUA-Licensed PPSI must notify its Customers of the misuse or possible misuse of Customer information as soon as law enforcement notifies the PPSI that notification will no longer interfere with the investigation. Proposed § 706.204(b)(7)(ii) recognizes that there may be situations where the NCUA-Licensed PPSI determines that a group of files has been accessed improperly but is unable to identify which specific Customers' information has been accessed. If the circumstances of the unauthorized access lead the NCUA-Licensed PPSI to determine that misuse of the information is reasonably possible, it must notify all Customers in the group.

Proposed § 706.204(b)(8) would provide that an NCUA-Licensed PPSI's information technology and security program must include measures to ensure continuity of operations and recover critical functions in the face of disruptions, including by business impact analyses, testing of vulnerabilities, and testing with critical service providers. Recent corporate information technology system failures have demonstrated the importance of measures to maintain operational resilience. NCUA-Licensed PPSIs should ensure that they have sufficient controls to reliably address operational issues that may arise with burning and minting new Payment Stablecoins and should conduct appropriate due

[174] If an NCUA-Licensed PPSI holds Digital Assets on a Customer's behalf, the PPSI's risk management practices must reflect this activity. Consistent with the July 14, 2025 Joint Statement on Risk-Management Considerations for Crypto-Asset Safekeeping issued by the FDIC, Federal Reserve, and OCC, an NCUA-Licensed PPSI holding Digital Assets on a Customer's behalf would be required to maintain risk management practices, and information security practices in particular, that reflect the PPSI's capacity to understand a complex and evolving asset class, ability to ensure a strong control environment, and appropriate contingency plans to address unanticipated challenges in effectively providing services to Customers.

[175] 12 CFR part 30, Appendix B.

[176] 12 CFR part 748, Appendix B.

diligence before supporting any new Distributed Ledger. Operational resilience will be particularly important for PPSIs, who will depend on Customer confidence in the stable value and availability of their Payment Stablecoins.

Proposed paragraph § 706.204(c) would implement the GENIUS Act's requirement for the NCUA to issue regulations implementing appropriate Bank Secrecy Act and sanctions compliance standards by providing that, in order to ensure compliance with Bank Secrecy Act and sanctions compliance requirements, each NCUA-Licensed PPSI must comply with the Bank Secrecy Act, sections 4(a)(5) and 4(a)(6) of the GENIUS Act,[177] and applicable regulations at 31 CFR Chapter V and 31 CFR Chapter X, including any AML/CFT program, sanctions program, and reporting requirements. The Department of Treasury's Financial Crimes Enforcement Network (FinCEN) and the Office of Foreign Assets Control (OFAC) recently issued a separate proposed rule that would implement the GENIUS Act's directive to treat PPSIs as financial institutions under the Bank Secrecy Act, as well as imposing several unique obligations required by the GENIUS Act.[178] The FinCEN and OFAC proposed rule would also implement the GENIUS Act's directive to require PPSIs to maintain effective sanctions compliance programs. In the interests of reducing burden and promoting consistent requirements, the proposed rule would not contain additional requirements beyond those contained in these proposed rules at this time. Instead, compliance with regulations at 31 CFR Chapter V and 31 CFR Chapter X would constitute compliance with proposed paragraph § 706.204(c). Proposed § 706.204(c) would also specifically reference subpart E of this part, which would provide the NCUA's supervision and enforcement policy for AML/CFT program requirements for NCUA-Licensed PPSIs.

b. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 104:* How should the NCUA ensure that the standards in proposed § 706.204 are ''principles-based'' while providing sufficient clarity to PPSIs? Should the requirements in proposed § 706.204 be more high level or more detailed?

*Question 105:* Should certain of the risk management requirements only apply to large PPSIs? If so, which requirements should only apply to large PPSIs, and what would be the appropriate threshold for determining that a PPSI is a large issuer (*e.g.,* $10 billion in Outstanding Issuance Value)?

*Question 106:* Which standards from 12 U.S.C. 1831p–1 and 12 CFR part 30 appendices A and B should or should not apply to PPSIs? Are there other standards not in 12 U.S.C. 1831p–1 and 12 CFR part 30 appendices A and B that should apply PPSIs? Commenters are directed to these sources even though they do not apply to FICUs because they serve as a basis for the OCC Proposal.

*Question 107:* Do the proposed risk management requirements appropriately provide for clear management roles, responsibilities, and accountability? If not, how should the proposed risk management requirements be revised?

*Question 108:* Should PPSIs be required to adopt and adhere to a risk appetite statement?

*Question 109:* Should PPSIs be required to regularly (*e.g.,* on at least an annual basis), review their risk management framework and make any changes to appropriately align risk management activities with their business objectives and strategies?

*Question 110:* Should the proposed rule's requirements with respect to interest rate risk management be modified? If so, how? For example, should PPSIs have in place the appropriate policies, procedures and internal controls for their interest rate risk management programs? Should PPSIs develop appropriate measurement of interest rate risk as part of their interest rate risk management programs? Should PPSIs establish risk appetite and limit structure as part of interest rate risk management programs? Should PPSIs incorporate stress testing as part of their interest risk management programs? Should PPSIs be allowed to use assets that do not qualify as Reserve Assets as part of an interest rate risk hedging program? If so, should there be restrictions on the types of instruments used for hedging purpose? Additionally, should the maturities of the hedging instruments be matched with the maturities of the qualified Reserve Assets?

*Question 111:* What types of credit risk may PPSIs face, and how should PPSIs manage these risks? Should the proposed rule include specific requirements or standards related to management of credit risk? If so, what specific requirements or standards should the NCUA consider including?

*Question 112:* Are the risk management requirements in proposed § 706.204(a)(8) necessary in light of the requirements in proposed § 706.202?

*Question 113:* Are there areas that fall under the categories of technological, operational, compliance, or other risk management principles-based requirements and standards that should be included in § 706.204 but were omitted from the proposed rule? Should proposed § 706.204(b) expressly address risks relating to smart contracts, encryption, tokenized assets, or any other technology or procedure? Are there standards which were included but are not applicable to PPSIs? The proposed rule would require the appointment of a qualified Information Technology and Security Officer. Should the rule also require the appointment of a qualified Chief Risk Officer and Chief Audit Executive? The NCUA is considering all possible combinations of the standards in proposed § 706.204 and invites comments on which combination of standards is appropriate as well as whether to remove any of the individual standards in proposed § 706.204.

*Question 114:* Should the NCUA consider operational risk management principles-based requirements and standards to address the situation where an issuer needs to transfer Payment Stablecoins across different blockchains to satisfy a redemption demand? If so, what kind of requirements and standards should the NCUA consider to address this situation? For example, should there be specific requirements relating to locking, minting, or burning Payment Stablecoins to facilitate a transfer?

*Question 115:* Should the NCUA include consumer protection-related compliance risk management principles-based requirements and standards in § 706.204? If so, are there specific standards the NCUA should institute?

*Question 116:* Are there additional requirements concerning data privacy that would be appropriate for the NCUA to include in proposed part 706? Please describe in detail any such standards.

*Question 117:* Are there particular measures necessary to manage compensation-related concerns at PPSIs, notably risks associated with compensating any party with Payment Stablecoins issued by a PPSI?

*Question 118:* Should the NCUA include additional requirements concerning PPSIs' management of their ability to satisfy redemption requests and to monetize Reserve Assets, including by analyzing reasonably anticipated redemption scenarios?

*Question 119:* Should the NCUA include additional requirements relating

[177] 12 U.S.C. 5903(a)(5) and (6).

[178] 91 FR 18582 (Apr. 10, 2026).

to the maintenance of safeguards to prevent the payment of compensation, fees, and benefits that are excessive or that could lead to material financial loss to the PPSI?

*Question 120:* Are the proposed requirements with respect to Insider and Affiliate transactions appropriately tailored? If not, how should they be modified? Should the NCUA consider more prescriptive quantitative or qualitative requirements related to Insider and Affiliate transactions?

*Question 121:* Should the NCUA include any requirements relating to the concentration of management at unaffiliated PPSIs? For example, should the NCUA include limits on the number of unaffiliated PPSIs for which an individual may serve as an Officer or senior management official? Should any such limits be tied to the Outstanding Issuance Value of the PPSI?

*Question 122:* Should the NCUA require PPSIs to acquire insurance against certain risks? For example, should PPSIs be required to hold cyber insurance policies? If so, what should be the minimum coverage requirements? Should the NCUA require some minimum level of property and casualty insurance? If so, what should the minimum level of coverage be? What disclosures, if any, would it be appropriate for a PPSI to make with respect to its insurance coverage and to whom should those disclosures be directed (*e.g.,* investors or Payment Stablecoin holders)? What implications with respect to other applicable disclosure regimes should the NCUA consider when deciding whether to impose any disclosure requirements with respect to insurance coverage? To what extent are the terms and conditions for property and casualty (or other types of) insurance coverage for PPSIs becoming more standardized? What steps, if any, should the NCUA take to encourage standardization to increase certainty and consistency with respect to insurance coverage across jurisdictions?

5. § 706.205. Audits, Reports, and Supervision

a. Examinations

Section 6(a)(1) of the GENIUS Act authorizes primary Federal payment stablecoin regulators, including the NCUA, to supervise PPSIs, as defined in the statute.[179] Section 6(a)(3) of the GENIUS Act authorizes the NCUA to examine PPSIs to assess the nature of their operations and the financial condition of the PPSI; the financial, operational, technological, compliance, and other risks associated within the PPSI that may pose a threat to the safety and soundness of the PPSI or the stability of the financial system of the United States; and the systems of the PPSI for monitoring and controlling the risks.[180] Pursuant to section 6(a)(4)(C) of the GENIUS Act, the NCUA may only request examinations at a cadence and in a format that is similar to that required for similarly situated entities regulated by the NCUA.[181]

NCUA's current examination program for FCUs requires a 12-month examination unless certain criteria are met.[182] FCUs can qualify for an examination every 14 to 24 months based on capital levels, asset size, supervisory ratings, and status of any enforcement actions.[183] The NCUA is proposing to apply this same examination framework to its examination authority over PPSIs. Proposed § 706.205(a) provides that the NCUA will conduct a full-scope examination of every PPSI subject to its supervision at least once during each 12-month period, unless otherwise specified in proposed § 706.205(d). A full-scope examination refers to the comprehensive review of a PPSI's financial condition, risk management practices, compliance with laws and regulations, and overall safety and soundness.

Proposed § 706.205(d) would provide the NCUA with the option to examine some PPSIs on a 14- to 24-month cycle, as determined by the NCUA in its sole discretion, if the issuers satisfy the following conditions: (1) the PPSI currently is not subject to a formal enforcement proceeding or order; (2) no Person became a Parent Company or acquired Control, as specified in §§ 706.111 and 706.205(m), of the PPSI during the preceding 12-month period in which a full-scope examination would have been required but for proposed § 706.205(d); (3) the PPSI has an Outstanding Issuance Value of less than $1 billion or less than $25 billion in total monthly Trading Volume; and (4) the PPSI is in compliance with all of the reserve requirements set forth in proposed § 706.202 and the reporting requirements in proposed § 706.205.

Consistent with the NCUA's statutory authority under the GENIUS Act and the NCUA's supervisory authority over FICUs, proposed § 706.205(e) allows the NCUA to conduct examinations of PPSIs as frequently as the agency deems necessary, including examinations of a limited scope. The NCUA has proposed this provision to ensure the agency has clear authority to conduct ad hoc examinations when emergencies or risks to the safety and soundness of a PPSI or the FICU investors require the agency to deviate from its routine examination cycle.

Proposed § 706.205(b) requires that, upon request, PPSIs must grant NCUA examiners prompt and complete access to all Officers, Directors, employees, agents, and relevant books, records, or documents of any type. The NCUA, through its examination authority over FICUs,[184] and the examination authority the GENIUS Act provides it over PPSIs that are FICU subsidiaries,[185] has authority to access the Officers, agents, and books and records of these institutions. The books and records of a PPSI include, but are not limited to, information retained on Distributed Ledgers. Additionally, proposed § 706.205(c) clarifies that the NCUA may conduct examinations either on site, remotely, or in some combination. Proposed § 706.205(f) provides that all PPSIs must maintain a complete set of books and records in English and in compliance with GAAP. Proposed § 706.205(g) requires all PPSIs to develop and implement a records retention policy that ensures the PPSI can demonstrate compliance with the GENIUS Act, this part, and all applicable laws and regulations.

b. Reports

Section 6(a)(2) of the GENIUS Act requires that each PPSI shall, upon request, submit to the appropriate Federal payment stablecoin regulator a report on: the financial condition of the PPSI; the systems of the PPSI for monitoring and controlling financial and operating risks; compliance by the PPSI (and any subsidiary thereof) with the GENIUS Act; and the compliance of the Federal qualified nonbank payment stablecoin issuer with the Bank Secrecy Act and with laws authorizing the imposition of sanctions and implemented by the Secretary of the Treasury.[186]

Section 6(a)(4) of the GENIUS Act requires the NCUA to take certain actions to promote efficiency in the supervision and examination of PPSIs. The NCUA, in supervising and examining PPSIs, to the fullest extent

[179] 12 U.S.C. 5905(a)(1).

[180] 12 U.S.C. 5905(a)(3).

[181] 12 U.S.C. 5905(a)(4)(C).

[182] *See* NCUA's Examination Flexibility Initiative web page at *available at https://ncua.gov/regulation-supervision/examination-modernization-initiatives/exam-flexibility-initiative* for the eligibility criteria

[183] *Id.*

[184] 12 U.S.C. 1756 and 1784.

[185] *See* 12 U.S.C. 5905.

[186] 12 U.S.C. 5905(a)(2).

possible, must use existing supervisory reports and other supervisory information and avoid duplication of examination activities, reporting requirements, and requests for information.[187] Proposed § 706.205(j) implements section 6(a)(2) of the GENIUS Act by requiring each PPSI subject to the requirements of section 6(a)(1) of the Act to, upon request, submit to the NCUA a report on: (1) the financial condition of the PPSI; (2) the systems of the PPSI for monitoring and controlling financial and operating risks; (3) compliance by the PPSI (and any subsidiary thereof) with the GENIUS Act and proposed part 706; and (4) compliance of the PPSI with the Bank Secrecy Act and with laws authorizing the imposition of sanctions and implemented by the Secretary of the Treasury. In an effort to clarify the GENIUS Act's requirements, the NCUA has proposed in § 706.205(j)(4) expanding the requirement that Federal qualified nonbank payment stablecoin issuers produce reports of compliance with the requirements of the Bank Secrecy Act and with laws authorizing the imposition of sanctions and implemented by the Secretary of the Treasury to all PPSIs.[188]

In addition to the regulations codifying the reporting requirements in section 6(a)(2) of the GENIUS Act,[189] pursuant to its supervisory authority in section 6(a)(1) of the GENIUS Act,[190] the NCUA is proposing in § 706.205(h) to require PPSIs to submit certain information on a weekly basis, in the manner and form specified by the NCUA to assist in ongoing supervision of the PPSI. At a high level, the NCUA is requesting a PPSI provide information regarding the issuance and redemption, Trading Volume, and Reserve Assets for each Payment Stablecoins it issues. The report would include information relating to the blockchains the Payment Stablecoin is listed on, Outstanding Issuance Value, secondary market activity and price movement, redemption volume and times, detailed information regarding Reserve Assets, and other relevant information. NCUA will provide more information about the specific information requested on a web page that will be available from NCUA's homepage at *www.ncua.gov.* The NCUA believes that requiring a PPSI to provide a confidential set of data on a weekly basis for each Payment Stablecoin it issues will allow the NCUA to understand the PPSI's operations and the risks unique to its business model. This regular data reporting will allow the NCUA to tailor its examinations to be risk-based, which will reduce the burden of examinations by focusing the scope of examinations. Further, the NCUA believes that this regular reporting framework will allow the NCUA to identify and respond more quickly to emerging novel and financial stability risks. The NCUA also believes the information request is currently tracked on a regular basis by stablecoin issuers.

The NCUA is proposing in § 706.205(i) a separate provision that requires PPSIs to submit quarterly reports of financial condition to the NCUA, including, but not limited to income statement, expenses, balance sheet, reserves, changes in equity, investments, capital, Outstanding Issuance Value, and assets under custody, in a standardized format as prescribed by the NCUA within 30 days of the end of the prior quarter. This provision is similar to the quarterly statements of financial condition that FICUs provide through their quarterly Call Report and Profile. The NCUA proposes this provision to ensure that PPSIs provide consistent, standardized statements of financial condition to the NCUA and will include additional information beyond the composition report required under § 706.202(e) and different information than what would be requested in the confidential weekly reporting required under proposed § 706.205(h). Receiving standardized data on a quarterly basis will enhance the NCUA's ability to supervise PPSIs and provide another source of information that can be used to tailor examinations and identify emerging risks.

The information required to be reported under this section will be streamlined substantially relative to the Call Reports filed by FICUs. Standardizing these reporting requirements will enhance the NCUA's ability to supervise PPSIs and provide clarity as to the information a PPSI must report. Similar to FICU financial data, the NCUA intends to publish the information provided in the quarterly report to ensure transparency and provide the public with an understanding of a PPSI's financial condition on an ongoing basis. The NCUA also proposes to require that each quarterly report of financial condition includes a declaration from the PPSI's Chief Financial Officer, or the individual performing an equivalent function, that the report is true and correct to the best of their knowledge and belief. The correctness of the quarterly report of condition shall also be attested to by the signatures of the Directors and senior management of the PPSI other than the Officer making such declaration, with the attestation stating that the report has been examined by them and to the best of their knowledge and belief is true and correct. The NCUA proposes requiring these declarations and attestations to ensure that PPSI's Officers and Directors are accountable for the accuracy of the PPSI's reports of financial condition, similar to existing standards for FICUs.

Proposed § 706.205(k) implements section 5(i) of the GENIUS Act .[191] Consistent with the statute, under the proposed rule, not later than 180 days after the approval of an application under proposed subpart A, and on an annual basis thereafter, a PPSI must submit to the NCUA a certification that the PPSI has implemented anti-money laundering and economic sanctions compliance programs that are reasonably designed to prevent the PPSI from facilitating money laundering, in particular, facilitating money laundering for cartels and organizations designated as foreign terrorist organizations under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) and the financing of terrorist activities, consistent with the requirements of the GENIUS Act.

c. Audits

Section 4(a)(10) of the GENIUS Act requires that a PPSI with more than $50 billion in consolidated total Outstanding Issuance Value that is not subject to certain reporting requirements under Federal securities laws prepare an annual financial statement.[192] Section 4(a)(10) further provides that a Registered Public Accounting Firm must perform an audit of the annual financial statement. The audited annual financial statement must be made publicly available on the PPSI's website and be

[187] 12 U.S.C. 5905(a)(4).

[188] The NCUA notes that section 6(a)(2) of the GENIUS Act (12 U.S.C. 5905(a)(2)) requires all PPSIs to provide the subsequent list of reports in section 6(a)(2)(A) through (D) to the NCUA upon request, whereas section 6(a)(2)(D) refers to the compliance of ''the Federal qualified nonbank payment stablecoin issuer with the requirements of the Bank Secrecy Act.'' Based on the structure of section 6(a)(2), the NCUA believes all PPSIs must, upon request, produce each of the listed reports and that the NCUA could request the report required in section 6(a)(2)(D) from a PPSI. Additionally, section 6(a)(1) of the GENIUS Act (12 U.S.C. 5905(a)(1)) gives the NCUA supervisory authority over all PPSIs that are FICU subsidiaries, which provides the NCUA with further authority to request the report in section 6(a)(2)(D).

[189] 12 U.S.C. 5905(a)(2). With regards to reporting by a PPSI as to its assets under custody, section 10(d) of the GENIUS Act (12 U.S.C. 5909(d)) provides an additional statutory grant of authority.

[190] 12 U.S.C. 5905(a)(1).

[191] 12 U.S.C. 5904(i).

[192] 12 U.S.C. 5903(a)(10).

submitted annually to the primary Federal payment stablecoin regulator.

Proposed § 706.205(l) implements the requirements of section 4(a)(10) of the GENIUS Act. Under the proposed rule, each PPSI with more than $50 billion in Outstanding Issuance Value that is not subject to the reporting requirements under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 [193] must prepare, in accordance with GAAP, an annual financial statement that must include the disclosure of any related party transactions, as defined by GAAP. Proposed § 706.205(l)(1) requires that a Registered Public Accounting Firm must conduct an audit of the financial statements in accordance with all applicable auditing standards established by the Public Company Accounting Oversight Board. Section 4(a)(10)(A)(iii) of the GENIUS Act describes ''applicable auditing standards'' [194] as those that would apply if the PPSI were subject to the reporting requirements under section 13(a) or 15(d) of the Securities and Exchange Act of 1934.[195] The standards would be enforced by the NCUA for PPSIs subject to the audit requirement under section 4(a)(10)(A)(iii) of the GENIUS Act.[196] Consistent with this framework, the NCUA may at any time request that a Registered Public Accounting Firm provide to the NCUA certain additional information or documents relating to information provided by the PPSI. The Registered Public Accounting Firm must agree to provide copies of any working papers, policies, and procedures relating to services in connection with the audit required under section 4(a)(10)(A)(iii) of the GENIUS Act.[197]

Proposed § 706.205(l)(2) requires the PPSI to: (1) make the audited financial statement publicly available on its website, and (2) submit the audited financial statement annually to the NCUA, in accordance with the GENIUS Act. Under proposed § 706.205(l)(2)(ii), a PPSI would be required to submit to the NCUA annually, within 120 days of the end of its fiscal year, an audited financial statement. If a PPSI is unable to timely file all or any portion of its financial statements, proposed § 706.205(l)(2)(iii) would require the PPSI to submit a written notice of late filing to the NCUA that would: (A) disclose the PPSI's inability to file all, or specified portions, of its annual financial statement and the reasons therefore in reasonable detail; (B) include the date by which the financial statement will be filed; and (C) be filed on or before the deadline for filing the financial statement.

d. Changes in Control

Proposed § 706.205(m) would address changes in Control of an NCUA-Licensed PPSI. Proposed § 706.205(m) would require a Person seeking to acquire Control, as those terms are defined in this part, of a PPSI to follow the requirements of proposed 12 CFR 706.111 in Subpart A as if the Person were a FICU seeking to become a new Parent Company of an NCUA-Licensed PPSI. Thus, consistent with § 706.111, a Person seeking to acquire Control would need to provide 60 days' prior notice to the NCUA. The NCUA could inform the filer that the acquisition has been disapproved, has not been disapproved, or that the review period has been extended.

The NCUA is considering including additional provisions detailing the consequences of failing to follow the procedures under § 706.111 both for new potential FICU Parent Companies and Persons acquiring Control of an NCUA-Licensed PPSI. For example, the NCUA is considering including language stating that, if a Person acquires Control of an NCUA-Licensed PPSI without following the requirements of § 706.111 before the time for the NCUA's review as provided in § 706.111 has expired or after the NCUA has disapproved the acquisition of control, the PPSI: (i) must, within 15 calendar days of the acquisition of Control, provide all information required under § 706.111; and (ii) may be subject to supervisory or enforcement actions relating to any concerns arising from the change in Control, consistent with applicable law. The NCUA welcomes any comments related to proposed § 706.205(m) as well as the additional language the NCUA is considering including in proposed § 706.205(m).

The NCUA proposes requiring this notice to facilitate the NCUA's ongoing examination and supervision of NCUA-Licensed PPSIs. Requiring notice of changes in Control will assist the NCUA in carrying out its mandate to examine PPSIs and is consistent with the NCUA's authority to supervise, request reports, and conduct examinations pursuant to section 6(a) of the GENIUS Act.[198] In addition, requiring notice regarding changes in Control will help the NCUA monitor for and address evasion of the requirements of the GENIUS Act. For example, there may be instances where changes in Control implicate the risk management requirements of the GENIUS Act, Bank Secrecy Act/Anti-Money Laundering (BSA/AML) or sanctions evasion. Similarly, section 5(c) of the GENIUS Act includes requirements designed to prevent an individual that has been convicted of a felony offense involving insider trading, embezzlement, cybercrime, money laundering, financing of terrorism, or financial fraud from serving as an Officer or Director for an applicant.[199] The same section of the GENIUS Act includes provisions addressing the competence, experience, integrity of the Officers, Directors, and Principal Shareholders of the applicant. Absent a requirement to submit a notice regarding a change in Control, an applicant could become licensed with a set of Officers, Directors, and Principal Shareholders that do not raise concerns under section 5(c) of the GENIUS Act and then transfer Control to Persons that do implicate concerns under section 5(c) of the Act or that otherwise raise concerns regarding the ability of the PPSI to comply with the Act and its implementing regulations.[200]

e. Use of Existing Reports and Avoidance of Duplication

Section 6(a)(4) of the GENIUS Act requires the NCUA to take certain actions to promote efficiency in the supervision and examination of PPSIs.[201] The NCUA, in supervising and examining PPSIs, to the fullest extent possible, must use existing supervisory reports and other supervisory information and avoid duplication of examination activities, reporting requirements, and requests for information. Proposed § 706.205(n) and (o) implement the requirements of section 6(a)(4)(A) and (B) of the GENIUS Act by mirroring the statutory requirements and stating that, as a part of its supervision and examination of PPSIs, the NCUA, to the fullest extent possible, will use existing supervisory reports and other supervisory information and avoid duplication of examination activities, reporting requirements, and requests for information.[202] The NCUA will follow this approach, including in developing and issuing related examination policies and processes. The NCUA believes this is the optimal approach because it will allow the NCUA to quickly adapt its supervisory and examination policies to maximize both efficiency and burden

[193] 15 U.S.C. 78m(a) or 78o(d).

[194] 12 U.S.C. 5903(a)(10)(A)(iii).

[195] 15 U.S.C. 78m or 78o(d).

[196] 12 U.S.C. 5903(a)(10)(A)(iii).

[197] 12 U.S.C. 5903(a)(10)(A)(iii).

[198] 12 U.S.C. 5905(a).

[199] 12 U.S.C. 5904(c).

[200] 12 U.S.C. 5904(c).

[201] 12 U.S.C. 5905(a)(4).

[202] 12 U.S.C. 5905(a)(4)(A)–(B).

reduction. This approach is also consistent with the approach that the NCUA takes for other entities under its jurisdiction.

Proposed § 706.205(o) would generally state that the NCUA will, to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information. The Board understands that FICUs may seek to invest in PPSIs that meet the PPSI definition because they are a subsidiary of a non-FICU IDI, are a Federal qualified payment stablecoin issuer, or a State qualified payment stablecoin issuer. The Board is also aware that these investments may create ambiguity regarding designation of the primary Federal payment stablecoin regulator and requests comment on how such institutions should be treated for purposes of licensing, regulation, supervision, examination, and enforcement. The NCUA and the other primary Federal payment stablecoin regulators may address such potential interjurisdictional issues in the future.

f. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 123:* Should the NCUA alter the proposed reporting or examination requirements? If so, how? Is there additional information that should be included in the required reports or information that is not included in the proposed rule? Is there information included in the required reports or information that should not be included in the rule?

*Question 124:* Proposed § 706.205(d) sets forth criteria under which a PPSI could qualify for an extended examination cycle. Are those criteria properly calibrated? Is the timeframe for an extended examination cycle appropriate? Should the NCUA consider decreasing or increasing the range for an extended examination cycle? Should the NCUA consider both monthly Trading Volume and Outstanding Issuance Value when determining whether to employ an extended examination cycle? Should the NCUA consider increasing or decreasing the Outstanding Issuance Value and total monthly Trading Volume limits for eligibility for an extended examination cycle? Are there other factors that should be included, such as redemption rates, asset composition, or creditworthiness? If so, how should the NCUA consider those factors?

*Question 125:* In proposed § 706.205(h), the NCUA proposes to collect confidential weekly data from PPSIs to minimize the examination burden on PPSIs. The weekly data would include information relating to: (1) Outstanding Issuance Value, (2) Reserve Assets, (3) redemptions, (4) minting and issuance, (5) exchanges on which the Payment Stablecoin trades, (6) the 100 Persons that hold or trade the Payment Stablecoin the most, (7) data concerning securities held as Reserve Assets (including information regarding Reserve Assets' CUSIPs, yield, weighted average maturity and weighted average life), and (8) information regarding repurchase agreements and reverse repurchase agreements (including information regarding the counterparty, clearing agency, collateral, and interest). Are these the appropriate data fields and categories of information to collect from a PPSI on a weekly basis to understand the operations and risks unique to its business model? If not, are there data fields that the NCUA should not request on a weekly basis and are there any additional data fields beyond those proposed that the NCUA should collect on a weekly basis from a PPSI to better assist in understanding the operations and risks unique to its business model? Should the NCUA collect secondary market transaction data (*e.g.,* trading price and volume)? Or should the NCUA only collect primary market transaction data? Would it be too burdensome for PPSIs to provide the proposed weekly data to the NCUA electronically on a daily or real-time basis? Should the NCUA collect additional data regarding the custody of Reserve Assets (or other Covered Assets)? Should the data collected be made public? If, so, on what timeframe should the data be made public? To what extent, if any, would a PPSI be anticipated to track the information required under the form referred to in proposed § 706.205(h) on a regular or real-time basis for its own use in the absence of a requirement to report it? To what extent would the proposed weekly and quarterly reporting requirements tend to reduce the frequency at which the NCUA would need to examine PPSIs? Are there other reporting requirements that the NCUA could request that might reduce the frequency at which the NCUA would need to examine PPSIs?

*Question 126:* In proposed § 706.205(i), the NCUA requires all PPSIs to submit a quarterly report of financial condition. Should the NCUA tailor this requirement for PPSIs under a certain threshold? If so, what should the threshold be? For PPSIs under the threshold, should the NCUA require less frequent reporting (*e.g.,* every six months) and/or change the data issuers under the threshold are required to submit (*e.g.,* require less data)? Should FICU Parent Companies be required to submit the quarterly report required under proposed § 706.205(i)? If so, why? If not, why not? Should the quarterly report under proposed § 706.205(i) be attached to the Call Report as an appendix as opposed to a separate filing? If so, why? If not, why not? Are there changes that should be made to the Call Report to ensure appropriate reporting while limiting duplicative reporting requirements? Should reports required under proposed § 706.205(i) and proposed part 706 more generally be coordinated and developed on an interagency basis across the primary Federal payment stablecoin regulators? Should any financial information included in the filings be required to be reviewed by a Registered Public Accounting Firm. If so, why? If not, why not?

*Question 127:* In addition to requiring a monthly report of a PPSI's Reserve Asset composition, should the NCUA also require a PPSI to publish a report of the Reserve Asset composition as of a day randomly selected each month by the PPSI's Registered Public Accounting Firm?

*Question 128:* How can the NCUA best minimize duplication of reports, including for PPSIs subject to the audit requirement contained in proposed § 706.205(l)? Should the NCUA include in the rule text its interpretation of ''applicable auditing standards'' under section 4(a)(10)(A)(iii) of the GENIUS Act [203] to mean those that would apply if the PPSI were subject to the reporting requirements under section 13(a) or 15(d) of the Securities and Exchange Act of 1934? [204] Should the NCUA also include in the rule text that the standards would be enforced by the NCUA for PPSIs subject to the audit requirement under section 4(a)(10)(A)(iii) of the GENIUS Act? [205] Should the NCUA also include in the rule text that it may at any time request that a Registered Public Accounting Firm provide to the NCUA certain additional information or documents relating to information provided by the PPSI and that the Registered Public Accounting Firm must agree to provide copies of any working papers, policies, and procedures relating to services in connection with the audit required under section 4(a)(10)(A)(iii) of the GENIUS Act? [206]

[203] 12 U.S.C. 5903(a)(10)(A)(iii).

[204] 15 U.S.C. 78m, 78o(d).

[205] 12 U.S.C. 5903(a)(10)(A)(iii).

[206] *Id.*

*Question 129:* The NCUA is proposing that PPSIs report to the NCUA the total aggregate value of their assets under custody (as part of the quarterly report described in § 706.205(i) of the proposal). For purposes of this calculation, the NCUA is proposing that the Private Keys used to issue Payment Stablecoins, as discussed in section 10 of the GENIUS Act, should be valued at a nominal $1.00 valuation. This reporting convention would prevent double counting of the Private Key and the associated Payment Stablecoin reserves. What are the advantages and disadvantages of this approach? Are there specific risks or information gaps related to the custody of these Private Keys that would not be identified by this reporting convention, including for example, where the Covered Custodian of the Private Key used to issue Payment Stablecoins is not also the custodian of all of the associate Payment Stablecoin reserves? Are there alternative methods to avoid double-counting? For example, what are the advantages and disadvantages of valuing the Private Key used to issue a Payment Stablecoin at the par-value of issuance of the associated Payment Stablecoin less the fair market value of any associated Payment Stablecoin reserves that the Covered Custodian holds under custody?

*Question 130:* Is the change in Control requirement in proposed § 706.205(m) and § 706.111 appropriately calibrated for PPSIs? If not, what changes should the NCUA incorporate into this provision? Should the regulation explicitly provide the consequences for failing to meet the requirements of proposed § 706.205(m) and § 706.111? For example, should the NCUA include a paragraph that would provide that, if a Person acquires Control of a PPSI without following the requirements of § 706.205(m) and § 706.111 before the time for the NCUA's review as provided in § 706.111 has expired or after the NCUA has disapproved the acquisition of Control, the PPSI: (i) must, within 15 calendar days of the acquisition of Control, provide all information required under § 706.111; and (ii) may be subject to supervisory or enforcement actions relating to any concerns arising from the change in Control, consistent with applicable law?

*Question 131:* What approach should the NCUA and other PPSI regulators take to licensing, examining, and regulating PPSIs that may be considered subsidiaries of multiple types of Insured Depository Institutions or a subsidiary of one or more types of Insured Depository Institutions and also a Federal qualified payment stablecoin issuer? Specifically, should PPSIs be required to obtain multiple licenses in some instances? If multiple licenses are required, should NCUA provide a process for expedited licensure of a PPSI or rather than require multiple licenses, rely on the licensure of another Primary Federal payment stablecoin regulator, if the PPSI has already been licensed or approved by another regulator? Should proposed § 706.205(o) expressly provide for avoidance of duplication of examination activities, reporting requirements, and requests for information to address the prospect of a PPSI having an ownership structure that subjects the issuer to the jurisdiction of both the NCUA and another primary Federal payment stablecoin regulator? If so, what should be the scope of NCUA examination, reporting, and supervision? If it is not appropriate to address the prospect of a PPSI having an ownership structure that subjects the issuer to the jurisdiction of both the NCUA and another primary Federal payment stablecoin regulator, why is it not appropriate? Should such ownership structures be addressed through separate guidance or agreements? Should such ownership structures be impermissible? Or are they unlikely to occur in practice?

### *E. Subpart C—Custody*

Section 10 of the GENIUS Act imposes requirements on any Person seeking to provide custodial or safekeeping services for Payment Stablecoin reserves, Payment Stablecoins used as collateral, or the Private Keys used to issue Payment Stablecoins.[207] Among other things, section 10 of the GENIUS Act requires such Persons to be subject to supervision or regulation by a Federal or State supervisor, to treat covered assets as Customer property, to separately account for and not commingle covered assets unless permitted under a listed exception, and to provide their supervisor with certain regulatory information as determined by that supervisor. Section 10 also provides claims of Payment Stablecoin holders priority over other claims on Persons providing custody and exempts certain Persons providing hardware or software services from the requirements of section 10.

The proposal would (1) establish relevant defined terms for purposes of subpart C to clarify the scope of custodial services to which subpart C would apply; (2) set minimum principles-based requirements for NCUA-supervised institutions related to their provision of custodial or safekeeping services to the assets described in Section 10 of the GENIUS Act that are appropriate to protect such custodied assets from the claims of creditors of the institution; and (3) implement other requirements and exclusions of the GENIUS Act.

#### 1. § 706.301. Definitions

The NCUA is proposing to define the assets for which the provision of custodial or safekeeping services trigger the requirements of the GENIUS Act as ''Covered Assets.'' This term would include the assets described in section 10(a) of the GENIUS Act that compose the Payment Stablecoin reserves (discussed above), any Payment Stablecoin used as collateral, and the Private Keys used to issue Payment Stablecoins.[208]

The NCUA is also proposing to include in the definition of Covered Assets any cash or other property of a PPSI, as defined in the GENIUS Act, received by the custodian in the course of provision of custodial or safekeeping services contemplated under the GENIUS Act. Sections 10(b) and (c) of the GENIUS Act each apply the GENIUS Act's custodial requirements not only to the custody of Payment Stablecoin reserves, Payment Stablecoins used as collateral, and the Private Keys used to issue Payment Stablecoins but also to ''cash[ ] and other property'' of a custody Customer of one of those assets.[209]

''Cash [ ] and other property,'' as used in section 10 of the GENIUS Act, appears to refer to cash and other property that a Covered Custodian (defined and discussed below) may receive as custodial property of its Customers, but only to the extent such cash or other property is received in connection with the provision of custodial services for Payment Stablecoin reserves, Payment Stablecoins used as collateral, and the Private Keys used to issue Payment Stablecoins. For example, any interest on Payment Stablecoin Reserve Assets held in custody in a deposit account or Share Account and credited to a Customer's (*i.e.,* a PPSI) custodial account would be the type of cash and other property subject to the custody requirements of the GENIUS Act.

Thus, under the proposed rule, ''Covered Assets'' would mean Payment Stablecoin reserves, Payment Stablecoins used as collateral, and Private Keys used to issue Payment Stablecoins, as well as cash and other

[207] 12 U.S.C. 5909.

[208] 12 U.S.C. 5909(a).

[209] 12 U.S.C. 5909(b)–(c).

property received in the course of the provision of custodial or safekeeping services for such assets.

Separately, the NCUA is proposing to define the entities to which the proposed custody requirements would apply as ''Covered Custodians.'' This term would mean a FICU or NCUA-Licensed PPSI to the extent of such Person's provision of custodial or safekeeping services to Covered Customers (as such term is described below) for Covered Assets.

The NCUA is proposing to define the custodial Customers to which the GENIUS Act's protections apply as ''Covered Customers.'' This term would mean a Person for or on whose behalf a Covered Custodian receives, acquires, or holds Covered Assets.

The NCUA is also proposing to define certain other concepts relative to Covered Asset custodial activities. The proposal would define ''Applicable Law'' for purposes of subpart C as the law of a State or other jurisdiction governing a Covered Custodian's custody relationships, any applicable Federal law governing those relationships, the terms of the Custody Agreement, and any applicable court order. The proposal would define ''Custody Agreement'' as a legally binding contractual agreement between a Covered Customer, as the principal, and the custodian, as the agent, that establishes the custodian's duties and responsibilities in providing safekeeping and ancillary services to the Covered Customer. The proposal would define ''Digital Wallet'' as a software program or hardware device that stores and manages the Private Keys associated with a particular unit of a Digital Asset. The proposal would define ''Sub-Custodian'' as a Person that provides custody and safekeeping services to a Covered Custodian, including through a Digital Wallet for which such Person controls the associated Private Keys, with respect to the Covered Assets of a Covered Customer for which the Covered Custodian otherwise serves as a custodian under this subpart.[210]

2. § 706.302. Covered Asset Custodial Property Requirements

Proposed § 706.302 would implement certain minimum principles-based requirements applicable to a Covered Custodian's provision of custodial and safekeeping services for Covered Assets to ensure that such Covered Assets are treated and dealt with as belonging to the Covered Customers and protected from claims of the Covered Custodian's creditors, as well as the creditors of any Sub-Custodian, as applicable, or the claims of any Customer's creditors. Under proposed § 706.302(a), a Covered Custodian must separately account for the Covered Assets of each Covered Customer and must treat and deal with those Covered Assets as belonging to such Covered Customer and not as the property of the Covered Custodian. Under proposed § 706.302(b), a Covered Custodian must take appropriate steps to protect the Covered Assets of Covered Customers from the claims of creditors of the Covered Custodian and any Sub-Custodian, as applicable, including through adopting, implementing, and maintaining written policies, procedures, and internal controls that are adequate to comply with Applicable Law and that are commensurate with the Covered Custodian's size, complexity, and risk profile and with the nature of the applicable Covered Assets for which it provides custodial or safekeeping services.

The NCUA believes that setting certain minimum principles-based requirements for the provision of these custody services, regardless of the use of omnibus accounts, is consistent with section 10(b)(2) of the GENIUS Act,[211] which requires that applicable custodians ''take such steps as are appropriate to protect the [Covered Assets] of a customer from the claims of creditors of the [custodian]'' and section 13 of the GENIUS Act,[212] which grants the NCUA broad rulemaking authority to implement the GENIUS Act. In considering minimum, principles-based requirements, the NCUA is proposing to require Covered Custodians to take such steps that would typically be expected of a supervised institution as part of sound custodial practices necessary to protect custodied assets from claims of the custodian's creditors.[213]

The NCUA is also proposing in § 706.302(b) to require that a Covered Custodian maintain possession or control of Covered Assets of a Covered Customer that are held directly, including in a Digital Wallet for which the Covered Custodian controls the associated Private Keys. Under the proposal, a Covered Custodian may maintain the Covered Assets of a Covered Customer through the use of a Sub-Custodian if consistent with Applicable Law, provided the Covered Custodian maintains adequate safeguards and internal controls reasonably designed to provide the Covered Custodian with oversight of such Sub-Custodian's compliance with the requirements of this proposed subpart C. Under the proposal, with regards to any Payment Stablecoin or Payment Stablecoin reserve in the form of a tokenized asset held in safekeeping under proposed subpart C, a Covered Custodian, or Sub-Custodian, as applicable, maintains control for purposes of the proposed requirement if it can reasonably demonstrate, consistent with the standard of care established by Applicable Law, that no other party, including the Covered Customer, can transfer the Payment Stablecoin or tokenized asset using a Distributed Ledger without the consent of the custodian or Sub-Custodian, as applicable. This requirement is consistent with past guidance from the other banking agencies on the control of crypto-assets for purposes of safekeeping.[214]

The NCUA intends these principles-based, minimum requirements to be in line with sound custodial management practices that the agency understands are industry standard. An FCU that is a Covered Custodian may not act in a fiduciary capacity. FISCUs' ability to act in a fiduciary capacity will depend upon State law.

The NCUA proposes codifying in proposed § 706.302(c) the exception in section 10(c) of the GENIUS Act to the customer property requirements described in section 10(b).[215] This exception permits a Covered Custodian to withdraw and apply such share of the Covered Assets of a Covered Customer necessary to transfer, adjust, or settle a transaction or transfer of assets applicable to that Covered Customer, including the payment of commissions, taxes, storage, and other charges lawfully accruing in connection with the provision of services to that Covered Customer by the Covered Custodian. The NCUA proposes to specify that any such withdrawal must be consistent with any Applicable Law. For example, the NCUA would expect any such withdrawal to be undertaken only in

[210] A sub-custodian would be subject to the requirements applicable to a custodian under the GENIUS Act, including the requirements under section 10 of the Act (12 U.S.C. 5909).

[211] 12 U.S.C. 5909(b)(2).

[212] 12 U.S.C. 5913.

[213] To the extent that a Covered Custodian, as an accommodation to a Covered Customer, documents in an account statement or other similar document any additional assets of that Customer for which the Covered Custodian does not provide custodial or safekeeping services, including through use of a Sub-Custodian of the Covered Custodian (commonly referred to as ''accommodation assets'' or ''below the line assets''), the NCUA would not expect such assets to be subject to the requirements of subpart C.

[214] *See* OCC, ''Agencies Issue Joint Statement on Risk-Management Considerations For Crypto-Asset Safekeeping,'' (Jul. 14, 2025), *available at https://www.occ.gov/news-issuances/news-releases/2025/nr-ia-2025-68.html*.

[215] 12 U.S.C. 5909(c).

compliance with the terms of a Covered Customer's written Custody Agreement and that any withdrawal of funds from an omnibus account would be properly recorded as to not implicate the custodial assets of any other Covered Customer.

Finally, proposed § 706.302(d) would clarify, consistent with section 10(c)(2)(D) of the GENIUS Act,[216] that a FICU that provides custodial or safekeeping services for Covered Assets may hold Covered Assets that are in the form of cash on deposit (including funds deposited in Share Accounts), provided such treatment is consistent with Federal law.

3. § 706.303. Use of Omnibus Accounts

Proposed § 706.303(a) would implement the GENIUS Act's requirement in section 10(c) of the Act that a Covered Custodian segregate all Covered Assets of Covered Customers and not commingle them with the assets of the Covered Custodian.[217] As discussed above, the proposal clarifies that this requirement does not apply in the case of a FICU that provides custodial or safekeeping services for covered assets that are in the form of cash to the extent the FICU holds such cash in the form of cash on deposit (including funds deposited in Share Accounts), provided such treatment is consistent with Federal law.

Proposed § 706.303(b) sets the terms by which Covered Custodians may use omnibus accounts consistent with the GENIUS Act's requirements to separately account for, treat as, and deal with custodied Covered Assets as belonging to Covered Customers. The NCUA is proposing to allow any Covered Custodian to commingle the Covered Assets of multiple Covered Customers in one or more omnibus accounts, to the extent that the steps it has taken pursuant to proposed § 706.302(b) are adequate to maintain safe and sound practices for the use of omnibus accounts, and to the extent that the use of omnibus accounts is consistent with Applicable Law.

4. Reporting

The NCUA is considering how to implement any additional reporting requirements in subpart C pursuant to section 10(d) of the GENIUS Act, which requires that a Covered Custodian submit to the NCUA certain information ''in such form and manner as [the NCUA] shall determine.'' [218] For Covered Custodians that are FICUs, the NCUA plans to issue updates to the NCUA Form 5300, Call Report, or NCUA Form 4501A, Profile, to collect information on FICUs' custodial businesses.[219] For Covered Custodians that are NCUA-Licensed PPSIs, the NCUA proposes to rely on such entities' reporting pursuant to section 6(a)(2) of the GENIUS Act's reporting requirements [220] as part of the PPSIs' quarterly report on financial condition discussed in proposed § 706.205.[221] The NCUA seeks comment on whether this is the most efficient and effective way to collect such information concerning a Covered Custodian's business operations as well as their processes to protect Customer assets.[222]

Nonetheless, requiring Covered Custodian-specific reporting outside of the context of a Call Report may be appropriate. Specifically, the NCUA is considering requiring Covered Custodians to report on a separate form maintained by the NCUA the following information: (1) total Covered Assets under custody, and (2) total Payment Stablecoin reserves under custody. For Payment Stablecoin reserves under custody, the NCUA is further considering requiring Covered Custodians to report the following: (a) total Payment Stablecoin reserves under custody for (i) an Affiliate and (ii) third parties; (b) total Payment Stablecoin reserves held in a deposit account or Share Account at (i) the Covered Custodian and (ii) a third-party IDI; (c) total Payment Stablecoin reserves held in a deposit account or Share Account that are not covered by FDIC or NCUA insurance at (i) the Covered Custodian and (ii) a third party IDI; and (d) total Payment Stablecoin reserves held in each of the categories listed in section 4(a)(1)(A)(i)–(viii) of the GENIUS Act.[223]

5. § 706.304. Self-Custody Hardware and Software Exclusion

The proposal implements section 10(e) of the GENIUS Act, which provides that the requirements of section 10 of the Act do not apply to any Person solely on the basis that such Person engages in the business of providing hardware or software to facilitate a Customer's own custody or safekeeping of the Customer's Payment Stablecoins or Private Keys.[224] In proposed § 706.304, the NCUA proposes to clarify that the requirements of this proposed subpart C do not apply to any FICU or NCUA-Licensed PPSI solely on the basis that such entity engages in the business of providing hardware or software to facilitate a Person's or entity's self-custody of their Payment Stablecoins or Private Keys. The requirements could nonetheless apply if, for example, an entity controls or holds itself out as controlling such Payment Stablecoins or Private Keys, or provides, or holds itself out as providing safekeeping or custodial services, including services that are ancillary or incidental to its custodial powers, for such Payment Stablecoins or Private Keys.

6. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 132:* Are the proposed definitions for terms relevant to this section appropriate and sufficiently clear? Would it be helpful to define any other terms?

*Question 133:* The NCUA has interpreted ''cash and other property'' to refer to the cash and other property that a Covered Custodian may receive as custodial property of its Customers, but only to the extent such cash or other property is received in connection with the provision of custodial services for the GENIUS Act's three core custody assets. Is this the appropriate approach? Should the NCUA take a broader view of what constitutes ''cash and other property''? What are the costs and benefits of such an approach? Does the proposal appropriately address the different requirements for noncash Covered Assets and ''cash on deposit'' Covered Assets held at an IDI?

*Question 134:* The NCUA is proposing to define Covered Assets in such a way that the requirements of sections 10(a), (b), and (c) of the GENIUS Act would

[216] 12 U.S.C. 5909(c)(2)(D).

[217] 12 U.S.C. 5909(c).

[218] 12 U.S.C. 5909(d).

[219] Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions (FICUs) to make financial and other reports to the NCUA. Section 741.5 describes the submission method FICUs must use to provide information to NCUA. NCUA Form 5300, Call Report, is used to file quarterly financial and statistical data through NCUA's online portal, CUOnline. NCUA Form 4501A, Profile, is used to collect non-financial information on credit union operations through NCUA's online portal, CUOnline.

[220] 12 U.S.C. 5905(a)(2).

[221] As noted above, section 10(d) of the GENIUS Act (12 U.S.C. 5909(d)) provides an additional statutory grant of authority for this reporting requirement.

[222] Consistent with the OCC Proposal, the NCUA believes that reporting the Private Key used to issue a Payment Stablecoin held in custody at a $1.00 book value would be consistent with industry practice unless the methodology for determining market value is otherwise set by applicable law. *See, e.g.,* OCC, Letter from Kerri Corn, Director for Credit and Market Risk (June 20, 2007), *available at https://www.occ.treas.gov/topics/supervision-and-examination/capital-markets/asset-management/corporate-trust/memo-misc-schedule-rc-t.pdf* (letter to the American Bankers Association regarding owner trustee fiduciary accounts reported on Schedule RC–T).

[223] 12 U.S.C. 5903(a)(1)(A)(i)–(viii).

[224] 12 U.S.C. 5909(e).

apply to all Covered Assets and is proposing to apply the substantive requirements of those sections as a connected set of requirements.[225] However, sections 10(a), (b), and (c) of the Act use slightly different wording when describing the assets to which each subsection applies and some of the substantive requirements that apply.[226] The NCUA believes that the provisions should be read together to cover the same set of assets and to provide a cogent and harmonized set of requirements for Covered Custodians.[227] Instead of the proposed approach, should the NCUA use the precise statutory language regarding the scope of assets covered separately in paragraphs (a), (b), and (c)? What are the advantages or disadvantages of doing so?

*Question 135:* Proposed subpart C would implement section 10 of the GENIUS Act with respect to entities that are regulated by the NCUA.[228] Are there issues that the NCUA should bear in mind if an NCUA-regulated entity holds reserve assets on behalf of a PPSI that is not regulated by the NCUA and may not be familiar with the NCUA's implementation of section 10 of the GENIUS Act?

*Question 136:* The NCUA is proposing applying these principles-based requirements on Covered Custodians subject to NCUA supervision, rather than requiring NCUA-supervised institutions that seek to custody a Covered Asset to only custody such assets with a custodian that can demonstrate it complies with certain minimum requirements. What are the costs and benefits of this approach, including with regards to administrability, jurisdiction, and the promotion of fair competition?

*Question 137:* The NCUA proposes principles-based requirements in line with sound custodial management practices that the agency understands are industry standard. Does the proposal accurately capture sound custodial management practices that are industry standard?

*Question 138:* Does the proposal provide enough detail regarding what steps are appropriate for a Covered Custodian to protect the Covered Assets of Covered Customers from the claims of creditors of the Covered Custodian? Would more prescriptive or specific requirements be appropriate to implement the requirements of the GENIUS Act? For example, should the NCUA require a Covered Custodian to take appropriate steps to protect the Covered Assets of Covered Customers from the claims of creditors of the Covered Custodian, including through adopting, implementing, and maintaining written policies, procedures, and internal controls adequate for (A) the safekeeping of Covered Assets of Covered Customers; (B) the documentation of Covered Customer relationships through one or more written Custody Agreements; (C) recording and verifying the Covered Assets of Covered Customers; and (D) the conducting of due diligence in the selection of and periodic monitoring of Sub-Custodians, in each case commensurate with the Covered Custodian's size, complexity, and risk profile and with the nature of the applicable Covered Assets in its Covered Customer relationships? What are the costs and benefits of prescriptive versus a principles-based approach?

*Question 139:* Is it sufficiently clear in a custodial relationship when and for what assets the minimum, principles-based requirements of subpart C would apply? For example, are there circumstances where a custodian may be unaware that Payment Stablecoin assets held in an account are being used as collateral and potentially subject to the requirements of subpart C?

*Question 140:* The proposed rule describes how a custodian maintains control of a Payment Stablecoin or tokenized Payment Stablecoin Reserve Assets. Is this description appropriately calibrated? Are there other means by which a custodian should be deemed to have demonstrated control over these types of assets?

*Question 141:* Are there additional considerations the NCUA should take into account regarding a Covered Custodian's use of an omnibus account? For example, should the NCUA consider a high-level principals-based approach to apply generally to a Covered Custodian's provision of custodial or safekeeping services to Covered Customers for Covered Assets while utilizing a more detailed regulatory framework regarding a Covered Custodian's use of omnibus accounts?

*Question 142:* Regarding the proposed rule governing the withdrawal of custodial Covered Assets to pay certain commissions, taxes, storage, and other charges, should the NCUA require any more prescriptive Customer protection requirements, such as those designed to ensure that such withdrawals do not cause any reserve to fall below any minimum coverage of a Payment Stablecoin? What are the costs and benefits of these or any similar approach? For example, in order to implement an effective compliance system, would such a requirement impose undue burdens on a custodian from withdrawing any permitted funds from a custodial account that contains Payment Stablecoin reserves?

*Question 143:* Section 10(c)(3) of the GENIUS Act provides a priority regime regarding the claims of Covered Customers against a Covered Custodian with regards to any Payment Stablecoins used as collateral. The section also allows Covered Customers to expressly waive this priority. What are the potential benefits and drawbacks of such a priority regime, including with regards to whether it may amplify losses to Payment Stablecoin issuers on Payment Stablecoin reserves that are custodied by a Covered Custodian that provides a diversified custodial business should there be a shortfall in a Covered Custodian's custodied assets? What market practices do commenters believe are likely to arise regarding the use of the contractual provisions that waive a Covered Customer's priority regarding Payment Stablecoins used as collateral that are held in custody? To what extent should the NCUA consider either providing guidance on the use of such contractual provisions or requiring Covered Custodians to use such contractual provisions in their Custody Agreements? How are Customer waivers in relation to Covered Custodians likely to impact the resolution of PPSIs? For example, would they lead to additional complications in determining the priority of claims?

*Question 144:* The GENIUS Act provides an exclusion from the custodial requirements to any Person solely on the basis that such Person engages in the business of providing hardware or software to facilitate a Customer's own custody or safekeeping of the Customer's Payment Stablecoins or Private Keys. The NCUA proposes to clarify that it would not consider certain activities to constitute ''solely'' providing hardware or software to facilitate custody or safekeeping of Payment Stablecoins or Private Keys. Should the NCUA consider implementing any other language to prevent the exception from being used to evade the custodial requirements of

[225] 12 U.S.C. 5909(a)–(c).

[226] For example, Section 10(a) of the Act refers to ''the payment stablecoin reserve, the payment stablecoins used as collateral, or the private keys.'' 12 U.S.C. 5909(a). Section 10(b) refers to ''the payment stablecoins, private keys, cash, and other property.'' 12 U.S.C. 5909(b). Section 10(c) refers to ''[p]ayment stablecoin reserves, payment stablecoins, cash, and other property.'' 12 U.S.C. 5909(c).

[227] For example, sections 10(b) and (c) of the Act refer to section 10(a), suggesting that the provisions are meant to be read together to cover the same set of assets.

[228] 12 U.S.C. 5909.

the GENIUS Act? Alternatively, could an NCUA-supervised institution provide ancillary custodial services to a user of such hardware or software (*e.g.,* facilitating the Customer's crypto-asset and fiat currency exchange transactions, transaction settlement, trade execution, recordkeeping, valuation, tax services, reporting, or other appropriate services) while avoiding the minimum, principles-based requirements of the proposal?

*Question 145:* Are there particular circumstances for which the NCUA should provide additional clarification as to the application of subpart C or the applicability of any exception (*e.g.,* regarding Payment Stablecoins locked in a smart contract for purposes of ''wrapping'' the Payment Stablecoin for use on an unsupported blockchain)?

*Question 146:* In order to help ensure that a PPSI is able to meet redemptions on a timely basis, should the NCUA require that any Custody Agreement a Covered Custodian enters into with a PPSI provide for prompt release of any custodied Covered Assets to the Covered Customer's control? For example, should a Custody Agreement require that a Covered Custodian have the ability to transfer control of Covered Assets comprising Payment Stablecoin reserves, or execute and settle at the Covered Customer's direction any such assets, within a specific timeframe? What are the costs and benefits of any such approach?

*Question 147:* To what extent are the portions of the reports required under proposed § 706.205 relevant to custodial activities appropriate to ensure that the NCUA possesses the information necessary to supervise Covered Custodians? If other forms of reporting would be helpful, what are they? If other types of information would be helpful, what are they? What are the costs and benefits of more detailed reporting requirements?

*Question 148:* Does the proposed approach regarding custody of Covered Assets proposed in subpart C, or any alternative approach discussed in comments or suggested by commenters, pose any concerns regarding fair competition between Covered Custodians and entities that are otherwise permissible custodians under section 10(a) of the GENIUS Act but which are not supervised by the NCUA?

### *F. Subpart D—Capital and Operational Backstop*

Section 4(a)(4)(A)(i) of the GENIUS Act requires the Board to establish capital requirements for PPSIs.[229] The capital requirements must be tailored to the business model and risk profile of PPSIs and not exceed requirements sufficient to ensure the ongoing operations of PPSIs. Consistent with the statutory requirement, and the capital requirements proposed by the OCC, the NCUA is proposing a minimum capital requirement that will be tailored to the business model and risk profile of an NCUA-Licensed PPSI. The NCUA's proposed approach for capital focuses primarily on the operational risk of Payment Stablecoin issuers.

Because of the novelty of Payment Stablecoins and various business models for PPSIs being discussed among industry participants, the NCUA believes that setting capital requirements based on individual evaluations of prospective PPSIs would be most appropriate at this time. Therefore, the overall approach in the proposed rule would provide for an individualized evaluation of each prospective PPSI. The NCUA would consider quantitative and qualitative factors including, but not limited to, financial projections, fixed and variable expenses, the nature of fiduciary products and services being proposed, and discussions with organizers when considering the appropriate capital amount for each PPSI.

In addition to establishing the initial capital requirement at licensing, all PPSIs must develop a process to assess and meet their capital requirements,[230] with evaluation by the NCUA through the examination process. As the NCUA gains additional experience and data from reviewing applications for prospective PPSIs and assessments performed by established PPSIs with varying business models and risk profiles, the NCUA may revise its licensing procedures or this rule to incorporate more standardized, objective capital requirements. The NCUA discusses potential options in the following sections and questions and invites feedback on how these options could be revised or incorporated into a final rule, either as elements of a capital requirement, liquidity requirement, or otherwise, because of the intertwined nature of capital and liquidity. For example, capital is generally used to support an entity's risk profile, business strategies, future growth prospects, and provide a cushion against unexpected losses, while liquidity is used to meet an entity's obligations when they come due. An entity that experiences unexpected losses that reduce the holdings of its liquid assets will have less liquidity to satisfy current liabilities, while an entity that needs to use liquidity to satisfy current liabilities may be more limited in its business strategies or future growth prospects.

#### 1. § 706.400. Capital Elements

Under the proposed rule, regulatory capital for PPSIs would consist of two capital elements, common equity tier 1 capital and additional tier 1 capital. These two elements are generally consistent with the capital elements for banking organizations under their respective capital requirements, however they are different than regulatory capital requirements for FICUs.[231] As mutuals, FICUs do not issue stock instruments and therefore must primarily rely on retained earnings to accumulate capital. PPSIs, however, will not likely be structured as mutual institutions, and instead will likely have ownership through stock certificates. Therefore, the NCUA believes it is appropriate to structure PPSI minimum capital requirements similarly to banking organizations and not analogous to FICU capital requirements.

The proposed PPSI capital elements primarily consist of common equity, retained earnings, and noncumulative perpetual preferred stock that meet certain terms designed to ensure significant loss-absorbing capabilities. For example, the proposed terms include provisions that require that the paid-in amount is equity under GAAP, that limit dividends, and that prohibit a PPSI from funding its own equity instruments to ensure that there is a source of external capital to support the PPSI's operations.

Common equity tier 1 capital would consist of common stock instruments (par value, if any, and related surplus), retained earnings, and any accumulated other comprehensive income (AOCI), all as reported under GAAP. Common stock instruments would need to meet various proposed criteria, including being the most subordinated claim on the PPSI's assets, being fully paid-in, having no maturity date, and not being redeemable except with prior NCUA approval. Any dividends must be fully discretionary, paid out only after fulfillment of any other legal or contractual obligations, and from positive retained earnings. In addition, the holders of the instruments must bear losses equally, proportionally, and simultaneously with other holders of common stock instruments. As the most subordinated tier of regulatory capital, common equity tier 1 exhibits the most loss absorbency, as any dividends are discretionary and there is

[229] 12 U.S.C. 5903(a)(4)(A)(i).

[230] *See,* proposed § 706.401(a)(2)(ii).

[231] See, 12 CFR part 3 (OCC); 12 CFR part 217 (FRB); and 12 CFR part 324 (FDIC).

no expectation of redemption or repurchase of the instrument, ensuring any operating funds generated can be used for any other business need of the issuer.

The NCUA also is proposing to include AOCI as a component of common equity tier 1 capital. This treatment is not consistent with the NCUA's capital framework in 12 CFR part 702, however, the NCUA is not proposing to permit any neutralization of AOCI. The NCUA permits neutralization of components of AOCI under part 702 in part to reduce regulatory capital volatility associated with changes in value of available-for-sale fixed income securities due to changes in interest rates. These changes in value due to interest rate movements are generally more pronounced the longer the remaining maturity of the securities. As PPSIs can only hold securities with remaining maturities of 93 days or less as reserve assets, the change in value of these securities due to interest rate movements likely would generate immaterial amounts of AOCI and therefore neutralization is not warranted to reduce volatility.

Additional tier 1 capital would consist of instruments that meet a different set of proposed criteria, generally consistent with noncumulative perpetual preferred stock issuances that are classified as equity under GAAP. Generally, these instruments would be subordinated to all claims except those of common shareholders. The instruments could not have a maturity date but may be callable after at least five years with prior approval of the NCUA. To provide additional flexibility to the issuer when needed, the terms of the instrument must provide for the payment of dividends only if and when declared by the PPSI board of directors. This feature provides the PPSI the ability to retain earnings and capital if needed. These provisions all help ensure that the instrument provides significant loss absorbency by limiting the PPSI's obligations to holders.

The NCUA's capital framework also permits inclusion of subordinated debt instruments in certain circumstances [232] and certain allowances for credit losses. The banking agencies also permit the inclusion of subordinated debt instruments as tier 2 capital instruments. However, the NCUA is not proposing to adopt subordinated debt as a capital component for PPSIs. Allowing a PPSI to employ subordinated debt instruments as capital may incentivize a PPSI to take on additional leverage with a stated repayment obligation, which increases the pressure and risk on the PPSI to generate enough income to repay that obligation instead of increasing the ability of the stablecoin issuer to absorb losses. Separately, as PPSIs would not be providing loans or other credit to Customers, they likely would not have any allowance for credit losses.

The proposed rule would not require any specific ratio between the regulatory capital elements or minimum amounts of any capital element. The NCUA does not believe such a structure for minimum capital is necessary for PPSIs based on their variety of business models. The proposed rule also would not require any specific deductions from regulatory capital instruments for PPSIs. The NCUA's current rules in 12 CFR part 702 require deductions from the definition of capital for purposes of the risk-based capital framework, but does not require deductions from the calculation of net worth. In general, the risk-based capital rule requires deductions because the potentially volatile valuation of those assets reduces their ability to absorb losses. While goodwill and other intangible assets may exhibit similar valuation volatility on the balance sheets of PPSIs, these risks may be addressed though the backstop requirement and proposed requirements around risk management, capital adequacy assessments, and liquidity. For example, a PPSI that holds a significant amount of goodwill from the acquisition of another entity would be expected to appropriately incorporate in its capital adequacy assessment the risk that the goodwill may become impaired and reduce retained earnings.

However, the NCUA is also considering a deduction framework, which could be more limited than the deductions required for FICUs under the risk-based capital framework. A more limited framework may focus deductions on goodwill and other intangible assets, which may be difficult to value and would be unavailable to satisfy redemption claims of Payment Stablecoin holders or support the PPSI during a business disruption. Alternately, the NCUA is considering a simplified capital instrument framework for PPSIs. Under this framework, any balance sheet account that qualifies as equity under GAAP would qualify as a capital element, including common stock, retained earnings, AOCI, and certain preferred stock. This alternative could be easier to implement as it relies on the GAAP definitions of equity without layering on additional requirements. However, those additional requirements reduce the risk to Payment Stablecoin holders and ensure that the equity instruments are sufficiently loss absorbing. For example, the additional proposed requirements help ensure a PPSI does not aggressively redeem equity instruments with funds that are necessary to support the liquidity or operations of the Payment Stablecoin and associated reserves, or make loans to potential shareholders to purchase stock, which provides no loss absorbency. The NCUA could also consider a framework based on tangible capital, which could start with GAAP equity, but deduct any intangible assets from that amount. This approach could address the risk that a PPSI invests material amounts of capital in generally illiquid and potentially volatile or difficult to value intangible assets. These assets would likely be difficult to liquidate if needed to address business disruptions. However, the proposed backstop may be sufficient to address these risks.

2. § 706.401. Minimum Capital Calculation

The NCUA is proposing to establish a minimum capital requirement framework based on the lifecycle of the PPSI. Under this framework, the NCUA will establish the minimum capital requirement for a PPSI as part of the licensing process that will apply for a minimum timeframe, generally three years. The NCUA intends to establish a monetary capital amount for each PPSI that must be maintained and a portion of which must be maintained in certain liquid assets. Under this approach, the NCUA would consider factors such as projected revenues and expenses, cash burn rates, and expenditures necessary to implement the proposed business plan and activities of the applicant. This analysis may include various scenarios based on projected Payment Stablecoin issuance volumes, planned composition of reserves, and projected returns on those reserves in different interest rate environments. During this time, and afterward, the PPSI also would be required to assess its capital adequacy and maintain an amount of capital that is commensurate with its business model and risk profile, subject to review by the NCUA.

a. De Novo Capital Requirement

Under proposed § 706.401, the initial minimum capital requirement would apply during the ''de novo period,'' generally the three-year period following licensing by the NCUA of the

[232] All complex FICUs may include subordinated debt instruments in risk-based capital under 12 CFR 702.104(b)(1)(vii). Low-income FICUs may include subordinated debt instruments as a component of net worth under 12 CFR 702.2 (definition of net worth).

PPSI to issue Payment Stablecoins. This timeframe may be extended or shortened by the NCUA. Generally, the NCUA would expect to lengthen the de novo period based on changes to the business model or activities of the issuer, excessive volatility in issuance and redemptions of the Payment Stablecoin, unexpected operating losses, weak earnings, poor risk management, or violations of the GENIUS Act or implementing rules. The NCUA would expect to shorten the de novo period for an entity that has a history of operating a stablecoin business prior to the effective date of the NCUA's final rule implementing the GENIUS Act or for a PPSI that converts to an NCUA-Licensed PPSI charter from another primary Federal payment stablecoin regulator.

During the de novo period, the requirements may be adjusted by the NCUA based on the actual operations of the PPSI compared to projections or as part of the licensing conditions. The NCUA would expect to consider the proposed PPSI's risk profile, business strategy, future growth prospects, and cushions for unexpected losses when evaluating the appropriate capital amount during the de novo period. At licensing and during the de novo period, the NCUA would consider factors including: the composition, stability, and direction of revenue; the level and composition of expenses; the level of retained earnings; the quantity and direction of strategic risk; the quality of management processes, including the adequacy of internal and external audit, internal controls, and compliance management; the quantity of transaction risk from delivery and administration of asset management products and services; and the impact of external factors, including economic conditions and evolving technology.

Under proposed § 706.401(a)(1)(i)(B), the NCUA is also proposing a floor of $5 million on the minimum capital requirement during the de novo period. This floor is primarily intended to ensure that every PPSI has sufficient resources to support initial operations, particularly to cover the losses that are expected to occur early in the startup phase of a new stablecoin. The $5 million floor is consistent with the OCC's proposed rule and the OCC's experience with chartering de novo national trust banks seeking to provide stablecoin programs.[233]

b. Ongoing Capital Requirement

The proposed rule would require all PPSIs to calculate a minimum capital requirement based on an evaluation of the risks associated with its business model and risk profile. This amount would be based on estimates submitted during the application phase, and after approval, this amount must incorporate the operating history of the PPSI and loss experienced from all sources, including operational risk. The NCUA will review and monitor this requirement and the amount of capital held by the PPSI as part of the examination process. The amount of capital held by the PPSI must appropriately incorporate the operating history and operational risk of the PPSI, consistent with the standards described above that the NCUA uses to determine the capital requirement for de novo Payment Stablecoin issuers. The NCUA is not currently proposing any floors on the minimum capital requirement or frameworks for determining a minimum capital requirement for those risks in the rule text, but has asked questions on possible options the NCUA could consider adopting in a final rule or as part of a future rulemaking. For the final rule, the NCUA may consider implementing a framework for determining more objective capital requirements as the industry evolves and PPSIs establish longer operating histories.

c. Operational Backstop

The NCUA is proposing that a PPSI hold a designated pool of highly liquid assets to maintain the ongoing operations of the PPSI during a business disruption, referred to as the operational backstop. This proposed backstop assets would be independent of the de novo or ongoing capital requirements and from any assets held as Reserve Assets. The purpose of the operational backstop is to help ensure that during a business disruption that impacts operations of the PPSI, a liquid pool of identifiable assets exists to allow the PPSI to meet short-term liquidity needs, stabilize the issuer after the disruption, and continue or resume normal operations. The operational backstop would be calculated based on the actual total expenses of the PPSI over the past 12 months. These expenses, including for utilities, data processing, and salaries, are highly correlated with the PPSI's ability to maintain the operations of its Payment Stablecoin and stabilize from a business disruption. At a minimum, the operational backstop provides a runway for the PPSI to evaluate the source of the disruption and potential responses without needing to take urgent action due to lack of funds. The amount of the operational backstop would be calculated each quarter, based on the PPSI's total expenses as reported in the four most recent quarterly reports filed. For de novo PPSIs, the initial requirement would be based on reasonable expense projections and adjusted each quarter based on actual amounts for that quarter.

The operational backstop amount would need to be held as readily available liquid assets to ensure that funds are available quickly during a business disruption. Specifically, this amount would need to be held in U.S. currency directly or at a Federal Reserve Bank, as deposits and/or funds in Share Accounts that are payable on demand at a U.S. IDI, with those deposits and/or funds in Share Accounts fully insured by the FDIC or NCUA, or in U.S. Treasuries that meet the requirements to qualify as Reserve Assets, which could be readily liquidated. The assets associated with the operational backstop would need to be separately identified in the reports filed under proposed § 706.205, and in any other financial statements of the PPSI, from any Reserve Assets required to support the Payment Stablecoin and any other assets of the PPSI on any reports filed under proposed § 706.205.

While the NCUA considered adjusting the operational backstop to more specifically identify and categorize expenses used in calculating the amount, this approach would create additional burden for PPSIs to track specific expenses, as well as increase the risk of gaming the backstop by PPSIs attempting to reclassify ongoing operating expenses as one-time items. The NCUA also does not want to create incentives or disincentives for different business decisions, such as to purchase or lease assets, by excluding non-cash expenses like depreciation from total expenses.

The proposed minimum capital amount, the capital held by the PPSI, and the operational backstop would be calculated as of the last day of each quarter and disclosed in the reports required under § 706.205 of the proposed rule. Under the proposal, if a PPSI does not meet the minimum capital requirement or have sufficient liquid assets to meet the operational backstop at the end of a quarter, it must make efforts to satisfy the capital requirement and backstop by the end of the following quarter. These efforts may include raising additional capital, reducing the size of the operations or risk profile of the issuer, or converting less-liquid assets into highly liquid assets to satisfy the backstop. Until the capital and backstop requirements are satisfied, the PPSI would be restricted from issuing any new Payment Stablecoins, except as necessary to

[233] 91 FR 10202 (Mar. 2, 2026).

facilitate a transfer of Payment Stablecoins from one Distributed Ledger to another and provided that the Net Outstanding Issuance Value does not increase so that the PPSIs can use their liquidity to address any issues in times of stress instead of further growing the risk by increasing the size of the Payment Stablecoin. If a PPSI fails to meet its capital or backstop requirements for two consecutive quarters, it must begin liquidating Reserve Assets and redeeming outstanding Payment Stablecoins at the start of the following month and can no longer issue any new Payment Stablecoins going forward. A PPSI that is required to redeem its Payment Stablecoins due to a shortage of capital or liquid assets for the backstop would be prohibited from charging Customers a fee for redeeming those Payment Stablecoins. For example, if a PPSI did not have sufficient capital as of June 30, it would be prevented from issuing new Payment Stablecoins, on a net basis, starting in July. If the PPSI increased its capital to meet the minimum requirement on July 8, it could resume issuing stablecoins on July 8. In contrast, if the PPSI did not satisfy its capital or backstop requirements at any time during the quarter and did not meet these requirements again on September 30, it would need to begin redemption of its Payment Stablecoins starting on October 1, regardless of whether it raises additional capital or meets the operational backstop requirements going forward. Due to the nature of PPSIs and the potential for rapid inflows or outflows of funds to issue or redeem Payment Stablecoins, the NCUA believes a timely response is warranted when there is a failure to meet minimum capital and backstop requirements to ensure that a growing Outstanding Issuance Value is appropriately backed by sufficient capital to address the risks associated with the PPSI and any business disruptions. The provisions to limit issuance of new Payment Stablecoins, and potentially redeem outstanding Payment Stablecoins, are intended to ensure that a PPSI maintains an adequate capital base and operational backstop relative to its risks and operations. The proposed quarterly calculation and assessment aligns with the proposed frequency of reporting under proposed § 706.205(i). However, more frequent capital calculations and assessments may be appropriate due to potential fluctuations in stablecoin demand or other factors.

3. § 706.402. Individual Additional Capital or Backstop Requirement

The NCUA expects that a PPSI will appropriately calculate a capital requirement under proposed § 706.401(a) and (b) and would expect to resolve any concerns with the capital adequacy assessment through the examination process. However, in cases where the PPSI's internal capital adequacy assessment is significantly deficient in addressing the capital needs of the PPSI to ensure ongoing operations, the NCUA is proposing a process to impose an individual additional capital or backstop requirement on the PPSI. This process is permitted by section 4(a)(4)(B)(i) of the GENIUS Act.[234]

The proposed rule includes a list of illustrative examples of when the NCUA may consider imposing an individual additional capital or backstop requirement, such as when a PPSI is facing a significant increase in operational risks, excessive volatility in stablecoin issuance or redemptions and the PPSI's management lacks a robust plan to address that volatility, or for additional risks that the PPSI is not appropriately managing or reflecting in the ongoing capital calculation.

Under the proposal, the NCUA would notify the PPSI of the proposed individual additional capital or backstop requirement, including a justification for that requirement and a target achievement date. The board and management of the PPSI generally would have 30 days to respond to that notice. The NCUA may change this time period, as appropriate, based on the condition of the PPSI. For example, the time period may be shortened due to the severity of the underlying issues and need for additional capital or backstop. After the response period, the NCUA would issue a final decision establishing an individual additional capital or backstop requirement for that PPSI, which would remain in effect until modified or rescinded by the NCUA. The decision may require the PPSI to develop and submit to the NCUA, within a specified time period, an acceptable plan to reach the additional capital or backstop requirement established for the PPSI. If, after the NCUA renders its decision, there is a significant change in the circumstances that materially affects the PPSI's capital adequacy or its ability to reach the required capital or backstop requirement, the PPSI may request, or the NCUA may propose to the PPSI, a change in the additional capital or backstop requirement for the PPSI, the date when the minimum must be achieved, or the PPSI's plan (if applicable). The NCUA may decline to consider proposals that are not based on a significant change in circumstances or that are repetitive or frivolous. Pending a decision on reconsideration, the NCUA's original decision and any plan required under that decision shall continue in full force and effect.

4. Proposed Adjustments to the NCUA's Capital Rule (12 CFR Part 702 and 704)

Section 4(a)(4)(C)(iii) of the GENIUS Act specifies that for stablecoin issuers owned by IDIs, the appropriate Federal banking agency (as defined in 12 U.S.C. 1813(q)), which does not include the NCUA, cannot require an IDI that is consolidated with a PPSI to hold any amount of regulatory capital with respect to such PPSI and its assets and operations in excess of the capital that such PPSI must maintain under the capital regulations promulgated under the GENIUS Act.[235] While the NCUA is not an appropriate Federal banking agency under the Federal Deposit Insurance Act, the NCUA is issuing similar proposed rules as the OCC regarding deconsolidation of PPSI subsidiaries for consistency. Therefore, for regulatory capital purposes, the NCUA is proposing to amend 12 CFR parts 702 (natural person FICUs) and 704 (corporate FICUs) to specify that a FICU that owns a consolidated PPSI under GAAP must deconsolidate the PPSI for regulatory capital purposes.

The FICU must deduct any interest in retained earnings of the PPSI from its net worth and, for complex credit unions calculating their capital under the risk-based capital framework, from the capital elements for the risk-based capital numerator.[236] This amount would also be deducted from total assets or total risk-weighted assets for the denominator. This interest reflects the FICU's share of retained earnings of the PPSI that have not been paid out as dividends, and the deduction ensures that the same amount would not count as capital at both the PPSI and its parent FICU. Once earnings from the subsidiary are paid as dividends to the parent FICU, those funds are available for general uses of the FICU and no longer count as capital of the PPSI. Finally, any remaining assets associated

[234] 12 U.S. 5903(a)(4)(B)(i).

[235] 12 U.S.C. 5903(a)(4)(C)(iii).

[236] The OCC's proposal requires deduction from common equity tier 1 capital. FICUs, however, as mutual institutions do not have common equity (stock certificates) and instead would deduct consolidated interests in the PPSI from the numerator, either net worth or its risk-based capital numerator, as applicable.

with the PPSI (after deducting its share of retained earnings), such as investments in or intercompany receivables from a PPSI, would be excluded when calculating the FICU's total assets or risk-weighted assets, as applicable.

To the extent that a subsidiary PPSI incurs net losses, there would be no adjustment to increase its parent FICU's assets or retained earnings to offset those losses, so as to not overstate the resources and financial condition of the parent. As proposed, this deconsolidation and deduction approach would ensure that any assets and capital associated with the PPSI are not double-counted when included in risk-based or net worth ratio calculations at the parent FICU, and that any retained earnings of the PPSI are not double-counted as capital that can be used by the parent FICU.

5. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 149:* The OCC did not provide a specific treatment for unconsolidated equity interests in PPSIs. The other banking agencies' capital treatment for non-consolidated equities is generally more conservative than the NCUA's treatment for non-consolidated equities. Banking organizations' unconsolidated investments may be subject to deduction in certain circumstances and are generally subject to higher risk weights than under part 702. The NCUA solicits comment on whether the current treatment under part 702 and NCUA's risk-based capital requirements for unconsolidated CUSO equities is appropriate for unconsolidated PPSI exposures.

*Question 150:* Are the proposed requirements for capital elements appropriate and sufficiently clear? Should the NCUA consider permitting tier 2 capital in the form of subordinated debt, similar to the permitted capital element under 702, Subpart D? Should the NCUA consider establishing limits on how much capital of each tier should be required or allowed? Alternately, should the NCUA adopt a simpler measure of capital, such as anything that qualifies as equity under GAAP, instead of importing the bank framework for capital instruments? Should the NCUA use tangible equity (retained earnings, stock, and preferred stock, net of tangible assets) as the measure of capital for a PPSI?

*Question 151:* Should the NCUA require deductions from regulatory capital for goodwill, certain deferred tax assets, or other illiquid or intangible assets, recognizing that these assets may not provide sufficient loss absorbency during a business disruption, and may experience volatility in value or writedowns that could deplete retained earnings? Please provide any data supporting your views.

*Question 152:* Are the proposed components and determination of the minimum capital and backstop requirements appropriate for PPSIs? Which alternatives, if any, should the NCUA consider and why? Should the requirements include any adjustments in recognition of newly acquired or divested businesses, or any other adjustments when calculating total expenses for purposes of the proposed backstop? Please provide any data supporting your views.

*Question 153:* Is the $5 million minimum capital requirement for a de novo PPSI appropriate?

*Question 154:* The NCUA is considering a variable capital component based on a percentage of Outstanding Issuance Value. This component could address operational risks associated with maintaining the Reserve Assets and issuing Payment Stablecoins to Customers. This component may vary directly with the Outstanding Issuance Value. It could also address price and liquidity risks associated with Payment Stablecoin Reserve Assets when those assets may need to be liquidated at below-market value to meet redemption demands. This component could also address price and credit risk associated with certain Payment Stablecoin Reserve Assets, such as uninsured deposits and/or funds in Share Accounts and certain reverse repurchase agreements. As the size of the Outstanding Issuance Value and corresponding Reserve Assets increase, the operational risk may increase. A larger pool of underlying Reserve Assets may increase the number and severity of hacking attempts, while a larger outstanding issuance may encourage attempts to create fraudulent Payment Stablecoins. Similarly, a larger pool of Reserve Assets that may need to be liquidated in a short timeframe to satisfy a run on the Payment Stablecoin would increase the risk that Reserve Assets would need to be liquidated at prices below fair value. However, the risk may not grow as quickly as the growth of Reserve Assets. Larger PPSIs may have more resources to spend on cybersecurity and other risk mitigation strategies. One possible calibration for such a requirement could be 1.0 percent for Payment Stablecoin reserves or Outstanding Issuance Value up to $10 billion, 0.40 percent for Payment Stablecoin reserves or Outstanding Issuance Value between $10 billion and $50 billion, and 0.20 percent for Payment Stablecoin reserves or Outstanding Issuance Value greater than $50 billion. However, the NCUA also recognizes that a PPSI could manage these risks through application of Reserve Asset diversification and liquidity measures. These measures could reduce the risk of unanticipated loss and thus the need for a significant amount of capital. Requirements to mitigate those risks are included elsewhere in this proposal. Moreover, including a variable component for operational risk based on Outstanding Issuance Value may disincentivize growth among PPSIs and prevent their Payment Stablecoins from obtaining economies of scale. Should the NCUA impose a minimum capital requirement based on a set percentage of Outstanding Issuance Value? If so, are the minimum capital requirements and thresholds discussed appropriately calibrated? Please provide any data supporting your views.

*Question 155:* While the capital requirement in the proposed rule text is the NCUA's preferred approach, the NCUA is also considering a variable capital component tied more directly to price and interest rate risk of Payment *S*tablecoin Reserve Assets. Under this approach, a capital charge would apply to Reserve Assets that consist of U.S. Treasuries, repurchase agreements, and tokenized versions of those assets. As a PPSI grows larger, there may be increased risk that a run on the Payment Stablecoin will require liquidation of a significant amount of underlying Reserve Assets over a short time. This may result in the PPSI receiving less than Fair Value for certain Reserve Assets. While the proposed rule's Reserve Asset provisions require consideration of the Fair Value of Reserve Assets, for certain assets such as U.S. Treasuries, a PPSI may need to sell those assets into the market and accept whatever price the market will offer at that time. A similar risk also arises with reverse repurchase agreements entered into by the PPSI, as the counterparty may decline to roll over the repurchase agreement, thus leaving the PPSI with additional Treasuries. In contrast, cash, deposits and funds in Share Accounts, and money market funds likely could be redeemed at par value with no interest rate risk loss to the PPSI. The NCUA could consider calibrating this variable capital component using the market price volatility haircuts used by banking organizations to calculate exposure amounts for repo-style transactions in

12 CFR 324.37.[237] This approach establishes a haircut of 0.5 percent for Treasuries and Treasury collateral posted or received under repurchase agreements with maturities up to one year, but the NCUA could consider more tailored and granular haircuts, such as 0.05 percent to 0.25 percent, which could vary based on the remaining time to maturity for these reserve assets. However, imposing a capital requirement on only certain Payment Stablecoin Reserve Assets may incentivize PPSIs to focus on other Reserve Assets. This approach may also introduce unnecessary complexity into the rule. The NCUA welcomes comment on the proposed approach in the regulatory text and all alternatives. The NCUA also solicits comments on a variable capital component tied to the credit risk of certain Payment Stablecoin Reserve Assets, specifically uninsured deposits and funds in Share Accounts, reverse repurchase agreements, and money market funds. Proposed § 706.202(c) includes provisions (whether as a requirement or safe harbor) that would encourage a PPSI to spread its deposits and funds in Share Accounts among multiple institutions. Moreover, proposed § 706.202(d) would require certain large PPSIs to hold a minimum amount of insured deposits and/or insured funds in Share Accounts. These provisions would help mitigate the counterparty credit risk that a PPSI would face with respect to uninsured Deposits and uninsured funds in Share Accounts. Thus, it may be unnecessary to impose a variable capital component tied to uninsured Deposits. Currently, the FDIC and NCUA deposit and share insurance limits are $250,000 per depositor per account ownership category at each insured bank or credit union.[238] Even if a PPSI attempted to split its deposits and funds in Share Accounts among multiple insured institutions, the total amount of insured deposits and insured funds in Share Accounts would likely be a small proportion of total Reserve Assets. For example, a Payment Stablecoin with $1 billion of Reserve Assets that kept 10 percent of reserves in bank deposits or FICU Share Accounts would need to spread those funds among 400 accounts to ensure all of those deposits and/or Share Accounts remained fully insured. It is more likely a PPSI would choose a much smaller group of IDIs and deposit a larger amount of reserves at each, resulting in a significant amount of uninsured deposits and/or uninsured funds in Share Accounts. These deposits and funds in Share Accounts would be subject to loss in the event of a failure of an IDI. To address this risk, the NCUA could consider a capital charge of 0.40 percent applied to uninsured deposits and/or uninsured funds in Share Accounts, or some other amount, that could be calibrated based on the number of IDIs or size of the uninsured deposit and/or uninsured funds in Share Accounts amount at each IDI.

Under section 4(a)(1)(A)(v) of the GENIUS Act, a reverse repurchase agreement may be entered into by PPSIs on a cleared basis, tri-party basis, or bilateral basis to satisfy Reserve Asset requirements.[239] For cleared reverse repurchase agreements, the transaction occurs through a central clearinghouse that fully backs the transaction, resulting in negligible counterparty credit risk. Under a tri-party repurchase agreement, the collateral for the transaction is held by a third party, reducing the credit risk to the counterparty. However, in bilateral reverse repurchase agreements, the PPSI would rely solely on the collateral provided by its counterparty. Under section 4(a)(1)(A)(v) of the GENIUS Act, acceptable collateral for reverse repurchase agreements could consist of U.S. Treasury bills, notes, or bonds, with no restrictions on original or remaining maturity. Therefore, in a counterparty default, a PPSI could receive long-dated Treasury securities with an extended time to maturity. Even if the reverse repurchase agreement was significantly overcollateralized, the price volatility of long-dated Treasuries could significantly increase the risk of loss to the PPSI on the default of its counterparty. To address this risk, the NCUA could consider imposing a capital requirement equivalent to the market price volatility haircut applied to collateral for repo-style transactions under the banking agencies capital rules in 12 CFR 324.37. The capital requirement could vary based on the remaining maturity of the collateral and the credit risk of the PPSI's counterparty. With respect to Reserve Assets in the form of money market funds, section 4(a)(1)(A)(vi) of the GENIUS Act requires that a PPSI only hold money market funds that invest in certain other eligible reserve assets; however, these include deposits, funds in Share Accounts, and reverse repurchase agreements that give rise to the same risks as if held directly by the PPSI.[240] Therefore, the NCUA could consider a capital charge that would require the PPSI to look through to the underlying assets of the money market fund, similar to the capital requirement for an equity exposure to an investment fund in Appendix A to Part 702—Gross-Up Approach, and Look-Through Approaches.

However, the NCUA considered that imposing a capital charge on these types of Reserve Assets could incentivize PPSIs to hold reserves in other types of assets that could be subject to lower or no specific capital charge. The NCUA does not want to discourage PPSIs from investing Reserve Assets in certain permissible categories, particularly in Share Accounts at FICUs. In addition, the proposed asset diversification and liquidity requirements would help mitigate the risk of loss on Reserve Assets without imposing a financial capital requirement. Should the NCUA adopt a capital requirement based on price risk, credit risk, operational risk, or interest rate risk, including variations on any of the proposals discussed above? Please provide any data supporting your views. For example, should the NCUA impose a charge for credit risk, such as a 2 percent capital charge for uninsured deposits and uninsured funds in Share Accounts? Should the NCUA impose a capital charge to reflect the interest rate risk of certain Reserve Assets, such as Treasury securities? Should the NCUA impose a minimum operational risk capital charge that scales with the size of the issuer, as discussed above (*i.e.,* with a charge of 1 percent for small issuers with a smaller additional marginal charge applying at certain thresholds)? Should any such operational charge be based, in part, on the PPSI's recent losses?

*Question 156:* While the capital requirement in the proposed rule is the NCUA's preferred approach, for PPSIs that also provide custody services to Customers, the NCUA is also soliciting comment about the potential for a variable capital component based on the Fair Value of assets held in custody. Operating a custody business generates a separate set of risks from operating a Payment Stablecoin business, and the risk is potentially increased compared with a standalone custody business, as any loss of the assets in custody could also impact operations of the custody business. This capital component could

[237] Complex FICUs may also use this approach when calculating off-balance sheet assets under 12 CFR 702.104(c)(4)(viii) and (ix).

[238] All shares placed by a member in a particular ownership category—whether in one account or multiple share accounts or at different branches or offices of the same FICU—are aggregated and insured up to the standard maximum share insurance amount for that ownership category. 12 CFR part 745.

[239] 12 U.S.C. 5903(a)(1)(A)(v).

[240] 12 U.S.C. 5903(a)(1)(A)(vi).

reflect costs associated with providing for ongoing operation of a PPSI's custody business, irrespective of the success or failure of the associated Payment Stablecoin issuance. This approach of assessing a capital charge based on the size and scope of a custodian's business is consistent with the GENIUS Act requirement that a PPSI's capital requirements be tailored based on the risk profile of the issuer.[241] The NCUA believes that the risks, in particular the operational risks, associated with providing custody services can be adequately addressed through the de novo and ongoing capital requirements in proposed § 706.401(a)(1) and (2). Proposed § 706.401(a)(2)(i) expressly states that the capital maintained by the PPSI must be commensurate with the level and nature of all risks to which the PPSI is exposed, including risks for off-balance sheet activities. Because the risks associated with operating a custody business would be addressed through a holistic assessment of the PPSI's risks in the proposal, the NCUA does not propose to include a variable capital component relating to assets under custody. The NCUA generally expects that entities engaged in custody businesses will require additional capital to address the operational risk associated with this activity. However, the NCUA solicit comments on whether it should adopt a capital requirement based on assets held in custody by the PPSI? If so, how should that requirement be calibrated? Please provide any data supporting your views.

*Question 157:* Should the NCUA adopt a capital requirement expressly designed to address costs of litigation, legal risk, or legal costs during insolvency that a PPSI may face? If so, how should such a requirement be calibrated?

*Question 158:* Should the capital and backstop requirements be calculated based as of the last day of a given quarter, as proposed? Should the amount instead be calculated across some other period of time, such as an average on a monthly, bi-monthly, biannually, or yearly basis?

*Question 159:* Is the timing for the PPSI to meet capital and backstop requirements appropriate? Are the resulting activity limitations for failing to meet those requirements appropriate? Should any activity limitations be imposed by NCUA on a discretionary basis? For example, should the PPSI be required to notify the NCUA in writing if it fails to meet its capital or operational backstop requirements and include a written contingency plan with measures to be taken by it to restore compliance? The rule could also provide that the NCUA may take certain discretionary actions if necessary, including directing the PPSI to issue capital instruments or acquire additional operational backstop assets; directing the PPSI to suspend or reduce issuance of Payment Stablecoins; or executing an orderly redemption of all outstanding Payment Stablecoins.

*Question 160:* Are there any advantages or disadvantages to setting capital requirements for PPSIs consistent with or different from those set by non-United States regulators? The proposed approach to determining capital requirements is less prescriptive than approaches adopted or proposed in certain foreign jurisdictions. Are there any advantages or disadvantages to setting capital requirements for PPSIs consistent with the approaches adopted by those jurisdictions?

*Question 161:* Are the proposed criteria for imposing an individual additional capital or backstop requirements appropriate and sufficiently clear? For example, should the NCUA define what constitutes ''excessive volatility?''

### *G. Subpart E—Supervision and Enforcement Policy for Anti-Money Laundering/Countering the Financing of Terrorism Program Requirements for NCUA-Licensed PPSIs*

Proposed subpart E of part 706 would articulate the supervision and enforcement frameworks for NCUA-Licensed PPSI's anti-money laundering/countering the financing of terrorism (AML/CFT) programs, which PPSIs are required to maintain under the GENIUS Act [242] and proposed § 706.204(c). The proposed rule defines key terms, describes the NCUA's enforcement and supervision policy with respect to AML/CFT program implementation failures, and establishes a consultation process between FinCEN and the NCUA relating to AML/CFT enforcement actions or significant AML/CFT supervisory actions.

#### 1. § 706.501. Definitions

Proposed § 706.501 would define several terms used throughout the subpart.

The term ''AML/CFT enforcement action'' would mean any formal or informal action taken by the NCUA under authority of 12 U.S.C. 5905 or other applicable law that seeks to penalize, remedy, prevent, or respond to noncompliance with past or ongoing violations of, or past or ongoing deficiencies relating to, an AML/CFT requirement. The term includes a cease-and-desist order, written agreement, consent order, or memorandum of understanding, or the assessment of a civil money penalty. It does not include criminal enforcement.

The term ''AML/CFT requirement'' would mean: (1) a requirement of the Bank Secrecy Act (as that term is defined in proposed part 706)) or of the regulations in title 31, chapter X applicable to PPSIs; (2) a requirement of 12 U.S.C. 5903(a)(5)(A)(i)–(v), 12 U.S.C. 5903(a)(6)(B), or 12 U.S.C. 5903(f)(1)(A); or (3) a requirement prescribed under 12 U.S.C. 1786(q) or this section.

The term ''significant AML/CFT supervisory action'' would mean any written communication or other formal supervisory determination issued by the NCUA that identifies one or more alleged deficiencies, weaknesses, violations of law, or unsafe or unsound practices or conditions relating to an AML/CFT requirement; communicates supervisory expectations to a PPSI regarding actions or remedial measures required to correct the deficiency, weakness, violation, or practice or condition; and contemplates significant or programmatic actions or remedial measures to be taken by the PPSI. The term does not include examiner observations, suggestions, or other informal comments.

#### 2. § 706.502. Supervision and Enforcement Policy

Proposed § 706.502 would articulate the NCUA's enforcement and supervision policy as it relates to AML/CFT requirements. Except with respect to a significant or systemic failure to implement an effective AML/CFT program in accordance with applicable regulations at 31 CFR Chapter X issued by FinCEN, a PPSI that has properly established an AML/CFT program would not be subject to an AML/CFT enforcement action or to a significant AML/CFT supervisory action based on the program requirements issued by FinCEN or proposed § 706.204(c). At the same time, the proposed rule would clarify that nothing in this policy would restrict an AML/CFT enforcement action or a significant AML/CFT supervisory action with respect to a failure to properly establish an AML/CFT program. The NCUA's proposed enforcement and supervisory approach is not intended to affect criminal enforcement liability under the BSA.

#### 3. § 706.503. Consultation

The proposed rule would establish a notice and consultation framework

[241] See 12 U.S.C. 5903(a)(4)(A)(i).

[242] 12 U.S.C. 5903(a)(5) and (6).

applicable when the NCUA intends to initiate an AML/CFT enforcement action or a significant AML/CFT supervisory action, as those terms are defined in the proposed regulation. Under such a consultation framework, before initiating such an action, the NCUA would provide the Director of FinCEN with an opportunity to review the action and would consider any input offered by the Director of FinCEN, which may include any view as to the effectiveness of the PPSI's AML/CFT program. To facilitate that review, the NCUA would be required to provide written notice to the Director of FinCEN of the NCUA's intent to take the action at least 30 days in advance of the proposed action, unless a shorter period is necessary, at the sole discretion of the NCUA, to remedy, prevent, or respond to an unsafe or unsound practice or condition.

Such a notice would be accompanied by the relevant AML/CFT information underlying the proposed action. Relevant AML/CFT information may include, but is not limited to, relevant portions of draft report of examination; relevant portions of a draft enforcement action; examination workpapers supporting the proposed action; and the relevant AML/CFT information submitted by the PPSI to the NCUA. The NCUA would not be obligated to provide information over which the PPSI may claim privilege under Federal or State law. The NCUA would also respond, to the extent reasonably practicable, to requests for additional AML/CFT information from the Director of FinCEN regarding the proposed action. The NCUA seeks comments on such a consultation framework.

4. § 706.504. Disclosure of Supervisory Information

The NCUA has issued regulations that generally prohibit the disclosure of the NCUA's non-public information, except as provided under such regulations.[243] This prohibition generally applies to disclosure of any portion of a report of examination, supervisory correspondence, and any representations concerning such reports or supervisory correspondence, or their findings, including conclusions regarding compliance with AML/CFT compliance program requirements. The proposed rule would clarify that PPSIs may share any information with the FinCEN Director that relates to an existing or potential AML/CFT enforcement action or significant AML/CFT supervisory action.

This proposed rule specifically provides that this authorization to share information includes information that would ordinarily be considered non-public information under the NCUA's rules. To qualify for this information sharing, the information at issue must have an appropriate nexus to an existing or potential AML/CFT enforcement action or significant AML/CFT supervisory action. The NCUA proposes this clarification to ensure that PPSIs can share appropriate information with the FinCEN Director, including in the context of actions subject to the newly established consultation requirement. Otherwise, PPSIs may be unable to provide thorough information to the FinCEN Director, whether proactively or in response to the Director's requests.

While the proposed rule intends to permit such sharing, the NCUA is proposing two alternative methods for permitting such information sharing with the FinCEN Director. Under the first approach, referred to as Option A in the amendatory text below, the NCUA would authorize the disclosure of covered information on the NCUA's behalf to the FinCEN Director and separately permit the FinCEN Director to use such information. This phrasing is intended to mirror the permissible scope of information sharing by the NCUA under 12 U.S.C. 1821(t), which provides that a ''covered agency, in any capacity, shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by'' another Federal agency.

Under the alternative approach, referred to as Option B in the amendatory text below, the NCUA would similarly authorize the disclosure of covered information on the NCUA's behalf, as well as similarly authorize the use of such information by the FinCEN Director. The NCUA, however, would expressly require that any such information shared on the NCUA's behalf be contemporaneously disclosed by the PPSI to the NCUA. While the NCUA will necessarily already have access to its own non-public information, this additional requirement is potentially more consistent with the retention of privilege contemplated under 12 U.S.C. 1821(t) and, therefore, potentially provides a greater safeguard against the unintended destruction of privilege. The NCUA also recognizes that PPSIs' willingness to share timely, fulsome information with the FinCEN Director is essential to the success of the consultation framework. Requiring PPSIs to contemporaneously disclose to the NCUA the same non-public information they provide to FinCEN is likely to discourage proactive reporting—particularly where a PPSI perceives the NCUA's proposed action as inconsistent with the AML/CFT priorities or FinCEN policy—and thereby undermine the rule's objective of enhancing FinCEN's role.

Regardless, the proposed rule would include additional clarifying text intended to preserve all applicable privileges. The destruction of privilege over non-public supervisory information could prove harmful both to the NCUA and a PPSI, so the additional language is intended to prevent such consequences.

The NCUA invites comment on these options for permitting greater information sharing with the FinCEN Director regarding existing or potential AML/CFT enforcement actions or significant AML/CFT supervisory actions, including possible alternative methods of accomplishing the rule's objectives without unintentionally impeding applicable privileges.

5. Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 162:* Should the NCUA further refine or clarify any of the concepts or definitions outlined in this proposed supervision and enforcement framework?

*Question 163:* Do any aspects of the GENIUS Act framework with regards to supervision, examination, and enforcement need to be better accounted for if the supervision and enforcement framework were extended to PPSIs, including a consultation framework when the NCUA intends to take an AML/CFT enforcement action or significant AML/CFT supervisory action? For example, should revocation of approval to issue a Payment Stablecoin, if based in whole or in part on AML/CFT deficiencies, be accounted for in, including in the definition of AML/CFT enforcement action?

*Question 164:* Should the proposed consultation process include an asset threshold—*e.g.,* consultation is required for any significant AML/CFT supervisory actions involving PPSIs with $10 billion or more in assets? In addition, or as an alternative, should the proposed rule not require but instead provide the option for PPSIs to request that the NCUA consult with FinCEN prior to initiating a significant AML/CFT supervisory action?

*Question 165:* Notwithstanding the benefits of the proposed consultation described above, the proposal may result in additional review during an examination. How can the consultation

[243] *See* 12 CFR part 792.

process be streamlined and prevent logistical burdens for financial institutions or delays in exam report issuance?

Disclosure of Supervisory Information

*Question 166:* The NCUA invites comment on the two options for permitting greater information sharing with the FinCEN Director regarding AML/CFT enforcement actions or significant AML/CFT supervisory actions. In particular, would the disclosure of confidential supervisory information to FinCEN compromise attorney-client privilege, other applicable privileges, or otherwise undermine the preservation of privilege in 12 U.S.C. 1821(t)?

*H. Assessments*

In the OCC Proposal, the OCC determined that collecting assessments in connection with the GENIUS Act activities of OCC-supervised institutions is necessary and appropriate to facilitate the OCC's functions under the GENIUS Act and conforms with its assessment authorities. The OCC found that its expanded supervisory responsibilities under the GENIUS Act include licensing and registration decisions for certain PPSIs, and monitoring compliance with reserve requirements and other applicable laws and regulations relating to Payment Stablecoin activities warranted the assessments.

Similar to the OCC, the NCUA would also be responsible for expanded oversight functions related to FICU Payment Stablecoin activities and activities of NCUA-Licensed PPSIs. As discussed in the NCUA Standards Proposal, proposed § 706.103 would state that the NCUA may require filing fees to accompany certain filings made under Subpart A. The NCUA also sought comment regarding the pros and cons of recovering the costs of administering the Payment Stablecoin program by imposing charges on individual FICUs or NCUA-Licensed PPSIs, including through an examination fee. The NCUA continues to consider the potential for imposing a licensing fee or examination fee to offset the NCUA's additional costs and seeks comments on how the NCUA should account for the additional expense. The NCUA believes that because Payment Stablecoin activities and investments are optional and based on each FICU's business judgment; and that because it is likely that, at least initially, only a minority of FICUs participate in Payment Stablecoin activities and investments, commenters may consider it more equitable to not pay these costs out of the general FCU operating fee and National Credit Union Share Insurance Fund (NCUSIF) overhead transfer.

The NCUA notes that the intent for any charges would not be to act as a deterrent, but rather as an equitable way of assessing the cost of Payment Stablecoin activities and the NCUA's expanded supervision requirements.

*I. Proposed Amendments to Part 747*

The NCUA is proposing several revisions to the rules of practice and procedure for adjudicatory proceedings part 747 of the NCUA's regulations to incorporate the GENIUS Act's procedural requirements with respect to PPSIs.[244]

Section 6(b) of the GENIUS Act[245] requires the NCUA to follow certain procedures when bringing an enforcement action or imposing civil money penalties against a PPSI for violations of the GENIUS Act, any regulation or order issued under the Act, or any condition imposed in writing between the NCUA and PPSI.

Specifically, section 6(b)(4)(A) of the GENIUS Act[246] requires the NCUA to comply with the procedures set forth in paragraphs (e) and (g) of section 206 of the FCU Act[247] if the NCUA identifies a violation or attempted violation of the GENIUS Act or makes a determination with respect to the enforcement authorities enumerated at sections 6(b)(1) through (3) of the Act.[248] Similarly, section 6(b)(4)(D) of the GENIUS Act[249] permits the NCUA to follow the procedures in section 206(f) of the FCU Act when the NCUA issues a temporary cease-and-desist order.

Section 6(b)(5)(D) of the GENIUS Act clarifies that any civil money penalty imposed under the GENIUS Act may be assessed and collected by the NCUA pursuant to the procedures set forth in section 206(k)(2) of the FCU Act.[250]

Consistent with the GENIUS Act, the NCUA proposes to revise § 747.1 to clarify that the rules of practice and procedure in part 747 apply to the following proceedings: suspension or revocation of registration, cease-and-desist, temporary cease-and-desist, removal and prohibition, or civil money penalties under section 6 of the GENIUS Act.[251] Additionally, the NCUA proposes to revise § 747.703(a) to clarify that the part 747 procedures for formal investigations apply to formal investigations initiated by the NCUA pursuant to section 6 of the GENIUS Act.[252]

The NCUA also proposes several technical revisions. Specifically, the NCUA proposes to revise the definitions of ''institution'' and ''institution-affiliated party'' in § 747.3 to incorporate PPSIs and actions brought pursuant to the Act.

*J. Proposed Amendments to Part 745*

Reserve assets backing Payment Stablecoins are an important component of the statutory framework established by the GENIUS Act. Through this proposal, the NCUA is seeking to clarify the treatment for such reserves for share insurance purposes. In particular, the NCUA is proposing to amend its share insurance rules, found in part 745 of the NCUA's regulations, to provide that funds held in Share Accounts at FICUs as reserves for a Payment Stablecoin would be insured to the PPSI under the NCUA's coverage rules for corporate accounts, but would not be insured to Payment Stablecoin holders on a pass-through basis. As corporate accounts of the PPSI, such accounts would be aggregated with other corporate accounts maintained by the PPSI at the same FICU and insured for up to the Standard Maximum Share Insurance Amount (SMSIA), currently $250,000. The NCUA is seeking comment on whether this is the appropriate approach and reflects the appropriate interpretation of the GENIUS Act and FCU Act.

1. General Principles of Share Insurance Coverage

The NCUA only insures ''accounts,'' as that term is defined in section 101(5) of the FCU Act (12 U.S.C. 1752(5)). ''Share Accounts,'' as defined in Part 706, funds in ''accounts'' (as defined by the FCU Act) at FICUs, which the GENIUS Act provides may comprise a portion of a PPSI's reserves backing its Payment Stablecoins.[253]

The FCU Act establishes the key parameters of share insurance coverage, including the SMSIA, and provides share insurance coverage up to the SMSIA at each separately chartered FICU where accounts are maintained.[254] The FCU Act also provides separate insurance coverage for accounts

[244] 12 CFR part 747.

[245] 12 U.S.C. 5905(b).

[246] 12 U.S.C. 5905(b)(4)(A).

[247] 12 U.S.C. 1786.

[248] Section 6(b)(1) through (3) of the GENIUS Act give the NCUA authority to suspend or revoke the registration of a PPSI, initiate cease-and-desist proceedings, and remove and prohibit institution-affiliated parties.

[249] 12 U.S.C. 5905(b)(4)(D).

[250] 12 U.S.C. 5905(b)(5)(D).

[251] 12 U.S.C. 5905.

[252] *Id.*

[253] The NCUA's share insurance coverage does not apply to other types of Reserve Assets that a PPSI may maintain at a FICU pursuant to the GENIUS Act.

[254] *See* 12 U.S.C. 1787(k).

maintained in different classifications (also known as ownership categories) at the same FICU.[255] In other words, the SMSIA is $250,000 per accountholder, per FICU, for accounts held in each ownership category.

Today, some Share Accounts are eligible for pass-through share insurance. Pass-through share insurance coverage is a mechanism that allows account funds placed at a FICU by a third party on behalf of one or more owners to be insured as if deposited directly at the FICU by the owner(s). Certain regulatory requirements must be satisfied for pass-through share insurance to apply: (1) the account records of the FICU must expressly disclose a basis for pass-through coverage, such as a custodial or agency relationship; (2) the identities and interests of the owners must be ascertainable either from the records of the FICU or records maintained in good faith and in the regular course of business by the account owner or another party that maintains such records for the account owner; and (3) the relationship that provides the basis for pass-through share insurance coverage must be genuine, with the deposited funds actually owned by the named owners.[256]

The NCUA insures ''member accounts''/''accounts'' as defined by section 101(5) of the FCU Act, at all FICUs.[257] Importantly, these terms are not limited to those persons enumerated in the credit union's field of membership who have become members. They also includes certain nonmembers, such as other nonmember credit unions; nonmember public units and political subdivisions; and, in the case of credit unions serving predominantly low-income members, deposits of nonmembers generally. In other words, the NCUA provides share insurance coverage to members and those otherwise eligible to maintain insured accounts at FICU. In general, the NCUA looks to the actual owner of the funds in the ''account'' to satisfy the membership or otherwise be eligible to maintain an insured account requirement.

2. GENIUS Act Provisions Concerning Share Insurance

The GENIUS Act expressly provides that Payment Stablecoins ''shall not be backed by the full faith and credit of the United States, guaranteed by the United States Government, subject to deposit insurance by the Federal Deposit Insurance Corporation, or subject to share insurance by the National Credit Union Administration,'' and it is unlawful to make contrary representations.[258]

These provisions appear to be inconsistent with providing share insurance to Payment Stablecoin holders on a pass-through basis. When the NCUA insures accounts on a pass-through basis, it treats end Customers as accountholders. Treating Payment Stablecoin holders as the insured accountholders on a pass-through basis seems inconsistent with the GENIUS Act's prohibition on Payment Stablecoins being ''subject to share insurance.'' Additionally, third parties that establish pass-through insurance arrangements often market the availability of NCUA share insurance to their customers, which is consistent with the principle that a third party offering pass-through insurance is effectively offering an access mechanism to an NCUA-insured Share Account. The GENIUS Act's firm prohibition on marketing Payment Stablecoins as subject to share insurance seems inconsistent with the concept of Payment Stablecoins serving as an access mechanism for NCUA-insured Share Accounts. Moreover, the fact that a Payment Stablecoin holder would generally engage in transactions by transferring Payment Stablecoins, without funds ever leaving the NCUA-insured Share Account, further differentiates Payment Stablecoin arrangements from existing pass-through arrangements, in which funds generally are withdrawn from the Share Account when transactions are made.

3. Proposed Amendments to § 745.6(b)

For reasons just discussed, the NCUA proposes to amend its share insurance rules, found in part 745 of the NCUA's regulations, to clarify that Share Accounts held as reserves for a Payment Stablecoin are not insured to Payment Stablecoin holders on a pass-through basis. Under the proposed rule, such accounts would be insured as corporate accounts of their owner, the PPSI. The NCUA proposes to amend its share insurance rules for corporate accounts, found at 12 CFR 745.6, to expressly include within their scope funds in Share Accounts held as reserves backing Payment Stablecoins.

The proposed rule would split current 745.6 into two subparagraphs. Paragraph (a) would contain existing 745.6 with no changes. Current 745.6 (and proposed paragraph (a)) provides that Share Accounts of a corporation engaged in any independent activity are added together and insured up to the SMSIA, currently $250,000, in the aggregate.[259] Proposed paragraph (b) would provide that notwithstanding any other provision of part 745, accounts at a FICU held as reserves for a Payment Stablecoin, as defined in the GENIUS Act, are accounts of the PPSI's and insured as corporate accounts. Under the proposed rule, all Share Accounts maintained by a PPSI at a FICU would be added together for purposes of the share insurance limit, regardless of whether those Share Accounts consist of reserves backing Payment Stablecoins or serve some other purpose (such as paying the PPSI's operating expenses). The PPSI's Share Accounts would not be insured to Payment Stablecoin holders on a pass-through basis.

4. Request for Comment on Share Insurance Coverage Proposal

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 167:* Is the NCUA's proposed treatment of Share Accounts that compose reserves for a Payment Stablecoin under section 4 of the GENIUS Act appropriate?[260] Is this the best reading of the GENIUS Act and FCU Act?

*Question 168:* If Payment Stablecoin reserves were eligible for pass-through share insurance, to what extent would PPSIs satisfy pass-through requirements, either today or in the future? Should the requirements be tailored for PPSIs in any way, and if so, how?

*Question 169:* If Payment Stablecoin reserves are or are not eligible for pass-through share insurance, what impact would this have on the market demand for Payment Stablecoins? What impact would it have on the composition of Reserve Assets of PPSIs?

*Question 170:* If Payment Stablecoin reserves are eligible for pass-through share insurance, what impact would that have on the NCUSIF?

*Question 171:* If Payment Stablecoin reserves are eligible for pass-through share insurance, how would that impact the risk of a PPSI's risk of failure?

*Question 172:* Should the availability of pass-through insurance or lack thereof have an impact on any of the

[255] *See* 12 U.S.C. 1787(k)(1)(C).

[256] 12 CFR 745.2(c)(1)–(2).

[257] *See* 12 U.S.C. 1752(5). Proposed part 706 would cross reference this definition when defining ''Share Account.''

[258] 12 U.S.C. 5903(e)(1), (2).

[259] The share insurance regulations define being engaged in an ''independent activity'' to mean an activity other than one directed solely at increasing insurance coverage. 12 CFR. 745.6. The NCUA has historically interpreted ''corporation'' broadly for purposes of section 745.6 to include similar forms of organizations established under State law, such as limited liability companies.

[260] 12 U.S.C. 5903(a)(1)(A)(ii).

other requirements in the proposed rule?

5. Treatment of Shares in Tokenized Form

The GENIUS Act establishes a Federal regulatory framework for the issuance of Payment Stablecoins and related Payment Stablecoins activities; the GENIUS Act does not specifically address tokenized deposits or tokenized shares in Share Accounts), other than to provide that the definition of ''payment stablecoin'' does not include, among other things, a deposit, including a deposit recorded using Distributed Ledger technology,[261] and to provide that nothing in the GENIUS Act may be construed to limit the authority of an IDI (including a FICU) to engage in activities permissible pursuant to applicable State and Federal law, including accepting or receiving deposits or shares (in the case of a credit union), and issuing digital assets that represent those deposits or shares.[262] Although Payment Stablecoins and tokenized shares [263] can both be used as a means of payment and can use the same underlying technological components and characteristics, Payment Stablecoins and tokenized shares are economically and legally distinct. Payment Stablecoins generally represent a PPSI's liability where the promise to redeem and to maintain a stable value is backed by highly liquid, short-term, and safe assets (including deposits and funds in Share Accounts at IDIs) held in reserve to mitigate concerns of counterparty risk.

A tokenized share, on the other hand, is a FICU's share liability represented in a particular way: in tokenized form and recorded on a Distributed Ledger technology. Like other shares, tokenized shares fund a FICU's extensions of credit and represent an integral part of the maturity and liquidity transformation services provided by credit unions. FICUs are subject to extensive regulatory and supervisory requirements, and maintain Federal share insurance.

The NCUA is using this proposed rule as a vehicle to clarify the treatment of tokenized shares under the FCU Act. Whether or not a particular tokenized financial product is considered a tokenized share for purposes of the FCU Act is relevant, among other things, to: (1) the applicability of share insurance,[264] (2) distribution of assets in the event of an institution's failure and liquidation,[265] (3) regulatory reporting purposes,[266] and (4) whether it would not be subject to the GENIUS Act.[267] Accordingly, the NCUA is proposing to amend its share insurance rules under part 745 to clarify that the application of share insurance to share accounts does not depend upon the technology or recordkeeping used to record a FICU's share liabilities.

The FCU Act's definition of an ''account''/''member account'' is technology neutral, and therefore, tokenized forms of shares in Share Accounts are not a separate category of accounts under the statute. For a FICU's tokenized financial product to be considered an account, it must meet the statutory definition of ''account''/''member account'' under section 101(5) of the FCU Act (12 U.S.C. 1752(5)). The technology used in crediting an account, evidencing a share liability, or recording or transferring a share, is not a factor in applying the statutory definition. A tokenized product that meets the statutory definition of ''account''/''member account'' is a share account, and as such, is treated no differently under the FCU Act than other forms of share accounts. Accordingly, a FICU member or accountholder using tokenized shares is afforded the same Federal share insurance coverage under the FCU Act as a FICU member or accountholder using non-tokenized shares.

The proposed rule would amend the NCUA's share insurance regulations to expressly include the general principle that the technology or recordkeeping utilized by a FICU to record its account liabilities does not affect whether those liabilities constitute insurable ''accounts.'' The proposed amendment is intended to codify this principle. Thus, a FICU's tokenization of its share ''account'' liabilities would not alter the legal status of those liabilities as insurable share ''accounts.'' Under the proposed rule, members and accountholders with tokenized shares in accounts would be entitled to the same benefits as members and accountholders with more traditional forms of accounts, including the NCUA's share insurance coverage.

Although a tokenized share is an insurable share ''account,'' there may be tokenized FICU liabilities that are not insurable share accounts, irrespective of an intention or representation that such constitute an insurable share account. If a product does not meet the statutory definition of an ''account,'' will not be an insurable share account. FICUs should also be mindful of the evolving characteristics and capabilities of tokenized shares that may lead to any material changes to the underlying nature throughout a product or transaction lifecycle to ensure ongoing alignment of the underlying tokenized share with the FCU Act's statutory definition of account.

As noted above, under the NCUA's regulations, for pass-through share insurance to apply, certain recordkeeping and ownership requirements must be met.[268] The NCUA seeks comment on whether any amendments to the share insurance rules, including the rules related to pass-through coverage, are needed to address tokenized shares.[269] For example, the pass-through insurance rules require that a FICU's account records expressly indicate a relationship, such as a fiduciary or agent relationship, that provides a basis for pass-through coverage.[270] Parties often satisfy this requirement today through account titling. To the extent tokenized Share Account arrangements may involve different approaches to account titling or recordkeeping, the NCUA seeks comment on what clarifications to the NCUA's pass-through rules would be appropriate.

6. Request for Comment on Treatment of Share Accounts in Tokenized Form

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 173:* Is the NCUA's proposed amendment to part 745

[261] *See* 12 U.S.C. 5901(22).

[262] *See* 12 U.S.C. 5915(a)(1).

[263] For purposes of this discussion, the NCUA is using the term ''tokenized shares'' to refer to tokenized forms of funds deposited in in Share Accounts, as defined by proposed Part 706, and ''accounts,'' or ''member accounts'' as defined by section 101(5) of the FCU Act. 12 U.S.C. 1752(5).

[264] *See* 12 U.S.C. 1781(a).

[265] See 12 U.S.C. 1787(b)(11).

[266] *See* 12 U.S.C. 12 U.S.C. 1756, 1766, 1781, and 1782; 12 CFR part 741.

[267] *See* 12 U.S.C. 5901(22)(B)(ii) (stating the GENIUS Act's definition of ''payment stablecoin'' expressly does not include a digital asset that ''is a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), including a deposit recorded using distributed ledger technology.''). Consistent with the GENIUS Act's rules of construction, which provide that ''[n]othing in this chapter may be construed to limit the authority of a . . . Federal credit union [or] State credit union . . . to engage in activities permissible pursuant to applicable State and Federal law, including—(1) accepting or receiving deposits or shares (in the case of a credit union), and issuing digital assets that represent those deposits or shares,'' the NCUA believes that tokenized shares are not covered by the GENIUS Act's definition of ''payment stablecoin.''

[268] *See* 12 CFR 745.2(c).

[269] The NCUA's pass-through insurance rules support the agency's ability to carry out its statutory obligation to aggregate and insure accounts of each eligible accountholder up to the insurance limit, regardless of whether funds are held in the name of the accountholder or another party. *See* 12 U.S.C. 1787(k)(1)(A)–(B); *see* also 12 U.S.C. 1787(d)(1) (requiring the NCUA to pay share insurance as soon as possible following a FICU's failure).

[270] 12 CFR 745.2(c)(1).

clarifying that the application of share insurance to share ''accounts'' does not depend upon the technology or recordkeeping used to record a FICU's share liabilities appropriate? Should the NCUA consider a more narrow amendment specifically focused on tokenized shares?

*Question 174:* Should the NCUA provide additional clarity regarding the treatment of tokenized shares outside of the share insurance context?

*Question 175:* Would it be helpful for the NCUA to consider defining relevant terms related to tokenized shares for purposes of the FCU Act, and, if so, what defined terms should be considered?

*Question 176:* What key characteristics of tokenized shares might be considered in the context of whether a particular product would be considered an ''account'' under the FCU Act? Do such products, including those that represent tokenized shares in accounts, function similarly or dissimilarly to the types of instruments considered an account for purposes of the FCU Act (*e.g.,* share certificates and other similar official instruments)?

*Question 177:* Although the statutory definition of ''account'' is technology neutral, how might technology and the evolving capabilities of tokenized share account products, including through application of smart contracts, alter the underlying nature of a FICU's liability?

*Question 178:* Should NCUA's rules and regulations be further updated to reflect reporting and recordkeeping considerations that are unique to blockchain and Distributed Ledger-based systems, and if so, how?

*Question 179:* The NCUA determines share insurance coverage at the time of the failure of a FICU, based on the FICU's account records and in accordance with share insurance coverage rules. A FICU's account records are evidence of its share account obligations. What challenges, if any, do tokenized shares in accounts present as to blockchain and Distributed Ledger recordkeeping, particularly as it relates to identifying owners of the accounts and aggregating tokenized shares in accounts with other traditional share accounts?

*Question 180:* How should the NCUA view a Digital Asset that only represents an interest in or claim on a Share Account at a FICU rather than being the tokenized share in an account itself? Under what circumstances could such a product be viewed as a tokenized share in an account of a FICU, and under what circumstances could such a product be viewed as a Payment Stablecoin backed by tokenized shares in Share Accounts? In what other manner could such a product be characterized for purposes of the GENIUS Act and other applicable law (*e.g.,* banking, credit union, and securities laws)? How would Digital Assets that represent tokenized shares in accounts but are not themselves share accounts be treated for accounting purposes; for example as an intangible asset or as cash and cash equivalents?

*Question 181:* What additional clarifications of existing pass-through rules are needed, if any, to address tokenized share arrangements? Should the NCUA's approach to tokenized shares differ in any respect from the approach to other share accounts? To what extent should the NCUA consider modifications with respect to expectations around account titling and recordkeeping? Are there particular considerations for any specific type of third-party arrangement?

## V. General Request for Comment

The NCUA requests feedback on all aspects of the proposed rule, including:

*Question 182:* A PPSI must be obligated to convert, redeem, or repurchase its issued Payment Stablecoins for a fixed amount of Monetary Value, not including a Digital Asset denominated in a fixed amount of Monetary Value. Is additional guidance needed on the accounting treatment for issued Payment Stablecoins and the associated Reserve Assets? If so, what considerations should factor into any such guidance (*e.g.,* what legal structures would be relevant to the accounting treatment)?

*Question 183:* What impact would the proposed rule have on credit creation? How can the NCUA minimize any negative impact to credit creation?

*Question 184:* Should any additional aspects of the proposed rule be adjusted based on the size of the PPSI? For example, are there additional aspects of the proposed rule that should be applied exclusively to issuers with outstanding issuance above a certain amount? Should the NCUA measure the ''size'' of a PPSI by its outstanding Payment Stablecoin issuance or is there a better measurement?

*Question 185:* Are there any aspects of the proposed rule that the NCUA should adjust to promote fair competition between FICUs and non-FICUs?

*Question 186:* Are there any other technical developments in Distributed Ledger Protocols, Digital Assets, or related technologies that the proposed rule should address to ensure the purposes of the GENIUS Act are being met? For example, should the NCUA consider automating aspects of reporting or oversight? Should the NCUA incorporate additional provisions concerning the use of smart contracts when considering compliance with aspects of the proposed rule, such as risk management? Are there dynamics relevant to particular blockchains that could affect liquidity, redemption, operating risk, or run risk that the NCUA should consider and incorporate into any final rule?

*Question 187:* Are there any particular considerations that the NCUA should bear in mind or changes that the NCUA should make with respect to PPSIs that are owned or operated by a consortium of other entities subject to the jurisdiction of various primary Federal payment stablecoin regulators and/or State payment stablecoin regulators?

*Question 188:* Should the NCUA adopt any new rules or change any existing rules to implement the insolvency provisions of the GENIUS Act? Should the NCUA require PPSIs to establish resolution plans?

*Question 189:* Section 12 of the GENIUS Act provides that the primary Federal payment stablecoin regulators, in consultation with the National Institute of Standards and Technology, and other relevant standard-setting organizations, and State bank and credit union regulators, shall assess and, if necessary, prescribe standards for PPSIs to promote compatibility and interoperability with other PPSIs and the broader digital finance ecosystem. What efforts are issuers currently taking to address challenges posed by interoperability? What considerations should the regulators take into account in determining whether standards are necessary? Would the promulgation of standards help to broaden adoption of Payment Stablecoins?

*Question 190:* What are risks posed by different types of interoperability solutions and how might issuers and regulators manage those risks? How can interoperability solutions aid in addressing risks facing issuers? What risks are introduced by cross-chain bridges and other interoperability solutions and how do these risks interact with BSA/AML and sanctions requirements? What steps can be taken to address such BSA/AML and sanctions concerns?

*Question 191:* Is there anything else the NCUA should do to address potential fraud concerns in the context of a final rule? For example, a bad actor may create fraudulent tokens intended to mimic a Payment Stablecoin. Are there technical or other requirements the NCUA should impose to mitigate the potential for such fraudulent tokens to harm consumers? For example, should authentic Payment Stablecoins be

required to have an electronic signature that can be verified by a recipient? Are there other areas of potential fraud that the NCUA should be aware of and should attempt to mitigate in the final rule?

*Question 192:* What changes to existing rules should be made in recognition of the GENIUS Act?

*Question 193:* Should the NCUA establish minimum standards for customer service and dispute resolution for retail holders of Payment Stablecoins, including requirements for response timelines and escalation procedures?

*Question 194:* Should the NCUA require NCUA-Licensed PPSIs above a certain size to conduct periodic ''stress tests'' or run simulations modeled on historical stablecoin de-pegging events? If so, how should stress scenarios be designed and should results be made public?

*Question 195:* Should the NCUA standardize the disclosures that NCUA-Licensed PPSIs are required to provide to Customers similar to how the Truth in Savings Act standardizes disclosures for share accounts, so that Customers can easily compare Payment Stablecoin products, redemption terms, and fee structures across issuers?

*Question 196:* Should the NCUA establish any guardrails on the use of artificial intelligence or automated-decision making systems by NCUA-Licensed PPSIs in the context of risk management, redemption processing, or reserve asset management? Are there particular AI-related operational risks unique to Payment Stablecoin issuance that the proposed rule does not adequately address?

*Question 197:* Many stablecoins are heavily concentrated on one or two public blockchains. Should the NCUA require NCUA-Licensed PPSIs to assess and disclose the risks of dependence on a single blockchain protocol, including the risk that a protocol upgrade, fork, or failure could impair redemption?

*Question 198:* Should the NCUA establish requirements for the treatment of ''lost'' or unclaimed Payment Stablecoins (*e.g.,* due to lost Private Keys or dormant accounts), including escheatment procedures or Customer notification requirements?

*Question 199:* Should the NCUA require independent audits of smart contracts used in Payment Stablecoin issuance and redemption, and should audit results be made public to enhance transparency and Customer trust?

## VI. Regulatory Procedures

### *A. Providing Accountability Through Transparency Act of 2023*

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) (Act) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as *regulations.gov*).

In summary, the proposed rule would supplement the NCUA's February 2026 proposal for approval and licensure of permitted payment stablecoin issuers (PPSIs) subject to the NCUA's jurisdiction by providing standards for PPSIs subject to the NCUA's jurisdiction, as required by the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act). This proposal would also make amendments to address share insurance coverage, tokenized shares, and other conforming and clarifying amendments.

The proposal and the required summary can be found at *https://www.regulations.gov.*

### *B. Executive Orders 12866, 13563, and 14192*

Pursuant to Executive Order 12866 (''Regulatory Planning and Review''), as amended by Executive Order 14215, a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order.[271] Executive Order 13563 (''Improving Regulation and Regulatory Review'') supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866.[272] This proposed rule was drafted and reviewed in accordance with Executive Order 12866 and Executive Order 13563. OMB has determined that this proposed rule is an economically significant regulatory action under Section 3(f)(1) of Executive Order 12866 and, therefore, is subject to review under Executive Order 12866.

Executive Order 14192 (''Unleashing Prosperity Through Deregulation'') requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.[273] This proposed rule, if finalized as proposed, is expected to be a deregulatory action under Executive Order 14192. NCUA estimates this rule generates $112.6 million in annualized cost savings at a 7% discount rate, discounted relative to year 2024, over a perpetual time horizon.

Scope of Affected Entities

For the purposes of this analysis and Paperwork Reduction Act estimates, NCUA estimates 10 applicants would apply for and be approved as an NCUA-Licensed PPSI in the first few years after the enactment of the proposed rule. Based on current CUSO ownership data, approximately 70 percent are wholly owned. Applying this to the estimated number of PPSIs assumes seven of the ten are wholly owned for consolidation purposes.

To estimate the impact of the proposal, NCUA estimated the total expected issuance per NCUA-Licensed PPSI, using private sector forecasts of aggregate stablecoin issuance, which put the upper bounds at $500 billion in 2026. However, considering the smaller market share credit union's hold in the financial services space, NCUA conservatively assumed a much lower issuance level for NCUA-Licensed PPSIs of $10 billion.

Beyond the direct issuance of Payment Stablecoins under section 4 of the GENIUS Act, the proposed rule would also encompass FICUs that participate in Payment Stablecoin-related activities, as Parent Companies or custodians, consistent with the GENIUS Act. As with estimating the number of NCUA-Licensed PPSIs, the NCUA recognizes significant uncertainty regarding the number of FICUs that would participate in these activities. For the purposes of providing a conservative estimate, the NCUA assumes that approximately 15 FICUs would perform one or more of the activities authorized under the proposed rule.[274]

These estimates establish numbers that serve as the basis for evaluating the costs, benefits, and economic effects of the proposed rule, while acknowledging the inherent uncertainty resulting from a lack of historical precedent.

Baseline

The baseline for this analysis assumes no statutory requirement to establish a consistent framework for PPSIs. Without the statute, and codifying rule, there

[271] 58 FR 51735 (Oct. 4, 1993).

[272] 76 FR 3821 (Jan. 21, 2011).

[273] 90 FR 9065 (Feb. 6, 2025).

[274] This number is consistent with the number of FICUs that report offering digital asset services as of December 31, 2025.

would be a lack of clarity about which entities could issue Payment Stablecoins and general requirements for Payment Stablecoin issuer applicants. This could potentially result in lower consumer adoption because of uncertainty with the safety of Payment Stablecoins and potentially dampen the market for entities to engage in this activity. Persons are more likely to invest in infrastructure and technology to facilitate stablecoin usage when there is regulatory certainty surrounding the activity. Additionally, the requirement for a consistent framework for all PPSIs helps to ensure that a certain category of issuers do not have a competitive advantage over others. The baseline for this analysis assumes no statutory requirement to establish a consistent framework for PPSIs. To calculate estimated costs, the agency assumes that in the baseline, with no established framework, fewer FICU subsidiaries will issue Payment Stablecoins and estimate that only four FICU subsidiaries would become Payment Stablecoin issuers.

Costs and Benefits to Credit Union System

Ideally, a cost-benefit analysis would identify and monetize, with confidence, all costs and benefits of a regulation. Many financial regulations, however, generate costs and/or benefits that cannot be measured with any degree of precision. In this analysis NCUA has included an evaluation of non-quantified benefits and costs as well as quantified benefits and costs.

The main effect of the proposed rule will be to boost aggregate market capitalization of Payment Stablecoins (the likely response to increased demand for stablecoins with greater adoption) in both the credit union system and the broader financial services industry.

If finalized, the proposed rule would establish a new regulatory framework for Payment Stablecoins issued by subsidiaries of FICUs. The new framework could encourage FICU subsidiaries to issue Payment Stablecoins and lead to an expansion of the Payment Stablecoin market. The expansion would provide the general public with more choices for making payments and engaging in transactions and provide regulatory clarity for FICUs seeking to engage in Payment Stablecoin activities.

Costs and benefits are categorized as follows: (a) reporting, recordkeeping, and compliance; (b) capital requirements; and c) custody authority.

Reporting, Recordkeeping, and Compliance

The requirements established by the proposed rule, consistent with the GENIUS Act, would benefit the industry by promoting safety and soundness of NCUA-Licensed PPSIs. The proposed rule includes a number of safeguards to protect Payment Stablecoin holders, such as the standards related to minimum reserve requirements, composition of reserves, and redemption policies, among others.

The proposed rule would also benefit Customers by providing a more secure environment, relative to the baseline, for activities related to Payment Stablecoins. The proposed rule would provide Customers increased assurance that their Payment Stablecoins are subject to elevated regulatory and supervisory standards. By codifying requirements and standards for reserves, redemption policies, and operational and compliance standards, among others, the proposed rule would require that Payment Stablecoin holders are able to redeem Payment Stablecoins issued by an NCUA-Licensed PPSI at par, including during periods of market stress.

Compliance with the Bank Secrecy Act under the proposed rule, as required by the GENIUS Act, would promote maintaining AML/CFT principles as the financial system integrates new payment technologies, and reduce the frequency and severity of harm caused by criminal activity facilitated through a fragmented digital asset regulatory framework.

For purposes of fulfilling the requirements of the Paperwork Reduction Act (PRA), the NCUA has estimated the average costs associated with the recordkeeping, reporting, and disclosure requirements in the proposed rule.[275] While these costs only represent a portion of the total burden costs imposed by the proposed rule, these costs can help estimate a minimum level of the expected costs incurred by the affected populations.

NCUA-Licensed PPSIs would be required under the proposed rule to create and maintain systems of records related to reserve management and internal audits, establish contingency and restoration plans, and maintain AML/CFT and sanctions compliance programs. The proposed rule mandates submission of quarterly reports, annual audited financial statements, and weekly reports to the NCUA. In addition, PPSIs would be required to provide certain reporting to the board of directors on interest rate risk and certify compliance with AML and sanctions compliance programs annually. These efforts will require various reporting, training, and auditing expenses. The following narrative describes the most material costs expected as a result of the proposed rule, based on PRA analysis. This includes the estimated costs to comply with referenced rules related to AML/CFT and the sanctions compliance program. For a complete listing of PRA burden estimates, please see Section VI D.

- Weekly reporting is estimated to require one hour per week. The total weekly burden for 10 NCUA-licensed PPSIs annually is 520 hours.
- Submission of quarterly reports is estimated to be a total of 640 hours annually (16 hours each quarter, per PPSI).
- Submission of audited financial statement audits each year is estimated to take 704 hours annually, totaling 7,040 for 10 PPSIs.
- Regular reporting to the board of directors on interest rate risk management is estimated to average 40 hours each month for a total of 4,800 burden hours.
- The burden for publishing the monthly Reserve Asset composition report is estimated at 48 hours a month, for a total of 4,800 hours in aggregate.
- The proposed rule mandates annual certification that anti-money laundering and economic sanctions programs have been implemented. NCUA estimates the average annual burden of these activities as 80 hours a year for a total of 800 hours for 10 PPSIs.

NCUA estimates that NCUA-Licensed PPSIs would incur an average of 13,800 hours of burden for these activities. The results in a total of $1.73 million using an estimated hourly labor compensation rate of $92.85.[276] In addition, it is estimated that each PPSI will incur costs of $24,983 in the first year to comply with AML/CFT and sanctions compliance requirements, totaling $249,830 for the 10 estimated NCUA-Licensed PPSIs.[277] In total, NCUA-licensed PPSIs would incur an aggregate $1.98 million in estimated costs to comply with the proposed rule's implementation requirements.

Capital

To estimate the monetary cost of the capital requirements in the proposed

[275] These requirements are described fully in Section VI.D.

[276] Estimated hourly compensation rate is based on the total compensation cost for the Financial Activities Industry, Management, business, and financial occupations series from the Bureau of Labor and Statistics (Table 4. Private industry workers by occupational and industry group—2025 Q04 Results).

[277] *See* 91 FR 18582 (Apr. 10, 2026).

rule NCUA assumes an average cost of capital for each issuer and makes other assumptions regarding the inputs to the cost calculations. To calculate the cost of equity capital requirements, NCUA assume that all issuers will initially be required to maintain the minimum amount of capital which includes the $5M requirement for de novo PPSIs and the ongoing 12-month-operating-expense backstop.

For the cost-of-capital calculation, NCUA assumes 10 NCUA-Licensed PPSIs in year one and the upper-bound for market size, measured by the value of outstanding payment stablecoins, will be $10 billion per NCUA-Licensed PPSI. Additionally, it is assumed that seven NCUA-Licensed PPSIs will be wholly owned and therefore consolidated with the parent FICU.

The cost of capital is the ongoing yearly required return on capital that is expected issuers will pay to obtain equity to satisfy capital requirements. The current estimate of the cost of capital in the banking industry ranges from 5–9 percent. For conservative calculations, NCUA is using 5.73% to account for the lower opportunity cost for credit unions and their subsidiaries due to investment limitations.[278]

This estimate assumes that the 12-month operating expense amount for each issuer to be 0.40% of outstanding payment stablecoins. This cost estimate is a conservative estimate of operating costs of government money market mutual funds and the stablecoin issuer Circle (CLCR)'s 10-Qs as reported pursuant to the Securities Exchange Act of 1934.

The first step calculates the total minimum required capital under the proposal for all expected NCUA-Licensed PPSIs. This includes the fixed $5 million capital requirement and the backstop.

To determine the fixed capital cost, NCUA multiplied the $5 million requirement by 10 to arrive at an aggregate capital requirement of $50 million. The cost of the aggregate $50 million of equity capital multiplied by 5.73% equals $2.87 million.

The estimate for the backstop, which is a capital requirement equal to 12 months of operating costs is 0.40% times the expected $100 billion in outstanding stablecoin issuance ($10 billion estimated issuance times 10 estimated NCUA-Licensed PPSIs) which amounts to $400 million. The cost of this $400 million of required capital is the amount of capital times the cost of equity capital (5.73%), which totals $22.9 million.

The total cost of minimum capital requirements for the proposed rule is $25.79 million, the sum of the cost of capital for the backstop ($22.9 million) and the fixed capital requirement ($2.87 million).

Under the baseline, we assume fewer FICU subsidiaries will issue Payment Stablecoins and for those that do, payment stablecoins issued would have been treated as standard balance sheet assets when consolidated with the parent FICU. Therefore, all stablecoin reserve assets would have been subject to the FICU leverage ratio. We assume that all stablecoin reserve assets would have counted toward the leverage requirement for all FICU subsidiaries. We use a capital requirement of 7%, which equals the capital requirement under the leverage ratio to be well capitalized.

Using the above estimate of $10 billion in issuances per issuer and an estimate of only four FICU subsidiary Payment Stablecoin issuers, assumes a total of $40 billion in issuances among the four wholly owned subsidiaries. With $40 billion in stablecoin issuance in the first year, NCUA estimates that these issuers would have $40 billion in stablecoin reserve assets subject to the capital requirement. Given these assumptions, these four wholly owned subsidiaries would need $2.8 billion in additional capital to cover the stablecoin reserves under the leverage ratio. The cost of this capital under the baseline is estimated to be $160.4 million ($2.8 billion × 5.73%). Therefore, after accounting for the regulatory baseline, we estimate the capital requirements under the proposed rule to result in a net savings of approximately $134.6 million in capital relative to the regulatory baseline.[279]

Therefore, we estimate that the proposed rule creates deregulatory cost savings relative to the baseline by allowing NCUA-Licensed PPSIs to hold capital against reserve assets only as required under the proposed rule, rather than applying the leverage ratio applicable to FICUs.

Custody

The proposed rule will likely result in FICUs offering new fee-based income streams from digital asset custody, settlement services, and other related payment stablecoin activities. The ability to settle obligations on-chain using a regulated instrument could provide operational efficiencies and lower costs associated with a FICU's internal accounting functions. By establishing a definitive set of requirements and standards associated with Payment Stablecoins, the proposed rule would benefit FICUs by providing additional opportunities to leverage their existing membership base, payment system networks, risk management, and compliance infrastructures to compete effectively in the digital payments market.

The proposed rule imposes mandates governing certain custodial activities of FICUs and NCUA-Licensed PPSIs.[280] Because this is largely a new activity for FICUs and their subsidiaries, engaging in custody and safekeeping services will likely result in additional costs under the proposed rule. For example, under the proposed rule, these entities would be required to establish and maintain policies, procedures, and systems to protect customer payment stablecoin reserves, payment stablecoins, private keys, cash, and other property.

The NCUA does not have the data necessary to fully quantify these costs, but expects they would generally be mitigated by the ability of a covered custodian to generate additional revenue through custody and safekeeping services.

Total Estimated Costs/Savings

Based on the analysis above, NCUA estimates the total annual cost savings of the proposed rule to be $132.6 million, driven mainly by the capital relief in the proposed rule for capital that would otherwise have had to been held when consolidating the FICU subsidiaries. This considers the $1.98 million annual cost for reporting, recordkeeping, and compliance; the $25.8 million annual cost of capital for NCUA-Licensed PPSIs; and the $160.4 million in annual *savings* from the capital relief when consolidating subsidiaries.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act [281] generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment

[278] The cost of capital is based on the Bank (Regional) measure found at *https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/wacc.html.*

[279] This is an estimate of the impact to capital based on the assumptions provided. Actual net savings or costs may vary based on a variety of factors, but illustrates the expected outcome based on the qualitative and quantitative costs and benefits of the rule.

[280] Specifically, the proposed rule imposes requirements relating to the custody of ''covered assets'' which are payment stablecoin reserves, payment stablecoins used as collateral, and private keys used to issue payment stablecoins, as well as cash and other property received in the course of the provision of custody services for such assets.

[281] 5 U.S.C. 601 *et seq.*

rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the agency makes such a certification, it shall publish the certification at the time of publication of either the proposed rule or the final rule, along with a statement providing the factual basis for such certification.[282] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[283] The NCUA fully considered the potential economic impacts of the regulatory amendments on small credit unions.

This rule will only apply to FICUs that wish to invest in NCUA-approved PPSIs, which are generally CUSOs for purposes of this rule, and provide permissible safekeeping and custody services. The NCUA does not anticipate a significant number of small credit unions will invest in PPSIs or work with a subsidiary (CUSO) to apply to become a PPSI. As of June 30, 2025, only 19 percent of small credit unions have invested in a CUSO, compared to 71 percent of credit unions with assets over $100 million supporting that the majority of NCUA-licensed PPSI applicants will be subsidiaries of larger FICUs. However, to establish the upper limit of estimated small credit unions that would have subsidiaries that become NCUA-licensed PPSIs, we can compare the total number of estimated NCUA-licensed PPSIs used for regulatory analysis (10) in this rulemaking to the total number of small credit unions (2,514 as of December 31, 2025) .If all 10 of the estimated NCUA-licensed PPSIs were subsidiaries of small credit unions, this would equate to 0.40 percent of small entities, which is not considered substnatial. Similarly NCUA does not anticipate a substantial number of small credit unions will provide the safekeeping and custody services provided for in the GENIUS Act due to the sophisticated infrastructure necessary for such activities.

Accordingly, the NCUA certifies the proposed rule would not have a significant economic impact on a substantial number of small credit unions.

*D. Paperwork Reduction Act*

This notice of proposed rulemaking has been reviewed for compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). In accordance with the PRA, the NCUA may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The NCUA has reviewed the notice of proposed rulemaking and determined that it would introduce new information collection requirements pursuant to the PRA. The NCUA is seeking a new control number for these information collection requirements and will submit them to OMB for review and approval.

Proposed Information Collection

*Title of Information Collection:* Requirements and Standards Associated with the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the National Credit Union Administration.

*OMB Control Number:* 3133–NEW.

*Type of Review:* Regular.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Description:* The proposed rule would establish regulatory requirements for NCUA-supervised permitted payment stablecoins issuers as mandated by the GENIUS Act, as well as provide further clarity for NCUA-supervised custodians.

The information collection requirements in the proposed rule are as follows:

NCUA Summary of Estimated Annual Burden (3133–NEW)

| 12 CFR | Information Collection (IC) activity | Type of burden | Number of respondents | Number of responses per respondent (frequency) | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| **Implementation Burden** | | | | | | |
| 706.108(a) | Written request to NCUA Board for opportunity to appeal application denial. | Reporting | 10 | 1 | 1 | 10 |
| 706.110(a) | Certification of AML program | Reporting | 10 | 1 | 4 | 40 |
| 706.201(c)(4)(iii) | Rebut the presumption described in 706.201(c)(4)(i), by submitting written materials that demonstrate that the contract, agreement, or other arrangement is not prohibited under 706.201(c)(4). | Reporting | 10 | 1 | 1 | 10 |
| 706.201(c)(5)(iii)(B) | Allows PPSIs to address liquidity needs by selling reserves held as Treasury bills with maturities of 93 days or less through repurchase agreements, provided they first obtain approval from the NCUA. | Reporting | 10 | 1 | 4 | 40 |
| 706.202(a)(2) | Demonstrate the capability to access and monetize identifiable reserve assets. | Reporting | 10 | 1 | 4 | 40 |
| 706.202(g)(1) | Notify the NCUA whenever their reserve assets fall below the minimum required level. | Reporting | 10 | 1 | 1 | 10 |
| 706.203(c)(4) | Notify the NCUA within 24 hours if redemption requests for a PPSI exceed 10% of its total outstanding issuance value within a single day. | Reporting | 10 | 1 | 0.5 | 5 |
| 706.204(a)(3) | Requires PPSIs to periodically regularly report on interest rate risk to management and the board of directors. | Reporting | 10 | 1 | 160 | 1,600 |
| 706.204(b)(7)(i) | Investigate unauthorized access to sensitive customer data and, if misuse is confirmed or likely, notify affected customers and the NCUA promptly. | Reporting | 10 | 1 | 4 | 40 |

[282] 5 U.S.C. 605(b).

[283] 80 FR 57512 (Sept. 24, 2015).

NCUA SUMMARY OF ESTIMATED ANNUAL BURDEN (3133–NEW)—Continued

| 12 CFR | Information Collection (IC) activity | Type of burden | Number of respondents | Number of responses per respondent (frequency) | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| 706.204(b)(7)(ii) | If a PPSI determines that a group of files has been accessed improperly but is unable to identify which specific customers' information has been accessed and the PPSI determines that misuse of the information is reasonably possible, it would be required to notify all customers in the group. | Reporting | 10 | 1 | 4 | 40 |
| 706.205(h) | Submit a confidential weekly report to the NCUA in a specified format, with the necessary information as outlined in forms made available on the NCUA website. | Reporting | 10 | 1 | 16 | 160 |
| 706.205(i) | Submit quarterly reports on financial condition within 30 days after each quarter ends. | Reporting | 10 | 1 | 80 | 800 |
| 706.205(j) | Submit other reports on financial condition requested by the NCUA upon request. | Reporting | 10 | 1 | 16 | 160 |
| 706.205(k) | Submit ongoing compliance reports to the NCUA. Specifically, within 180 days of application approval and then annually, the PPSIs Board of Directors must certify that anti-money laundering and economic sanctions compliance programs have been implemented. | Reporting | 10 | 1 | 80 | 800 |
| 706.205(l)(2)(ii) | Submit audited financial statements annually, within 120 days after the end of its fiscal year to the NCUA. | Reporting | 10 | 1 | 480 | 4,800 |
| 706.205(l)(2)(iii) | Submit a written notice of late filing to NCUA | Reporting | 10 | 1 | 8 | 80 |
| 706.205(m) | Any person intending to acquire control of an licensed PPSI must comply with the procedures outlined in proposed 12 CFR § 706.111 of Subpart A, including providing a 60-day advance notice to the NCUA. | Reporting | 10 | 1 | 2 | 20 |
| 706.400(b)(1)(iii) | Submit request for prior approval from the NCUA to redeem discretionary repurchases. | Reporting | 10 | 1 | 1 | 10 |
| 706.400(c)(v)(A) | Submit request for prior approval from the NCUA to exercise a call option. | Reporting | 10 | 1 | 1 | 10 |
| 706.400(c)(1)(vi) | Submit request for prior approval from the NCUA for redemption or repurchase of the instrument. | Reporting | 10 | 1 | 1 | 10 |
| 706.402(c)(2)(i) | Respond in writing, within 30 days when notified by the NCUA about proposed additional capital or backstop requirements. | Reporting | 10 | 1 | 40 | 400 |
| 706.402(c)(4) | Submit an acceptable plan to reach the additional capital or backstop requirements. | Reporting | 10 | 1 | 40 | 400 |
| 706.202(a)(1) | Maintain records that are identifiable and segregated from other assets owned or held by the PPSI and calculate the fair value of reserve assets. | Recordkeeping | 10 | 1 | 40 | 400 |
| 706.202(f)(2) | Requires the CEO and CFO (or their equivalents) to submit to NCUA a certification of accuracy. | Recordkeeping | 10 | 1 | 8 | 80 |
| 706.203(b) | Establish a redemption policy | Recordkeeping | 10 | 1 | 8 | 80 |
| 706.204(a)(1) | Establish internal controls and information systems that are suitable for their size, complexity, and activity risk. | Recordkeeping | 10 | 1 | 80 | 800 |
| 706.204(a)(2) | Develop an internal audit system tailored to their size, complexity, and risk profile. | Recordkeeping | 10 | 1 | 80 | 800 |
| 706.204(a)(5) | Create and maintain a system, appropriate to size and operational complexity, for evaluating and monitoring earnings. | Recordkeeping | 10 | 1 | 80 | 800 |
| 706.204(a)(6)(i)(C) | Document transactions with insiders or affiliates and have these transactions reviewed by the board of directors. | Recordkeeping | 10 | 1 | 8 | 80 |
| 706.204(b)(1)(2)(3)(4)(6) and (8) | Establish requirements for information technology and security programs for PPSIs and implement a comprehensive written information security risk control framework, including a program that assesses and managements IT and information security risks. | Recordkeeping | 10 | 1 | 160 | 1,600 |
| 706.204(b)(5) | Establish and maintain security measures for the handling of digital assets. | Recordkeeping | 10 | 1 | 80 | 800 |
| 706.205(f) | Maintain a complete set of books and records in English. | Recordkeeping | 10 | 1 | 40 | 400 |
| 706.205(g) | Develop a records retention policy that ensures that can demonstrate compliance with the GENIUS Act 12 CFR part 15, and all applicable laws and regulations. | Recordkeeping | 10 | 1 | 40 | 400 |
| 706.205(1) | PPSIs with over $50 billion in outstanding issuance value, must prepare annual financial statements in accordance with GAAP. | Recordkeeping | 10 | 1 | 160 | 1,600 |

NCUA SUMMARY OF ESTIMATED ANNUAL BURDEN (3133–NEW)—Continued

| 12 CFR | Information Collection (IC) activity | Type of burden | Number of respondents | Number of responses per respondent (frequency) | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| 706.302(b)(1) | Requires covered custodians to have written controls to protect customer assets from creditor claims, including those of sub-custodians, in compliance with applicable laws and suited to their business size and risk. | Recordkeeping .. | s10 | 1 | 8 | 80 |
| 706.202(e) | Publish monthly composition report on their website detailing reserve assets. | Disclosure | 10 | 1 | 40 | 400 |
| 706.203(a) | Publicly disclose a redemption policy | Disclosure | 10 | 1 | 1 | 10 |
| 706.203(d)(1) | Publicly disclose certain information related to the PPSI, the payment stablecoin, and fees. | Disclosure | 10 | 1 | 8 | 80 |
| 706.205(1)(2)(i) | Disclose audited financial statements on PPSIs website. | Disclosure | 10 | 1 | 16 | 160 |
| 706.504 | Disclose to the NCUA the same non-public information provided to FinCEN. | Disclosure | 10 | 1 | 1 | 10 |
| | **Ongoing Burden** | | | | | |
| 706.201(c)(4)(iii) | Rebut the presumption described in 706.201(c)(4)(i), by submitting written materials that demonstrate that the contract, agreement, or other arrangement is not prohibited under 706.201(c)(4). | Reporting | 10 | 1 | 1 | 10 |
| 706.201(c)(5)(iii)(B) | Allows PPSIs to address liquidity needs by selling reserves held as Treasury bills with maturities of 93 days or less through repurchase agreements, provided they first obtain approval from the NCUA. | Reporting | 10 | 1 | 1 | 10 |
| 706.202(a)(2) | Demonstrate the capability to access and monetize identifiable reserve assets. | Reporting | 10 | 1 | 16 | 160 |
| 706.202(g)(1) | Notify the NCUA whenever their reserve assets fall below the minimum required level. | Reporting | 10 | 1 | 1 | 10 |
| 706.203(c)(4) | Notify the NCUA within 24 hours if redemption requests for a PPSI exceed 10% of its total outstanding issuance value within a single day. | Reporting | 10 | 1 | 0.5 | 5 |
| 706.204(a)(3) | Requires PPSIs to periodically regularly report on interest rate risk to management and the board of directors. | Reporting | 10 | 12 | 40 | 4,800 |
| 706.204(b)(7)(i) | Investigate unauthorized access to sensitive customer data and, if misuse is confirmed or likely, notify affected customers and the NCUA promptly. | Reporting | 10 | 1 | 1 | 10 |
| 706.204(b)(7)(ii) | If a PPSI determines that a group of files has been accessed improperly but is unable to identify which specific customers' information has been accessed and the PPSI determines that misuse of the information is reasonably possible, it would be required to notify all customers in the group. | Reporting | 10 | 1 | 1 | 10 |
| 706.205(h) | Submit a confidential weekly report to the NCUA in a specified format, with the necessary information as outlined in forms made available on the NCUA website. | Reporting | 10 | 52 | 1 | 520 |
| 706.205(i) | Submit quarterly reports on financial condition within 30 days after each quarter ends. | Reporting | 10 | 4 | 16 | 640 |
| 706.205(j) | Submit other reports on financial condition requested by the NCUA upon request. | Reporting | 10 | 1 | 40 | 400 |
| 706.205(k) | Submit ongoing compliance reports to the NCUA. Specifically, within 180 days of application approval and then annually, the PPSIs Board of Directors must certify that anti-money laundering and economic sanctions compliance programs have been implemented. | Reporting | 10 | 1 | 8 | 80 |
| 706.205(l)(2)(ii) | Submit audited financial statements annually, within 120 days after the end of its fiscal year to the NCUA. | Reporting | 10 | 1 | 40 | 400 |
| 706.205(l)(2)(iii) | Submit a written notice of late filing to NCUA | Reporting | 10 | 1 | 16 | 160 |
| 706.205(m) | Any person intending to acquire control of an licensed PPSI must comply with the procedures outlined in proposed 12 CFR § 706.111 of Subpart A, including providing a 60-day advance notice to the NCUA. | Reporting | 10 | 1 | 2 | 20 |
| 706.400(b)(1)(iii) | Submit request for prior approval from the NCUA to redeem discretionary repurchases. | Reporting | 10 | 1 | 1 | 10 |
| 706.400(c)(v)(A) | Submit request for prior approval from the NCUA to exercise a call option. | Reporting | 10 | 1 | 1 | 10 |
| 706.400(c)(1)(vi) | Submit request for prior approval from the NCUA for redemption or repurchase of the instrument. | Reporting | 10 | 1 | 1 | 10 |

NCUA SUMMARY OF ESTIMATED ANNUAL BURDEN (3133–NEW)—Continued

| 12 CFR | Information Collection (IC) activity | Type of burden | Number of respondents | Number of responses per respondent (frequency) | Average time per response (hours) | Total estimated annual burden (hours) |
|---|---|---|---|---|---|---|
| 706.402(c)(2)(i) | Respond in writing, within 30 days when notified by the NCUA about proposed additional capital or backstop requirements. | Reporting | 10 | 1 | 1 | 10 |
| 706.402(c)(4) | Submit an acceptable plan to reach the additional capital or backstop requirements. | Reporting | 10 | 1 | 1 | 10 |
| 706.202(a)(1) | Maintain records that are identifiable and segregated from other assets owned or held by the PPSI and calculate the fair value of reserve assets. | Recordkeeping | 10 | 1 | 4 | 40 |
| 706.202(f)(2) | Requires the CEO and CFO (or their equivalents) to submit to NCUA a certification of accuracy. | Recordkeeping | 10 | 12 | 0.5 | 60 |
| 706.203(b) | Maintain a redemption policy | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.204(a)(1) | Maintain internal controls and information systems that are suitable for their size, complexity, and activity risk. | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.204(a)(2) | Maintain an internal audit system tailored to their size, complexity, and risk profile. not warranted. | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.204(a)(5) | Create and maintain a system, appropriate to size and operational complexity, for evaluating and monitoring earnings. | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.204(a)(6)(i)(C) | Document transactions with insiders or affiliates and have these transactions reviewed by the board of directors. | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.204(b)(1)(2)(3)(4)(6) and (8) | Maintain requirements for information technology and security programs for PPSIs and implement a comprehensive written information security risk control framework, including a program that assesses and managements IT and information security risks. | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.204(b)(5) | Maintain security measures for the handling of digital assets. | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.205(f) | Maintain a complete set of books and records in English. | Recordkeeping | 10 | 1 | 8 | 80 |
| 706.205(g) | Maintain a records retention policy that ensures that can demonstrate compliance with the GENIUS Act 12 CFR part 15, and all applicable laws and regulations. | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.205(1) | PPSIs with over $50 billion in outstanding issuance value, must prepare annual financial statements in accordance with GAAP. | Recordkeeping | 10 | 1 | 1 | 10 |
| 706.302(b)(1) | Requires covered custodians to have written controls to protect customer assets from creditor claims, including those of sub-custodians, in compliance with applicable laws and suited to their business size and risk. | Recordkeeping | 10 | 1 | 8 | 80 |
| 706.202(e) | Publish monthly composition report on their website detailing reserve assets. | Disclosure | 10 | 12 | 8 | 960 |
| 706.203(a) | Publicly disclose a redemption policy | Disclosure | 10 | 1 | 1 | 10 |
| 706.203(d)(1) | Publicly disclose certain information related to the PPSI, the payment stablecoin, and fees. | Disclosure | 10 | 1 | 1 | 10 |
| 706.205(1)(2)(i) | Disclose audited financial statements on PPSIs website. | Disclosure | 10 | 1 | 8 | 80 |
| 706.504 | Disclose to the NCUA the same non-public information provided to FinCEN. | Disclosure | 10 | 1 | 1 | 10 |
| Total Estimated Annual Burden (Hours). | | | | | | 26,770 |

The NCUA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to submit written comments via email to (1) *PRAComments@ncua.gov* or (2) visit *www.reginfo.gov/public/do/PRAMain* (find this particular information collection by selecting the tab titled ''Information Collection Review'' and click on to the section titled ''Currently under Review—Open for Public comment'').

*E. Executive Order 13132 on Federalism*

Executive Order 13132 encourages regulatory agencies to consider the impact of their actions on State and local interests. The NCUA, an agency as defined in 44 U.S.C. 3502(5), complies with the executive order to adhere to

fundamental federalism principles. As required by the GENIUS Act, the proposed rule would require that all FICU subsidiaries, including subsidiaries of FISCUs, seeking to become PPSIs apply to the NCUA for licensure. It would also impose standards on NCUA-Licensed PPSIs. As any subsidiary of a FISCU cannot be licensed a permitted State payment stablecoin regulator, the rulemaking would not have direct effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[284] While the proposed rule could contribute to an expansion in access to Payment Stablecoin services, the effect would be indirect and not easily quantifiable.

**List of Subjects**

*12 CFR Part 702*

Credit unions, Reporting and recordkeeping requirements.

*12 CFR Part 704*

Credit unions, Reporting and recordkeeping requirements, Surety bonds.

*12 CFR Part 706*

Accounting, Advertising, Anti-Money Laundering, Appeals, Applications, Control, Credit unions, Credit union service organizations, Deadlines, Denials, Federal Credit Union Act, Filings, Guiding and Establishing National Innovation for U.S. Stablecoins Act, Hearings, Investigations, Investments, Jurisdiction, Licensing, Payment stablecoins, Permitted payment stablecoin issuers, Reports, Requirements, Safe harbor, Sanctions, Shareholders, Subsidiaries, Technology.

*12 CFR Part 745*

Credit, Credit Unions, Share Insurance.

*12 CFR Part 747*

Administrative practice and procedure, Claims, Credit unions, Crime, Equal access to justice, Investigations, Lawyers, Penalties, Share insurance.

[284] Public Law 105–277, 112 Stat. 2681 (1998).

By the National Credit Union Administration Board, this 14th day of May, 2026.

**Ji Kwon,**

*Acting Secretary of the Board.*

For the reasons stated in the preamble, the NCUA Board proposes to amend chapter VII of title 12 of the Code of Federal Regulations as follows:

## PART 702—CAPITAL ADEQUACY

■ 1. The authority citation for part 702 continues to read as follows:

**Authority:** 12 U.S.C. 1757(9), 1766(a), 1784(a), 1786(e), 1790d.

* * * * *

■ 2. Amend the definition of net worth in § 702.2 by adding paragraph (5) to read as follows:

**§ 702.2 Definitions.**

* * * * *

(5) *Permitted Payment Stablecoin Issuers.* An Insured Credit Union that is consolidated with a permitted payment stablecoin issuer, as defined in § 706.2 of this chapter, must make the following adjustments when calculating its net worth:

(i) Deconsolidate any permitted payment stablecoin issuer from the insured credit union's balance sheet, removing applicable assets, liabilities and equity;

(ii) Deduct from net worth any amount of positive retained earnings that originated from the permitted payment stablecoin issuer to the extent not paid out as dividends to the insured credit union; and

(iii) Exclude any investment in (to the extent not deducted under paragraph (5)(i) of this section) and receivable from the permitted payment stablecoin issuer when calculating total assets, as applicable.

(iv) Any amounts deducted from net worth under paragraph (5) are also deducted from total assets, to the extent not already deducted.

* * * * *

■ 3. Amend § 702.104(b)(2) by:

■ i. In subparagraph (iv), removing ''; and''

■ ii. Adding a new paragraph (v); and

■ iii. Renumbering current paragraph (v) as paragraph (vi) to read as follows:

**§ 702.104 Risk-based capital ratio.**

* * * * *

(b) * * *

(2) * * *

(iv) Identified losses not reflected in the risk-based capital ratio numerator.

(v) *Permitted Payment Stablecoin Issuers.* For an Insured Credit Union with a consolidated permitted payment stablecoin issuer, the deductions and deconsolidation required under paragraph (5) of the definition of net worth; and

(vi) Mortgage servicing assets that exceed 25 percent of the sum of the capital elements in paragraph (b)(1) of this section, less deductions required under paragraphs (b)(2)(i) thorough (v) of this section.

* * * * *

## PART 704—CORPORATE CREDIT UNIONS

■ 4. The authority citation for part 704 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1781, 1789.

■ 5. Amend § 704.2 by amending the definitions of *Retained Earnings* and *Tier 1 capital* to read as follows.

**§ 704.2 Definitions.**

* * * * *

*Retained earnings* means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, GAAP equity acquired in a merger, and other appropriations from undivided earnings as designated by management or the NCUA. Retained earnings does not include any amount of positive retained earnings that originated from a consolidated permitted payment stablecoin issuer to the extent not paid out as dividends to the insured credit union;

* * * * *

*Tier 1 capital* means the sum of items in paragraphs (1) and (2) of this definition from which items in paragraphs (3) through (8) of this definition are deducted or adjusted:

(1) Retained earnings;

(2) Perpetual contributed capital;

(3) Deduct the amount of the corporate credit union's intangible assets that exceed one half percent of its moving daily average net assets (however, the NCUA may direct the corporate credit union to add back some of these assets on the NCUA's own initiative, or the NCUA's approval of petition from the applicable State regulator or application from the corporate credit union);

(4) Deduct investments, both equity and debt, in unconsolidated CUSOs;

(5) Deduct an amount equal to any PCC or NCA that the corporate credit union maintains at another corporate credit union;

(6) Deduct any amount of PCC received from federally insured credit unions that causes PCC minus retained earnings, all divided by moving daily average net assets, to exceed two percent when a corporate credit union's

retained earnings ratio is less than two and a half percent.

(7) Deduct any natural person credit union subordinated debt instrument held by the corporate credit union; and

(8) An Insured Credit Union that is consolidated with a permitted payment stablecoin issuer, as defined in § 706.2 of this chapter, must make the following adjustments when calculating its net worth:

(i) Deconsolidate any permitted payment stablecoin issuer from the insured credit union's balance sheet; and

(ii) Exclude any investment in (to the extent not deducted under paragraph (5)(i) of this section) and receivable from the permitted payment stablecoin issuer when calculating total assets, as applicable; and

(9) Mortgage servicing assets that exceed 25 percent of the sum of the capital elements in paragraphs (1) and (2) of this definition, less deductions required under paragraphs (3) thorough (8) of this section.

■ 6. Add reserved part 706 to Subchapter A to read as follows:

**CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION**

**SUBCHAPTER A—REGULATIONS AFFECTING CREDIT UNIONS**

## PART 706—PAYMENT STABLECOINS

706.1 Authority, Purpose and Scope.
706.2 Definitions.
706.3 Severability.

**Subpart A—Investment in and Approval of Issuers That Are Subsidiaries of Insured Credit Unions**

706.101 Scope.
706.102 Rules of General Applicability.
706.103 Filing Required.
706.104 Investigations.
706.105 Evaluation of Applications and Factors to be Considered.
706.106 Timing for Decision on Applications.
706.107 Denial.
706.108 Opportunity for Hearing; Final Determination.
706.109 Right to Reapply.
706.110 Certification of Anti-Money Laundering and Economic Sanctions Compliance Programs.
706.111 Change in Parent Company.
706.112 Investment Limitation.

**Subpart B—NCUA-Licensed Permitted Payment Stablecoin Issuers and**

706.201 Activities.
706.202 Reserve Assets.
706.203 Redemption.
706.204 Risk management.
706.205 Audits, Reports, and Supervision.

**Subpart C—Custody**

706.301 Definitions.
706.302 Covered Asset Custodial Property Requirements.
706.303 Use of Omnibus Accounts.
706.304 Self-custody hardware and software exclusion.

**Subpart D—Capital and Operational Backstop**

706.401 Capital Elements.
706.402 Minimum Capital and Backstop.
706.403 Individual Additional Capital or Backstop Requirement.

**Subpart E—Supervision and Enforcement Policy for Anti-Money Laundering/ Countering the Financing of Terrorism Program Requirements for NCUA-Licensed Permitted Payment Stablecoin Issuers**

706.501 Definitions.

**§ 706.502 NCUA Supervision and Enforcement Policy.**

**§ 706.503 FinCEN Consultation.**

**§ 706.504 Disclosure of Supervisory Information to FinCEN.**

**Authority:** 12 U.S.C. 5901 *et seq.;* 12 U.S.C. 1766(a), 1786, and 1789(a)(11).

### § 706.1 Authority, purpose, and scope.

(a) *Authority and purpose.* The NCUA is issuing this part pursuant to its authority under the Guiding and Establishing National Innovation for U.S. Stablecoins Act or GENIUS Act (12 U.S.C. 5901 *et seq.*).

(b) *Scope.* This part applies to insured credit unions and all payment stablecoin issuers with investment or loans from insured credit unions and sets forth the requirements for NCUA-issued licenses.

(c) *No limitation of authority.* Nothing in this part shall be read to limit the authority of the NCUA to take action under other law, including action to address unsafe or unsound practices or conditions, or violations of law or regulation, under section 206 of the FCU Act.

### § 706.2 Definitions.

Unless otherwise provided in this part, the terms used in this part have the same meanings as set forth in 12 U.S.C. 1752 and 5901. All accounting terms not otherwise defined in this section have meanings consistent with the commonly accepted meanings under United States generally accepted accounting principles (U.S. GAAP). The following definitions apply to this part:

*Affiliate* means a Person that controls, is controlled by, or is under common Control with another Person.

*Applying Issuer* means any entity applying to the NCUA for an NCUA permitted payment stablecoin issuer license.

*Bank Secrecy Act* means:

(1) Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

(2) Chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 *et seq.*); and

(3) Subchapter II of chapter 53 of title 31, United States Code and notes thereto (31 U.S.C. 5311 *et seq.*).

*Control.* A Person controls another Person if:

(1) The Person directly or indirectly or acting through one or more other Persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other Person;

(2) The Person controls in any manner the election of a majority of the Directors or trustees of the other Person; or

(3) The NCUA determines, after notice and opportunity for hearing, that the Person directly or indirectly exercises a controlling influence over the management or policies of the other Person.

*Customer* means a Person that purchases (through any consideration) the products or services of another person.

*Digital Asset* means any digital representation of value that is recorded on a cryptographically secured Distributed Ledger.

*Director,* as used in this part:

(1) Means an individual who serves on the board of directors of:

(a) An Applying Issuer;

(b) An NCUA-Licensed Permitted Payment Stablecoin Issuer;

(c) A Parent Company of an Applying Issuer or an NCUA-Licensed Permitted Payment Stablecoin Issuer; or

(d) A Principal Shareholder of the Applying Issuer or NCUA-Licensed Permitted Payment Stablecoin Issuer; and

(2) Does not include an advisory director who does not have the authority to vote on matters before the board of directors or any committee of the board of directors and provides solely general policy advice to the board of directors or any committee.

*Distributed Ledger* means technology in which:

(1) Data is shared across a network that creates a public digital ledger of verified transactions or information among network participants; and

(2) Cryptography is used to link the data to maintain the integrity of the public ledger and execute other functions.

*Distributed Ledger Protocol* means publicly available and accessible executable software deployed to a Distributed Ledger, including smart contracts or networks of smart contracts.

*Eligible Financial Institution* means

(1) A Person that:

(a) Is eligible to hold Reserve Assets in custody under section 10(a) of the GENIUS Act (12 U.S.C. 5909(a));

(b) Complies with the applicable requirements in section 10(b), (c), and

(d) of the GENIUS Act (12 U.S.C. 5909(b), (c), and (d)), including with applicable implementing regulations issued by a relevant primary Federal payment stablecoin regulator as defined in 12 U.S.C. 5901(25), primary financial regulatory agency described in 12 U.S.C. 5301(12)(B) or (C), State bank supervisor, or State credit union supervisor; and

(c) If applicable, enters into a custody agreement with an NCUA-Licensed Permitted Payment Stablecoin Issuer documenting the Person's compliance with section 10(b), (c), and (d) of the GENIUS Act (12 U.S.C. 5909(b), (c), and (d)) as well as policies and procedures to ensure compliance; or

(2) A Federal Reserve Bank.

*Fair Value* means fair value as determined under GAAP.

*FDIC* means the Federal Deposit Insurance Corporation.

*GAAP* means generally accepted accounting principles as used in the United States.

*Immediate Family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

*Insider* means:

(1) An Officer or Director of an NCUA-Licensed Permitted Payment Stablecoin Issuer;

(2) Any Parent Company, and the Officers and Directors of the Parent Company, of an NCUA-Licensed Permitted Payment Stablecoin Issuer;

(3) Any Principal Shareholder, and Officers and Directors of the Principal Shareholder, of an NCUA-Licensed Permitted Payment Stablecoin Issuer; and

(4) A Related Interest of or the Immediate Family of any of these Persons.

*Insured Credit Union* has the meaning given to that term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

*Insured Depository Institution* means:

(1) An insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)); and

(2) An Insured Credit Union.

*Issuing Group* means the Applying Issuer or NCUA-Licensed Permitted Payment Stablecoin Issuer and its Parent Company(ies), and the Officers, Directors, and Principal Shareholders, if applicable, of the Applying Issuer or NCUA-Licensed Permitted Payment Stablecoin Issuer, its subsidiaries, and Parent Company(ies).

*Monetary Value* means a National Currency or deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)) denominated in a National Currency.

*Money* means

(1) Monetary Value; and

(2) Any other medium of exchange that the NCUA has determined is currently authorized or adopted by a domestic or foreign government, including a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

*National Currency* means—

(1) A Federal Reserve note (as the term is used in the first undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 411));

(2) Money standing to the credit of an account with a Federal Reserve Bank;

(3) Money issued by a foreign central bank; or

(4) Money issued by an intergovernmental organization pursuant to an agreement by two or more governments.

*NCUA-Licensed Permitted Payment Stablecoin Issuer* means a Person formed in the United States that is a Subsidiary of an Insured Credit Union that has been approved and licensed by the NCUA under subpart A to issue Payment Stablecoins.

*Nonpublic Personal Information,* as used in this part:

(1) Means information—

(i) Provided by a Customer to an NCUA-Licensed Permitted Payment Stablecoin Issuer to obtain a financial product or service;

(ii) About a Customer resulting from any transaction involving a financial product or service between the NCUA-Licensed Permitted Payment Stablecoin Issuer and a Customer; or

(iii) Otherwise obtained by the NCUA-Licensed Permitted Payment Stablecoin Issuer in connection with providing a financial product or service to a Customer; and

(2) Does not include Publicly Available Information, unless such Publicly Available Information, when combined with other information, would reveal the identity of a Customer or would enable access to the Customer's account.

*Officer* means the president, chief executive officer, chief operating officer, chief financial officer, chief technology officer, chief lending officer, chief investment officer, chief risk officer, Bank Secrecy Act officer, and any other individual the NCUA identifies in writing to the Issuing Group who exercises significant influence over, or participates in, major policy making decisions of the Issuing Group without regard to title, salary, or compensation. The term also includes employees of entities retained by an Issuing Group to perform such functions in lieu of directly hiring the individuals.

*Outstanding Issuance Value* means the total consolidated par value of all of an NCUA-Licensed Permitted Payment Stablecoin Issuer's Payment Stablecoins.

*Parent Company* means an insured credit union(s) that will own, control or hold the power to vote 10 percent or more of any class of voting securities, or has the ability to direct the management or policies, of a Permitted Payment Stablecoin Issuer. If no Insured Credit Union will own, control or hold the power to vote 10 percent or more of any class of voting securities, the Insured Credit Union with the largest percentage of voting securities in relation to all other insured credit unions is considered the Parent Company.

*Payment Stablecoin,* as used in this part:

(1) Means a Digital Asset—

(i) That is, or is designed to be, used as a means of payment or settlement; and

(ii) The issuer of which—

(A) Is obligated to convert, redeem, or repurchase for a fixed amount of Monetary Value, not including a Digital Asset denominated in a fixed amount of Monetary Value; and

(B) Represents that such issuer will maintain, or creates the reasonable expectation that it will maintain, a stable value relative to the value of a fixed amount of Monetary Value; and

(2) Does not include a Digital Asset that is a—

(i) National Currency;

(ii) deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)), including a deposit recorded using Distributed Ledger technology; or

(iii) Security, as defined in section 2 of the Securities Act of 1933 (15 U.S.C. 77b), section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2).

*Person* means an individual, partnership, company, corporation, association, trust, estate, cooperative organization, or other business entity, incorporated or unincorporated.

*Principal Shareholder* means a Person other than an Insured Credit Union that directly or indirectly or acting in concert with one or more Persons or companies, or together with members of their immediate family, will own, control, or hold the power to vote 10 percent or more of any class of voting securities.

*Private Key* means the unique alphanumeric sequence that allows an individual to transfer a particular unit of

a Digital Asset using a Distributed Ledger.

*Publicly Available Information* means any information that a Person has a reasonable basis to believe is lawfully made available to the general public from:

(1) Federal, State, or local government records;

(2) Widely distributed media;

(3) Disclosures to the general public that are required to be made by Federal, State, or local law; or

(4) A Distributed Ledger.

*Registered Public Accounting Firm* has the meaning set forth in section 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(12)).

*Related Interest* of a Person means:

(1) A company that is controlled by that Person; or

(2) A political or campaign committee that is controlled by that Person or the funds or services of which will benefit that Person.

*Reserve Asset* means an asset maintained by an NCUA-Licensed Permitted Payment Stablecoin Issuer of a type enumerated in § 706.202 (b).

*Share Account* means an ''account'' as defined in section 101 of the FCU Act (12 U.S.C. 1752(5).

*State* means each of the several States of the United States, the District of Columbia, and each territory of the United States.

*Subsidiary of an Insured Credit Union* means—

(1) An organization providing services to the Insured Credit Union that are associated with the routine operations of credit unions, as described in section 107(7)(I) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I));

(2) A credit union service organization, as such term is used under part 712 of this title, with respect to which the Insured Credit Union has an ownership interest or to which the Insured Credit Union has extended a loan;

(3) A subsidiary of a State chartered Insured Credit Union authorized under State law; and

(4) A subsidiary of any entity that meets the definition of a Subsidiary of an Insured Credit Union. All tiers or levels of a Subsidiary of an Insured Credit Union are included as a Subsidiary of an Insured Credit Union.

*Trading Volume* means the aggregate number of Payment Stablecoins issued by an NCUA-Licensed Permitted Payment Stablecoin Issuer that were purchased or sold on exchanges during a specified period of time.

#### § 706.3 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 NCUA's intention that the remaining provisions shall continue in effect.

### Subpart A—Investment in and Approval of Issuers That Are Subsidiaries of Insured Credit Unions

#### § 706.101 Scope.

This subpart establishes the NCUA rules and procedures for Insured Credit Unions seeking to invest in Payment Stablecoin issuers and for Insured Credit Unions and their subsidiaries to jointly apply for an NCUA permitted payment stablecoin issuer license. It contains information on rules of applicability, where and how to file, and requirements and policies applicable to filings.

#### § 706.102 Rules of general applicability.

(a) *NCUA's Permitted Stablecoin Issuer Licensing Manual.* The NCUA's ''Permitted Stablecoin Issuer Licensing Manual'' (Payment Stablecoin Issuer Manual) provides additional filing guidance, including policies and procedures. This Manual and sample forms are available at *www.ncua.gov.*

(b) *Electronic filing.* The NCUA encourages electronic filing for all filings. The NCUA's Payment Stablecoin Issuer Manual describes the NCUA's electronic filing procedures.

(c) *Reservation of authority.* The rules in this subpart apply to all sections in this part unless otherwise stated. The NCUA may adopt materially different procedures for a particular filing, or class of filings as it deems necessary, for example, in exceptional circumstances or for unusual transactions, after providing notice of the change to the filer and to any other party that the NCUA determines should receive notice.

(d) *Computation of time.* In computing the period of days under this subpart, the NCUA does not include the day of the act or event (*e.g.,* the date a filing is received by the NCUA) from which the period begins to run. When the last day of a period is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday or Federal holiday.

#### § 706.103 Filing required.

(a) *Filing.* A Subsidiary of an Insured Credit Union who seeks to issue Payment Stablecoins must apply to the NCUA for an NCUA permitted payment stablecoin issuer license and receive approval before issuing Payment Stablecoins. This application must be filed jointly with any Insured Credit Union Parent Company(ies).

(b) *Where to file.* Any submission under this part should be submitted as provided in the NCUA's Payment Stablecoin Issuer Manual.

(c) *Prefiling meeting.* Before submitting a filing to the NCUA, a potential filer may contact the NCUA to discuss whether a prefiling meeting would be beneficial. The NCUA may grant a prefiling meeting on a case-by-case basis. Submission of a draft business plan or other relevant information before any prefiling meeting may expedite the filing review process. A potential filer considering a novel, complex, or unique proposal is encouraged to contact the NCUA to request a prefiling meeting early in the development of its proposal for the early identification and consideration of policy issues. Information on model business plans can be found in the NCUA's Payment Stablecoin Issuer Manual.

(d) *Certification.* An Applying Issuer, and all of its Parent Companies and any Principal Shareholders, must certify in writing that any filing or supporting material submitted to the NCUA contains no material misrepresentations or omissions. The NCUA may review and verify any information filed in connection with a notice or an application. Any Person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

(e) *Filing fees.*

(1) The NCUA may require filing fees to accompany certain filings made under this subpart before it will accept those filings. If the NCUA requires the aforementioned filing fee, the NCUA will publish an applicable fee schedule on its website at *http://www.NCUA.gov.*

(2) Filing fees must be paid to the NCUA by electronic transfer.

#### § 706.104 Investigations.

(a) *Authority.* The NCUA may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision.

(b) *Fingerprints.* For certain filings, the NCUA requires fingerprints for a biometric based criminal history search.

#### § 706.105 Evaluation of applications and factors to be considered.

(a) *Scope.* This section describes the procedures and requirements governing NCUA evaluation of an application to be an NCUA-Licensed Permitted Payment Stablecoin Issuer. The NCUA will evaluate each substantially complete

application to determine whether approval would be consistent with the safety and soundness of the Applying Issuer based on the statutory evaluation factors set forth in this section. An applicant should consult the NCUA's Payment Stablecoin Issuer Manual to determine what other information is necessary for the NCUA to evaluate an application using the statutory evaluation factors described in this section.

(b) *Statutory evaluation factors.* The NCUA grants permitted payment stablecoin licenses under the authority of the Guiding and Establishing National Innovation for U.S. Stablecoins Act, 12 U.S.C. 5901 *et seq.,* which requires the NCUA to evaluate:

(1) The ability of the Applying Issuer, based on financial condition and resources, to meet the requirements set forth under 12 U.S.C. 5903 and incorporated in subpart B of part 706;

(2) Whether an individual who has been convicted of a felony offense involving insider trading, embezzlement, cybercrime, money laundering, financing of terrorism, or financial fraud is serving as an Officer or Director of the Applying Issuer;

(3) The competence, experience, and integrity of the Officers, Directors, and Principal Shareholders of the Applying Issuer, its subsidiaries, and Parent Company, including:

(i) the record of those Officers, Directors, and Principal Shareholders of compliance with laws and regulations; and

(ii) the ability of those Officers, Directors, and Principal Shareholders to fulfill any commitments to, and any conditions imposed by, the NCUA in connection with the application at issue and any prior applications;

(4) Whether the redemption policy of the Applying Issuer meets the standards under 12 U.S.C. 5903(a)(1)(B) and incorporated in subpart B of part 706; and

(5) Any other factors established by the NCUA that are necessary to ensure the safety and soundness of the Applying Issuer.

(c) *Policy—*

(1) *In general.* In determining whether to approve an application to be an NCUA-Licensed Permitted Payment Stablecoin Issuer based on the statutory evaluation criteria in paragraph (c), the NCUA is guided by the following policy considerations as they relate to the Applying Issuer:

(i) Whether an Issuing Group has a record of compliance with laws and regulations and whether the Issuing Group is familiar with the laws and regulations applicable to NCUA-Licensed Permitted Payment Stablecoin Issuers and digital asset service providers;

(ii) Whether an Issuing Group has the ability to fulfill any commitments to, and any conditions imposed by, the NCUA in connection with the application at issue and any prior applications;

(iii) Whether an Issuing Group has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided;

(iv) Whether an applicant has capital, liquidity, and capital and liquidity plans sufficient to support the projected volume and type of business;

(v) Whether an applicant has a redemption policy that meets all requirements in subpart B of this part;

(vi) Whether an applicant can reasonably be expected to achieve and maintain profitability; and

(vii) Whether an applicant can be operated in a safe and sound manner by evaluating criteria including, but not limited to, the following:

(A) the ability to meet the operational, compliance, and information technology risk management requirements and standards outlined in subparts B of this part; and

(B) the ability to maintain sufficient technological capabilities to comply with the terms of any lawful order and all applicable laws and regulations.

(2) *NCUA evaluation.* The NCUA evaluates an Issuing Group and its business plan together. The NCUA's judgment concerning one may affect the evaluation of the other. An Issuing Group and its business plan must be stronger in markets where economic conditions are marginal, competition is intense, or the services to be provided have greater or unknown risk.

(d) *Issuing Group—*

(1) *In general.* An Issuing Group must have the competence, experience, and integrity to be active in directing the Applying Issuer's affairs in a safe and sound manner. The business plan and other information supplied in the application, including the completed NCUA Biographical and Financial Report forms, must demonstrate an Issuing Group's collective ability to establish and operate a successful permitted payment stablecoin issuer in the economic and competitive conditions of the market to be served. This collective ability must be demonstrated with consideration of the activities to be engaged in by the Applying Issuer and the services it intends to provide. Each member of the Issuing Group must be knowledgeable about the business plan. An inadequate business plan may be a reason for the NCUA to deny an application because it reflects adversely on the Issuing Group's qualifications.

(2) *Management selection.* The initial board of directors must select competent Officers before the NCUA grants an NCUA permitted payment stablecoin license. Early selection of Officers, especially the chief executive officer, contributes favorably to the preparation and review of a business plan that is accurate, complete, and appropriate for the activities the proposed permitted payment stablecoin issuer intends to engage in, and is necessary for a substantially complete application.

(3) *Financial resources.*

(i) Each member of the Issuing Group must have a history of responsibility, personal honesty, and integrity.

(ii) The Issuing Group must have a realistic plan to enable the Applying Issuer to obtain capital and liquidity when needed.

(iii) Any financial or other business arrangement, direct or indirect, between the Issuing Group or other Insiders and the Applying Issuer must be on nonpreferential terms.

(e) *Business plan—*

(1) *In general.*

(i) An Applying Issuer must submit a business plan that adequately addresses the statutory and related policy considerations set forth in paragraphs (b) and (c) of this section. The plan must reflect sound business and financial principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served and the services to be provided.

(ii) The NCUA may offset deficiencies in one factor by strengths in one or more other factors. However, deficiencies in some factors, such as unrealistic earnings prospects, may have a negative influence on the evaluation of other factors, such as capital adequacy, or may be serious enough by themselves to result in denial. The NCUA considers inadequacies in a business plan to reflect negatively on the Issuing Group's ability to operate a successful NCUA-Licensed Permitted Payment Stablecoin Issuer.

(2) *Earnings prospects and financial condition.* An Applying Issuer must submit balance sheets and income statements that demonstrate financial stability and earnings prospects as part of the business plan. This would include both actual and *pro forma* balance sheets and income statements, as applicable based on the availability of actual financial statements. The NCUA reviews all *pro forma* projections for

reasonableness of assumptions and consistency with the business plan.

(3) *Management.*

(i) The Applying Issuer must include in the business plan information sufficient to permit the NCUA to evaluate the overall management ability of the Issuing Group. If the Issuing Group has limited relevant experience, the Officers of the Applying Issuer must be able to compensate for such deficiencies.

(ii) The Applying Issuer may not hire an Officer or elect or appoint a Director if the NCUA objects to that Person at any time prior to the date the Applying Issuer commences business.

(iii) All Issuing Group Officers, Directors, and any Principal Shareholders must also submit the Biographical and Financial Report information described in paragraph (f)(3) of this section to allow the NCUA to evaluate the competence, experience, and integrity of the Officers, Directors, and Principal Shareholders of the Applying Issuer, its subsidiaries, and Parent Company or Parent Companies as described in paragraph (b)(3).

(4) *Capital.* An Applying Issuer must have sufficient initial capital, net of any organizational expenses that will be charged to the Applying Issuer's capital after it begins operations, to support the Applying Issuer's projected volume and type of business as outlined in the business plan. An Applying Issuer also must have a longer-term capital plan that is sufficient to support the future projected volume and type of business and is consistent with the capital requirements in subpart B of this part.

(5) *Liquidity and Reserve Asset diversification.* An Applying Issuer's business plan must address its liquidity and Reserve Asset diversification practice. Issuers must have liquidity and Reserve Asset diversification policies that meet the requirements of subpart B of this part.

(6) *Safety and soundness.* The business plan must demonstrate that the Applying Issuer is aware of, and understands, applicable laws and regulations, and how to conduct safe and sound operations and practices.

(f) *Procedures—*

(1) *Prefiling meeting.* The Issuing Group of an Applying Issuer may request a prefiling meeting with the NCUA before the Applying Issuer files an application. The prefiling meeting normally is held virtually.

(2) *Business plan.* An Applying Issuer must file a business plan that addresses the subjects discussed in paragraph (e) of this section.

(3) *Biographical and financial reports.*

(i) Each Director or Officer or proposed Director or Officer of a member of the Issuing Group or Principal Shareholder must submit to the NCUA the information prescribed in the NCUA's Biographical and Financial Report, available at *www.ncua.gov;*

(ii) Each Director or Officer or proposed Director or Officer of the Applying Issuer must submit legible fingerprints for a biometric based criminal history search; and

(iii) The NCUA may request additional information about any Director or Officer, or proposed Director or Officer, or any Principal Shareholder, if appropriate. The NCUA may waive any of the information requirements of this paragraph if the NCUA determines that it is in the public interest.

(4) *Contact person.* The Applying Issuer must designate a contact person to represent the Issuing Group in all contacts with the NCUA.

(5) *Decision notification.* The NCUA notifies the contact person and other relevant parties in writing of its decision on an application.

(6) *Activities.* Before the NCUA grants a license to an Applying Issuer, the Applying Issuer must be established as a legal entity under State law.

**§ 706.106 Timing for decision on applications.**

(a) *In general.* Not later than 120 days after receiving a substantially complete application for license as an NCUA-Licensed Permitted Payment Stablecoin Issuer, the NCUA will render a decision on the application. If the NCUA fails to render a decision on a complete application within this period, the application shall be deemed approved.

(b) *Substantially complete applications.*

(1) An application is considered substantially complete if the application contains sufficient information for the NCUA to render a decision on whether the Applying Issuer satisfies the factors described in 706.105.

(2) Not later than 30 days after receiving an application, the NCUA will notify the Applying Issuer as to whether the NCUA determined the application to be substantially complete and, if the application is not substantially complete, the additional information the Applying Issuer must provide for the application to be considered substantially complete.

(3) Material Change in Circumstances. An application considered substantially complete under this section will remain substantially complete unless there is a material change in circumstances that requires the NCUA to treat the application as a new application.

**§ 706.107 Denial.**

(a) *Grounds for denia*l.

(1) *In general.* The NCUA will only deny a substantially complete application received under this subpart if the NCUA determines that the activities of the Applying Issuer would be unsafe or unsound based on the statutory evaluation factors described in § 706.105.

(2) *Issuance on open, public, or decentralized network not grounds for denial.* The issuance of a Payment Stablecoin on an open, public, or decentralized network is not a valid ground for denial of an application received under this subpart.

(b) *Explanation required.* If the NCUA denies a substantially complete application received under this subpart, not later than 30 days after the date of such denial, the NCUA shall provide the Applying Issuer with written notice explaining the denial with specificity, including all findings made with respect to all identified material shortcomings in the application and actionable recommendations on how the Applying Issuer could address the identified material shortcomings.

**§ 706.108 Opportunity for hearing; final determination.**

(a) *In general.* Not later than 30 days after the date of receipt of any notice of the denial of an application under this subpart, the Applying Issuer may request, in writing, an opportunity for a written or oral hearing before the NCUA Board to appeal the denial.

*(b) Timing.* Upon receipt of a timely hearing request, the NCUA will notice a time not later than 30 days after the date of receipt of the request and place at which the Applying Issuer may appear, personally or through counsel, to submit written materials or provide oral testimony and oral argument.

*(c) Final determination.* Not later than 60 days after the date of a hearing under this section, the NCUA will notify the Applying Issuer of a final determination, which will contain a statement of the basis for that determination, with specific findings.

*(d) Notice if no hearing.* If an applicant does not make a timely request for a hearing under this section, the NCUA will notify the Applying Issuer, not later than 10 days after the date by which the Applying Issuer may request a hearing under this subparagraph, in writing, that the denial of the application is a final determination of the NCUA.

**§ 706.109 Right to reapply**

The denial of an application under this subpart does not prohibit the

Applying Issuer from filing a subsequent application.

**§ 706.110 Certification of anti-money laundering and economic sanctions compliance programs.**

(a) *In general.* Not later than 180 days after the approval of an application, and on an annual basis thereafter, each NCUA-Licensed Permitted Payment Stablecoin Issuer must submit to the NCUA written certification that the NCUA-Licensed Permitted Payment Stablecoin Issuer has implemented anti-money laundering and economic sanctions compliance programs that are reasonably designed to prevent the NCUA-Licensed Permitted Payment Stablecoin Issuer from facilitating money laundering, in particular, facilitating money laundering for cartels and organizations designated as foreign terrorist organizations under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), and the financing of terrorist activities, consistent with the requirements of this Act.

(b) *Failure to submit certification.* The failure by an NCUA-Licensed Permitted Payment Stablecoin Issuer to submit the certification required under paragraph (a) constitutes cause for the NCUA to revoke the approval and license of the NCUA-Licensed Permitted Payment Stablecoin Issuer.

**§ 706.111 Change in Parent Company.**

(a) *Change in Parent Company.* An Insured Credit Union must provide the NCUA with sixty days' prior written notice of a proposed acquisition that would cause it to become a Parent Company of an NCUA-Licensed Permitted Payment Stablecoin Issuer.

(b) *Notice.* The notice must include:

(1) Biographical and financial report information described in § 706.105(f)(3) of this part sufficient to allow the NCUA to

(i) Evaluate the competence, experience, and integrity of the proposed Parent Company's Officers and Directors related to Payment Stablecoins; and

(ii) Evaluate the record of the proposed Parent Company's Officer and Directors with compliance with laws and regulations; and

(2) A certification that the proposed Parent Company will fulfill any commitments to, any conditions imposed by, the NCUA in connection with its proposed investment.

(c) *Timing.* The Insured Credit Union may complete its proposed investment to become a Parent Company of an NCUA-Licensed Permitted Payment Stablecoin Issuer at the end of the sixty-day period unless the NCUA issues a notice disapproving the proposed acquisition.

(d) *Notice of disapproval.* The NCUA may disapprove of an insured credit union's proposed investment to become a Parent Company of an NCUA-Licensed Permitted Payment Stablecoin Issuer if it finds that the competence, experience, or integrity of the insured credit union's Officers and Directors indicates the investment would not be in the best interests of the NCUA-Licensed Permitted Payment Stablecoin Issuer or of the public.

(e) *Appeal.* Not later than 30 days after the date of receipt of the notice of disapproval, the notificant may request, in writing, an opportunity for a written or oral hearing before the NCUA to appeal the denial.

**§ 706.112 Investment limitation.**

An Insured Credit Union cannot invest in a Payment Stablecoin issuer unless it is an NCUA-Licensed Permitted Payment Stablecoin Issuer.

## Subpart B—NCUA-Licensed Permitted Payment Stablecoin Issuers

**§ 706.201 Activities.**

(a) Permitted activities. An NCUA-Licensed Permitted Payment Stablecoin Issuer may only:

(1) Issue Payment Stablecoins;

(2) Redeem Payment Stablecoins;

(3) Manage reserves related to the issuance or redemption of Payment Stablecoins, including purchasing, selling, and holding Reserve Assets or providing custodial services for Reserve Assets, consistent with applicable State and Federal law;

(4) Provide custodial or safekeeping services for Payment Stablecoins, required reserves, or Private Keys of Payment Stablecoins, consistent with subpart C of this part;

(5) Assess fees associated with purchasing or redeeming Payment Stablecoins;

(6) Act as principal or agent with respect to any Payment Stablecoin;

(7) Pay fees to facilitate Customer transactions; and

(8) Undertake any other activities that directly support any of the activities described in paragraphs (a)(1) through (4) of this section.

(b) *Rule of construction.* Nothing in paragraph (a) of this section may be construed to limit the authority of an Insured Credit Union to engage in activities permissible pursuant to applicable State and Federal law.

(c) *Prohibitions.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must not:

(1) Use a deceptive name by using any combination of terms relating to the United States Government, including ''United States,'' ''United States Government,'' and ''USG,'' in the name of the Payment Stablecoin. This prohibition does not apply to abbreviations relating directly to the currency to which the Payment Stablecoin is pegged, such as ''USD''.

(2) Market a Payment Stablecoin in such a way that a reasonable person would perceive the Payment Stablecoin to be:

(i) Legal tender as described in 31 U.S.C. 5103;

(ii) Issued by the United States; or

(iii) Guaranteed or approved by the Government of the United States.

(3) Directly or through implication represent that Payment Stablecoins are backed by the full faith and credit of the United States, guaranteed by the United States Government, or subject to Federal deposit insurance or Federal share insurance.

(4) Pay the holder of any Payment Stablecoin any form of interest or yield (whether in cash, tokens, or other consideration) solely in connection with the holding, use, or retention of such Payment Stablecoin.

(i) The NCUA presumes that an NCUA-Licensed Permitted Payment Stablecoin Issuer is paying interest or yield (whether in cash, tokens, or other consideration) to the holder of a Payment Stablecoin solely in connection with the holding, use, or retention of such Payment Stablecoin if:

(A) The NCUA-Licensed Permitted Payment Stablecoin Issuer has a contract, agreement, or other arrangement with an Affiliate of the issuer or related third party to pay interest or yield to the Affiliate or related third party;

(B) The Affiliate or related third party identified in paragraph (c)(4)(i)(A) of this section or, if the Person is a related third party, an Affiliate of such related third party has a contract, agreement, or other arrangement to pay interest or yield (whether in cash, tokens, or other consideration) to a holder of any Payment Stablecoin issued by the NCUA-Licensed Permitted Payment Stablecoin Issuer solely in connection with the holding, use, or retention of such Payment Stablecoin; and

(C) To the extent the Person, or an Affiliate of the Person, identified in paragraph (c)(4)(i)(A) is a related third party of the NCUA-Licensed Permitted Payment Stablecoin Issuer because the NCUA-Licensed Permitted Payment Stablecoin Issuer issues Payment Stablecoins on the related third party's behalf or under the related third party's branding, the arrangement identified in paragraph (c)(4)(i)(B) of this section

considers the holder of the Payment Stablecoin to be the holder of a Payment Stablecoin issued by the NCUA-Licensed Permitted Payment Stablecoin Issuer on the related third party's behalf or under the related third party's branding.

(ii) For purposes of paragraph (c)(4)(i) of this section, a related third party means:

(A) A Person offering to pay interest or yield to Payment Stablecoin holders as a service; and

(B) Any Person that the issuer issues Payment Stablecoins on the Person's behalf or under the Person's branding.

(iii) An NCUA-Licensed Permitted Payment Stablecoin Issuer may rebut the presumption in paragraph (c)(4)(i) of this section by submitting written materials that, in the NCUA's judgment, demonstrate that the contract, agreement, or other arrangement is not prohibited under paragraph (c)(4) of this section and is not an attempt to evade the prohibition.

(5) Pledge, rehypothecate, or reuse any Reserve Assets required under § 706.202 either directly or indirectly (*e.g.,* through a third-party custodian of the Reserve Assets) except for the purpose of:

(i) Satisfying margin obligations in connection with investments in permitted reserves under § 706.202(b)(4) or (5);

(ii) Satisfying obligations associated with the use, receipt, or provision of standard custodial services; or

(iii) Creating liquidity to meet reasonable expectations of requests to redeem Payment Stablecoins, such that reserves in the form of Treasury bills with a maturity of 93 days or less may be sold as purchased securities in repurchase agreements, provided that either:

(A) The repurchase agreements are cleared by a clearing agency registered with the Securities and Exchange Commission; or

(B) The NCUA-Licensed Permitted Payment Stablecoin Issuer receives prior approval from the NCUA. All repurchase agreements under this paragraph (c)(5) wherein the Treasury bills that are sold as purchased securities have a maturity of 93 days or less are approved by the NCUA.

(6) Engage in any activity that the NCUA determines is an evasion of the requirements of section 4 of the GENIUS Act (12 U.S.C. 5903) or this part.

(7) Provide a Customer credit, directly or indirectly, to enable the Customer to purchase or otherwise acquire Payment Stablecoins from the NCUA-Licensed Permitted Payment Stablecoin Issuer.

**§ 706.202 Reserve Assets.**

(a) *Reserve requirement.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must:

(1) Maintain Reserve Assets that:

(i) Are identifiable;

(ii) Are segregated from and not commingled with other assets owned or held by the NCUA-Licensed Permitted Payment Stablecoin Issuer;

(iii) At all times have a total Fair Value that equals or exceeds the Outstanding Issuance Value of the NCUA-Licensed Permitted Payment Stablecoin Issuer; and

(iv) Are either held directly by the NCUA-Licensed Permitted Payment Stablecoin Issuer or within the custody of an Eligible Financial Institution.

(2) Demonstrate the operational capability to access and monetize the identifiable Reserve Assets, commensurate with the NCUA-Licensed Permitted Payment Stablecoin Issuer's risk profile and business model.

(3) Only withdraw any surplus Reserve Assets in excess of Outstanding Issuance Value once per month, upon the publication of the composition report required by paragraph (e) of this section. An NCUA-Licensed Permitted Payment Stablecoin Issuer may withdraw any surplus Reserve Assets, calculated and reported as of the last day of the previous month, after the information in the month-end report is examined and certified pursuant to paragraph (f) of this section, provided that an NCUA-Licensed Permitted Payment Stablecoin Issuer may not withdraw any Reserve Assets if the withdrawal would cause the current Fair Value of Reserve Assets to fall below the current Outstanding Issuance Value, calculated as of the day of withdrawal.

(b) *Composition.* The Reserve Assets required under paragraph (a) of this section must comprise exclusively:

(1) United States coins and currency (including Federal Reserve notes) or money standing to the credit of an account with a Federal Reserve Bank;

(2) Funds held as deposits or in Share Accounts that are payable upon demand at an Insured Depository Institution (including any foreign branches or agents, including correspondent banks, of an insured depository institution), subject to any limitation established by the FDIC and the NCUA, as applicable, pursuant to section 4(a)(1)(A)(ii) of the GENIUS Act (12 U.S.C. 5903(a)(1)(A)(ii)) to address safety and soundness risks of such insured depository institution;

(3) Treasury bills, Treasury notes, or Treasury bonds with a remaining maturity of 93 days or less;

(4) Money received under repurchase agreements, with the NCUA-Licensed Permitted Payment Stablecoin Issuer acting as a seller of securities and with a no longer than overnight maturity, that are backed by Treasury bills with a maturity of 93 days or less;

(5) Reverse repurchase agreements, with the NCUA-Licensed Permitted Payment Stablecoin Issuer acting as a purchaser of securities and with a no longer than overnight maturity, that are collateralized by Treasury bills, Treasury notes, Treasury bonds on a no longer than overnight basis, subject to overcollateralization in line with standard market terms, that are:

(i) Tri-party;

(ii) Centrally cleared through a clearing agency registered with the Securities and Exchange Commission; or

(iii) Bilateral with a counterparty that the issuer has determined to be adequately creditworthy even in the event of severe market stress;

(6) Securities issued by an investment company registered under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)), or other registered Government money market fund, and that are invested solely in underlying assets described in paragraphs (b)(1) through (5) of this section;

(7) Any other similarly liquid Federal Government-issued asset approved by the NCUA. In determining whether a potential Reserve Asset qualifies as ''any other similarly liquid Federal Government-issued asset,'' the NCUA will consider, among other relevant factors, whether:

(i) The asset has liquidity characteristics, including during times of stress, comparable to the other Reserve Assets allowed under this paragraph (b);

(ii) NCUA-Licensed Permitted Payment Stablecoin Issuers will be operationally capable of monetizing the asset to meet redemption requests, including sudden and high-volume requests;

(iii) The asset poses levels of risk comparable to those of the assets allowed under this paragraph (b) including interest rate risk and counterparty credit risk; and

(iv) Whether the asset introduces additional risks that may be difficult for NCUA-Licensed Permitted Payment Stablecoin Issuers to manage; or

(8) Any reserve described in paragraphs (b)(1) through (3) or paragraph (b)(6) or (7) of this section in tokenized form, provided that such reserves comply with all applicable laws and regulations.

Option A for Paragraph (c)

(c) *Asset diversification and concentration.*

(1) An NCUA-Licensed Permitted Payment Stablecoin Issuer must maintain Reserve Assets that are sufficiently diverse to manage potential credit, liquidity, interest rate, and price risks. An NCUA-Licensed Permitted Payment Stablecoin Issuer must measure and manage the risk that concentrating Reserve Assets at one Eligible Financial Institution or a small number of Eligible Financial Institutions may impair the ability of an NCUA-Licensed Permitted Payment Stablecoin Issuer to satisfy redemption demands if individual Eligible Financial Institutions are unable to return, or if there is a delay in returning, Reserve Assets placed by an NCUA-Licensed Permitted Payment Stablecoin Issuer.

(2) An NCUA-Licensed Permitted Payment Stablecoin Issuer will be deemed to satisfy the requirements of paragraph (c)(1) of this section if on each business day:

(i) The NCUA-Licensed Permitted Payment Stablecoin Issuer maintains at least 10 percent of its Reserve Assets as deposits or funds in Share Accounts that are payable upon demand or Money standing to the credit of an account with a Federal Reserve Bank;

(ii) The NCUA-Licensed Permitted Payment Stablecoin Issuer maintains at least 30 percent of its Reserve Assets as deposits or funds in Share Accounts that are payable upon demand, Money standing to the credit of an account with a Federal Reserve Bank, or amounts receivable and due unconditionally within five business days on pending sales of Reserve Assets, maturing Reserve Assets, or other maturing transactions;

(iii) The NCUA-Licensed Permitted Payment Stablecoin Issuer maintains no more than 40 percent of its Reserve Assets at any one Eligible Financial Institution, whether as deposits or funds in Share Accounts at any one Insured Depository Institution, securities custodied at any one Eligible Financial Institution, bilateral reverse repurchase agreements with any counterparty, or through other exposures;

(iv) The NCUA-Licensed Permitted Payment Stablecoin Issuer maintains no more than 50 percent of the amount required in paragraph (c)(2)(i) of this section at any one Eligible Financial Institution; and

(v) The NCUA-Licensed Permitted Payment Stablecoin Issuer's total stock of Reserve Assets have a weighted average maturity of no more than 20 days.

Option B for Paragraph (c)

(c) *Asset diversification and concentration.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must on each business day:

(1) Maintain at least 10 percent of its Reserve Assets as deposits or funds in Share Accounts that are payable upon demand or Money standing to the credit of an account with a Federal Reserve Bank;

(2) Maintain at least 30 percent of its Reserve Assets as deposits or funds in Share Accounts that are payable upon demand, Money standing to the credit of an account with a Federal Reserve Bank, or amounts receivable and due unconditionally within five business days on pending sales of Reserve Assets, maturing Reserve Assets, or other maturing transactions;

(3) Maintain no more than 40 percent of its Reserve Assets at any one Eligible Financial Institution, whether as deposits or funds in Share Accounts at any one Insured Depository Institution, securities custodied at any one Eligible Financial Institution, bilateral reverse repurchase agreements with any counterparty, or through other exposures;

(4) Maintain no more than 50 percent of the amount required in paragraph (c)(1) of this section at any one Eligible Financial Institution; and

(5) Maintain Reserve Assets with a weighted average maturity of no more than 20 days.

(d) *Minimum insured amount.* An NCUA-Licensed Permitted Payment Stablecoin Issuer with an Outstanding Issuance Value of $25 billion or more must, on each business day, maintain at least 0.5 percent of its Reserve Assets, up to a cap of $500 million, in the form of deposits or funds in Share Accounts at Insured Depository Institutions that are fully insured by the FDIC and/or NCUA.

(e) *Composition report.* By noon on the last day of each month, an NCUA-Licensed Permitted Payment Stablecoin Issuer must publish the monthly composition of the issuer's Reserve Assets as of the last day of the previous month on the website of the issuer, using a format substantially similar to the template provided in table 1 to this paragraph (e), containing:

(1) The total number of outstanding Payment Stablecoins issued by the issuer; and

(2) The amount and composition of the reserves described in paragraph (a) of this section, including the average tenor and geographic location of custody of each category of reserve instruments.

Table 1 to Paragraph (e)—Monthly Composition Template

TABLE 1 TO PARAGRAPH (e)—MONTHLY COMPOSITION TEMPLATE

| As of YY/YY/YYYY (In thousands of U.S. dollars) | Amount | Geographic location | Average tenor | |
|---|---|---|---|---|
| | **Number of Outstanding Payment Stablecoins** | | | |
| 1 [1] | | ..... | ..... | |
| 2 | | ..... | ..... | |
| 3 | | ..... | ..... | |
| 4 | TOTAL OUTSTANDING PAYMENT STABLECOINS ..... | ..... | ..... | |
| | **Fair Value of Reserve Assets** | | | |
| 5 | Deposits or funds in Share Accounts: ..... | ..... | ..... | |
| 6 | Insured deposits or insured funds in Share Accounts ..... | ..... | ..... | |
| 7 | Uninsured deposits or uninsured funds in Share Accounts ..... | ..... | ..... | |
| 8 | Treasury bills, Treasury notes, or Treasury bonds ..... | ..... | ..... | |
| 9 | Other similarly liquid Federal Government-issued assets approved by NCUA. | ..... | ..... | |
| 10 | Money received under repurchase agreements ..... | ..... | ..... | |

TABLE 1 TO PARAGRAPH (e)—MONTHLY COMPOSITION TEMPLATE—Continued

| As of YY/YY/YYYY (In thousands of U.S. dollars) | Amount | Geographic location | Average tenor | |
|---|---|---|---|---|
| 11 | Reverse repurchase agreements | | | |
| 12 | Securities issued by an investment company solely invested in qualifying reserve assets. | | | |
| 13 | Reserves in tokenized form [2] | | | |
| 14 | Total Reserve Assets [3] | | | |
| 15 | Outstanding repurchase agreement liabilities | | | |
| 16 | Total Reserve Assets net of Outstanding Repurchase Agreement Liabilities. | | | |

[1] List different classes of Payment Stablecoin separately, if applicable. To the extent that different classes of Payment Stablecoins are secured by distinct pools of reserve assets, NCUA-Licensed Permitted Payment Stablecoin Issuers should publish a composition table for each class of Payment Stablecoin and describe the legal mechanism for how the assets are separately secured.

[2] NCUA-Licensed Permitted Payment Stablecoin Issuers must separately list any reserves in tokenized form by category of reserve asset, using multiple rows if appropriate.

[3] Do not double count any reserve assets that may be listed in more than one row for purposes of computing the total.

(f) *Monthly certification; examination of reports by Registered Public Accounting Firm.*

(1) By noon on the last day of each month, an NCUA-Licensed Permitted Payment Stablecoin Issuer must have the information disclosed in the previous month-end report required under paragraph (e) of this section examined by a Registered Public Accounting Firm. The Registered Public Accounting Firm's examination report must be published on the website of the issuer at the same time as the month-end report required under paragraph (e).

(2) Each month, the Chief Executive Officer and Chief Financial Officer (or the Persons performing the equivalent functions) of an NCUA-Licensed Permitted Payment Stablecoin Issuer must submit a certification as to the accuracy of the monthly report required under paragraph (e) of this section to the NCUA.

(g) *Failure to meet minimum Reserve Assets requirement.*

(1) An NCUA-Licensed Permitted Payment Stablecoin Issuer must notify the NCUA on any day in which its Reserve Asset amount has fallen below the required minimum in paragraph (a) of this section.

(2) An NCUA-Licensed Permitted Payment Stablecoin Issuer that fails to satisfy the minimum Reserve Asset requirement in paragraph (a) of this section at any time:

(i) Is prohibited from issuing any new Payment Stablecoins immediately except as necessary to facilitate a transfer of Payment Stablecoins from one Distributed Ledger to another and provided that the net Outstanding Issuance Value does not increase; and

(ii) May not resume issuance until the NCUA-Licensed Permitted Payment Stablecoin Issuer satisfies its minimum Reserve Asset requirement.

(3) If an NCUA-Licensed Permitted Payment Stablecoin Issuer fails to meet its minimum Reserve Asset requirement for 15 consecutive business days (which may be extended in the NCUA's sole discretion), it must:

(i) Begin liquidation of Reserve Assets and redemption of outstanding Payment Stablecoins, consistent with § 706.203; and

(ii) Not charge Customers a fee to redeem their Payment Stablecoins at any time during the liquidation.

(4) If at any point the NCUA determines that an NCUA-Licensed Permitted Payment Stablecoin Issuer has not demonstrated that it meets the Reserve Asset requirements in paragraph (a), (b), (c), or (d) of this section, the NCUA may require the issuer to submit a plan describing how the NCUA-Licensed Permitted Payment Stablecoin Issuer will attain compliance and the timeline for the plan. If the NCUA determines, either before or after the submission of a plan, that an NCUA-Licensed Permitted Payment Stablecoin Issuer faces a significant risk of being unable to attain compliance with the reserve requirements in paragraph (a), (b), (c), or (d) within a reasonable period, the NCUA may order the issuer to initiate redemption of all outstanding Payment Stablecoins. The NCUA's authority to require a compliance plan or order redemption does not limit the NCUA's authority to pursue other measures, including enforcement actions, if appropriate.

**§ 706.203 Redemption.**

(a) *Redemption policy.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must publicly disclose its current redemption policy and include, at a minimum, the following information:

(1) The timeframe in which the issuer will redeem Payment Stablecoins and the timeframe under which the issuer is required to redeem Payment Stablecoins under paragraph (b)(1)(i) of this section;

(2) A statement explaining the limitation in paragraph (b)(1)(ii) of this section;

(3) A statement explaining the scenarios under which the redemption period may be extended as described in paragraph (c) of this section;

(4) A statement with clear instructions on how a Payment Stablecoin holder can redeem a Payment Stablecoin, including a link to the website(s) where a Customer can redeem the Payment Stablecoin; and

(5) The minimum number of Payment Stablecoins, if any, that the NCUA-Licensed Permitted Payment Stablecoin Issuer will redeem, provided that the issuer must redeem any number greater than or equal to one Payment Stablecoin, subject to appropriate Customer screening and onboarding.

(b) *Redemption policy requirements.* An NCUA-Licensed Permitted Payment Stablecoin Issuer's redemption policy must provide:

(1) Clear and conspicuous procedures for timely redemption of outstanding Payment Stablecoins:

(i) That timely redemption may not exceed two business days following the date of the requested redemption; and

(ii) That any discretionary limitations on timely redemptions can only be imposed by the NCUA.

(2) [Reserved]

(c) *Timeliness extended in certain scenarios.*

(1) If an NCUA-Licensed Permitted Payment Stablecoin Issuer faces redemption demands in excess of 10

percent of its Outstanding Issuance Value in a single 24-hour period, the period for timely redemption described in paragraph (b)(1) of this section is immediately extended to seven calendar days by operation of this paragraph (c)(1).

(2) The extended redemption period in paragraph (c)(1) of this section applies to all redemption requests that are outstanding at the time the 10 percent threshold is met as well as any subsequent redemption requests.

(3) An NCUA-Licensed Permitted Payment Stablecoin Issuer may only redeem any of the outstanding or subsequent redemption requests described in paragraph (c)(2) of this section prior to the seven-calendar day period if the NCUA determines that the issuer has the ability to redeem sooner in an orderly fashion and through a fair and transparent process or the NCUA otherwise provides notice to the NCUA-Licensed Permitted Payment Stablecoin Issuer that the extended redemption period no longer applies.

(4) An NCUA-Licensed Permitted Payment Stablecoin Issuer must provide notice to the NCUA within 24 hours if its redemption requests exceed 10 percent of its Outstanding Issuance Value in a single 24-hour period.

(5) The NCUA may also, in its discretion, extend timely redemption described in paragraph (b)(1) or (c)(1) of this section, as applicable, if the NCUA determines that the NCUA-Licensed Permitted Payment Stablecoin Issuer poses a threat to safety and soundness, financial stability, or such an extension is otherwise in the public interest.

(d) *Disclosures and fees associated with purchase and redemption.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must:

(1) Publicly, clearly, and conspicuously disclose in plain language and in a format that is readily noticeable to Customers, readily understandable by Customers, and segregated from other information:

(i) The name of the NCUA-Licensed Permitted Payment Stablecoin Issuer that issues the Payment Stablecoin;

(ii) That the NCUA-Licensed Permitted Payment Stablecoin Issuer is the entity that is obligated to convert, redeem, or repurchase the Payment Stablecoin for a fixed amount of Monetary Value;

(iii) The link to the monthly composition report of the relevant NCUA-Licensed Permitted Payment Stablecoin Issuer's reserves required under § 706.202(e); and

(iv) All fees associated with purchasing or redeeming Payment Stablecoins.

(2) Update the disclosures in paragraph (d)(1)(iv) of this section if there are any changes in fees associated with purchasing or redeeming Payment Stablecoins and provide Customers at least seven calendar days' prior notice of the change, including by securely delivering the notice to current Customers;

(3) Publish the disclosures in paragraph (d)(1) of this section and any updates made in accordance with paragraph (d)(2) of this section on the NCUA-Licensed Permitted Payment Stablecoin Issuer's website; and

(4) Include the disclosures in paragraph (d)(1) of this section and any updates made in accordance with paragraph (d)(2) of this section in any Customer agreements that it provides.

**§ 706.204 Risk management.**

(a) *General operational and managerial standards—*

(1) *Internal controls and information systems.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must have internal controls and information systems to support effective risk management that are appropriate for the size and complexity of the NCUA-Licensed Permitted Payment Stablecoin Issuer and the nature, scope, and risk of its activities and that provide for:

(i) An organizational structure with appropriate segregation of duties and an internal control structure that establishes clear lines of authority and responsibility for monitoring adherence to established policies;

(ii) Effective risk assessment;

(iii) Timely and accurate financial, operational, and regulatory reporting, including with respect to the reports required under this part;

(iv) Adequate procedures to monitor, safeguard, manage, control, and monetize assets, including Reserve Assets; and

(v) Compliance with applicable laws and regulations.

(2) *Internal audit system.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must have an internal audit system that is appropriate to the size and complexity of the NCUA-Licensed Permitted Payment Stablecoin Issuer and the nature, scope, and risk of its activities and that provides for:

(i) Adequate monitoring of the system of internal controls through an internal audit function, or for an NCUA-Licensed Permitted Payment Stablecoin Issuer whose size, complexity or scope of operations does not warrant a full-scale internal audit function, a system of independent reviews of key internal controls;

(ii) Independence and objectivity;

(iii) Qualified Persons responsible for the audit function;

(iv) Adequate independent testing and review of internal controls and information systems, verification of published information available to Customers, calculations for required reserves, and regulatory filings;

(v) Adequate documentation of tests and findings and any corrective actions;

(vi) Verification and review of management actions to address deficiencies; and

(vii) Review by the NCUA-Licensed Permitted Payment Stablecoin Issuer's audit committee or board of Directors of the effectiveness of the internal audit systems.

(3) *Interest rate exposure.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must:

(i) Manage interest rate risk in a manner that is appropriate to the size and complexity of the NCUA-Licensed Permitted Payment Stablecoin Issuer and the complexity of its assets and liabilities; and

(ii) Provide for periodic reporting to the NCUA-Licensed Permitted Payment Stablecoin Issuer's management and board of Directors regarding interest rate risk with adequate information for management and the board of Directors to assess the level of risk.

(4) *Asset growth.* An NCUA-Licensed Permitted Payment Stablecoin Issuer's asset growth must be prudent and commensurate with an NCUA-Licensed Permitted Payment Stablecoin Issuer's risk management capabilities, operational capacity, and staffing.

(5) *Earnings.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must establish and maintain a system that is commensurate with the NCUA-Licensed Permitted Payment Stablecoin Issuer's size and complexity and the nature and scope of its operations to evaluate and monitor earnings and ensure that earnings are sufficient to support operations and maintain the capital levels required by subpart D of this part.

(6) *Insider and Affiliate transactions.*

(i) An NCUA-Licensed Permitted Payment Stablecoin Issuer must ensure that transactions between the NCUA-Licensed Permitted Payment Stablecoin Issuer and Insiders or Affiliates:

(A) Are not excessive and do not pose significant risks of material financial loss;

(B)

(1) Are conducted on terms that are the same or at least as favorable to the NCUA-Licensed Permitted Payment Stablecoin Issuer as those prevailing at the time for comparable transactions

with or involving non-Insiders or non-Affiliates; or

(2) In the absence of comparable transactions, are offered on terms and under circumstances that, in good faith would be offered to, or would apply to non-Affiliates or non-Insiders; and

(C) Are appropriately documented and reviewed by the NCUA-Licensed Permitted Payment Stablecoin Issuer's board of Directors.

(ii) An NCUA-Licensed Permitted Payment Stablecoin Issuer must appropriately monitor and validate compliance with the requirements of paragraph (a)(6)(i) of this section.

(7) *Oversee service provider arrangements.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must:

(i) Exercise appropriate due diligence in selecting its service providers;

(ii) Require its service providers by contract to implement appropriate measures designed to meet the applicable requirements of this part; and

(iii) As appropriate, monitor its service providers to confirm they have satisfied their obligations under this section. As part of this monitoring, NCUA-Licensed Permitted Payment Stablecoin Issuers must review audits, summaries of test results, or other equivalent evaluations of its service providers.

(8) *Liquidity, diversification, and concentration.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must:

(i) Appropriately monitor and validate compliance with the requirements of § 706.202; and

(ii) Manage liquidity and concentration risk in a manner that is appropriate to the business model and risk profile of the NCUA-Licensed Permitted Payment Stablecoin Issuer.

(b) *Information technology and security—*

(1) *Information technology and security program.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must implement a comprehensive written information security risk and control framework, including a program that assesses and manages information technology and information security risks.

(2) *Board of Directors approval.* The NCUA-Licensed Permitted Payment Stablecoin Issuer's board of Directors or an appropriate board committee must approve the information technology and security program described in paragraph (b)(1) of this section and oversee the development, implementation, and maintenance of the program, including the appointment of a qualified Information Technology and Security Officer. Such oversight includes assigning specific responsibility for program implementation and review of program-related reports.

(3) *Required elements of program.* An NCUA-Licensed Permitted Payment Stablecoin Issuer's information technology and security program must include:

(i) An inventory and classification of assets, processes, and sensitivity of data;

(ii) Controls supporting and safeguarding sensitive information and processes;

(iii) Evaluation, validation, and reporting processes to ensure that key information technology systems and controls, including smart contracts, are operating as intended;

(iv) Periodic independent testing; and

(v) A comprehensive and effective incident identification and assessment process and incident response program.

(4) *Security of Customer information.* An NCUA-Licensed Permitted Payment Stablecoin Issuer's information technology and security program must include administrative, technical, and physical safeguards designed to:

(i) Ensure the security and confidentiality of records containing Nonpublic Personal Information about a Customer;

(ii) Protect against any anticipated threats or hazards to the security or integrity of such records;

(iii) Protect against unauthorized access to or use of such records that could result in substantial harm or inconvenience to any Customer; and

(iv) Ensure the proper disposal of such records.

(5) *Safe handling of Digital Assets.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must develop, implement, and maintain appropriate measures to ensure secure handling of Digital Assets, including Private Key management, backup, and recovery incorporating:

(i) Relevant technical, operational, strategic, market, legal, and compliance considerations relating to each Digital Asset and its underlying Digital Ledger; and

(ii) Material developments specifically related to supported Digital Assets and their underlying Digital Ledgers.

(6) *Adjust the program.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must monitor, evaluate, and adjust, as appropriate, the information technology and security program in light of any relevant changes in technology, the sensitivity of its Customer information, internal or external threats, and the NCUA-Licensed Permitted Payment Stablecoin Issuer's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, third-party arrangements, and changes to applicable information systems.

(7) *Notification of unauthorized access—*

(i) *Notification to Customers.* When an NCUA-Licensed Permitted Payment Stablecoin Issuer becomes aware of an incident of unauthorized access to sensitive Customer information, including a Customer's Private Key, the NCUA-Licensed Permitted Payment Stablecoin Issuer must conduct a reasonable investigation to promptly determine the likelihood that the information has been or will be misused. If the NCUA-Licensed Permitted Payment Stablecoin Issuer determines that misuse of its information about a Customer has occurred or is reasonably possible, it must notify the affected or possibly affected Customer and the NCUA as soon as possible. Customer notice must be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the NCUA-Licensed Permitted Payment Stablecoin Issuer with a written request for the delay. The NCUA-Licensed Permitted Payment Stablecoin Issuer must notify its Customers of the misuse or possible misuse of Customer information as soon as law enforcement notifies the NCUA-Licensed Permitted Payment Stablecoin Issuer that notification will no longer interfere with the investigation.

(ii) *Notification to group of Customers.* If an NCUA-Licensed Permitted Payment Stablecoin Issuer determines that a group of files has been accessed improperly but is unable to identify which specific Customers' information has been accessed and the circumstances of the unauthorized access lead the NCUA-Licensed Permitted Payment Stablecoin Issuer to determine that misuse of the information is reasonably possible, it must notify all Customers in the group.

(8) *Information technology resilience.* An NCUA-Licensed Permitted Payment Stablecoin Issuer's information technology and security program must include measures to ensure continuity of operations and recovery of critical functions in the face of disruptions, including by business impact analyses, testing of vulnerabilities, and testing with critical service providers.

(c) In order to ensure compliance with Bank Secrecy Act and economic sanctions requirements, each NCUA-Licensed Permitted Payment Stablecoin

Issuer must comply with the Bank Secrecy Act, sections 4(a)(5) and 4(a)(6) of the GENIUS Act (12 U.S.C. 5903(a)(5) and (6), and applicable regulations at 31 CFR Chapter V and 31 CFR Chapter X, including any Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) program, economic sanctions program, and reporting requirements. Subpart E of this part provides the NCUA's supervision and enforcement policy for AML/CFT program requirements for NCUA-Licensed Permitted Payment Stablecoin Issuers.

**§ 706.205 Audits, reports, and supervision.**

(a) *General.* The NCUA will conduct a full-scope examination of every NCUA-Licensed Permitted Payment Stablecoin Issuer subject to its supervision at least once during each 12-month period, unless otherwise specified in paragraph (d) of this section.

(b) *Access to books and records.* Upon request by the NCUA, NCUA-Licensed Permitted Payment Stablecoin Issuers must grant the NCUA prompt and complete access to all Officers, Directors, employees, agents, and relevant books, records, or documents of any type.

(c) *Location of examinations.* The NCUA may conduct examinations of every NCUA-Licensed Permitted Payment Stablecoin Issuer subject to its supervision, as specified in paragraph (a) of this section, on-site, remotely, or in some combination.

(d) *Extended exam cycle for certain issuers.* Notwithstanding paragraph (a) of this section, the NCUA may conduct a full-scope examination of an NCUA-Licensed Permitted Payment Stablecoin Issuer subject to its supervision at least once during each 14- to 24-month period, as determined by the NCUA in its sole discretion, if the following conditions are satisfied:

(1) The NCUA-Licensed Permitted Payment Stablecoin Issuer currently is not subject to a formal enforcement proceeding or order;

(2) No Person became a Parent Company or acquired Control, as specified in §§ 706.111 and 706.205(m) of this part, of the NCUA-Licensed Permitted Payment Stablecoin Issuer during the preceding 12-month period in which a full-scope examination would have been required but for this paragraph (d);

(3) The NCUA-Licensed Permitted Payment Stablecoin Issuer has an Outstanding Issuance Value of less than $1 billion or less than $25 billion in total monthly Trading Volume; and

(4) The NCUA-Licensed Permitted Payment Stablecoin Issuer is in compliance with all of the reserve requirements set forth in § 706.202 and the reporting requirements of this section.

(e) *Authority to conduct more frequent examinations.* This section does not limit the authority of the NCUA to examine any NCUA-Licensed Permitted Payment Stablecoin Issuer as frequently as the NCUA deems necessary, including examinations of a limited scope.

(f) *Recordkeeping requirements.* All NCUA-Licensed Permitted Payment Stablecoin Issuers must maintain a complete set of books and records in English and in accordance with GAAP.

(g) *Records retention policy.* All NCUA-Licensed Permitted Payment Stablecoin Issuers must develop and implement a records retention policy that ensures the NCUA-Licensed Permitted Payment Stablecoin Issuer can demonstrate compliance with the GENIUS Act, this part, and all applicable laws and regulations.

(h) *Confidential weekly reporting.* All NCUA-Licensed Permitted Payment Stablecoin Issuers must submit to the NCUA, on a weekly basis, in the manner and form specified by the NCUA, a confidential report containing the information requested in the form available at *www.ncua.gov.*

(i) *Reports of financial condition.* All NCUA-Licensed Permitted Payment Stablecoin Issuers must submit to the NCUA a quarterly report on the financial condition of the NCUA-Licensed Permitted Payment Stablecoin Issuer, including, but not limited to, income statement, expenses, balance sheet, reserves, changes in equity, investments, capital, outstanding issuance value, and assets under custody, in a standardized format as prescribed by the NCUA within 30 days of the end of the prior quarter. Forms and instructions are available at *www.ncua.gov.* Each report of financial condition must contain a declaration by the NCUA-Licensed Permitted Payment Stablecoin Issuer's Chief Financial Officer, or the individual performing an equivalent function, that the report is true and correct to the best of their knowledge and belief. The correctness of the report of financial condition must be attested to by the signatures of the Directors and senior management of the NCUA-Licensed Permitted Payment Stablecoin Issuer other than the Officer, or the individual performing an equivalent function, making such declaration, with the attestation stating that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(j) *Submission of other reports.* All NCUA-Licensed Permitted Payment Stablecoin Issuers must, upon request, submit to the NCUA a report on:

(1) The financial condition of the NCUA-Licensed Permitted Payment Stablecoin Issuer;

(2) The systems of the NCUA-Licensed Permitted Payment Stablecoin Issuer for monitoring and controlling financial and operational risks;

(3) Compliance of the NCUA-Licensed Permitted Payment Stablecoin Issuer and any subsidiary thereof with the GENIUS Act, and this part; and

(4) Compliance of the NCUA-Licensed Permitted Payment Stablecoin Issuer with the requirements of the Bank Secrecy Act and with laws authorizing the imposition of sanctions and implemented by the Secretary of the Treasury.

(k) *Ongoing compliance reporting.* Not later than 180 days after the approval of an application under subpart A, and on an annual basis thereafter, an NCUA-Licensed Permitted Payment Stablecoin Issuer must submit to the NCUA a certification by its board of Directors that the NCUA-Licensed Permitted Payment Stablecoin Issuer has implemented anti-money laundering and economic sanctions compliance programs that are reasonably designed to prevent the NCUA-Licensed Permitted Payment Stablecoin Issuer from facilitating money laundering, in particular, facilitating money laundering for cartels and organizations designated as foreign terrorist organizations under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) and the financing of terrorist activities, consistent with the requirements of the GENIUS Act.

(l) *Audits.* An NCUA-Licensed Permitted Payment Stablecoin Issuer with more than $50 billion in Outstanding Issuance Value that is not subject to the reporting requirements under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) must prepare in accordance with GAAP an annual financial statement that must include the disclosure of any related party transactions, as defined by GAAP.

(1) A Registered Public Accounting Firm must perform an audit of the financial statements described in this paragraph (l). The audit must be conducted in accordance with all applicable auditing standards established by the Public Company Accounting Oversight Board, including those relating to auditor independence,

internal controls, and related party transactions.

(2) An NCUA-Licensed Permitted Payment Stablecoin Issuer required to prepare an audited annual financial statement under this paragraph (l) must:

(i) Make the audited financial statements publicly available on the NCUA-Licensed Permitted Payment Stablecoin Issuer's website; and

(ii) Submit the audited financial statements annually, within 120 days after the end of its fiscal year, to the NCUA.

(iii) If an NCUA-Licensed Permitted Payment Stablecoin Issuer is unable to timely file all or any portion of the financial statement described in paragraph (l)(2)(ii) of this section, it must submit a written notice of late filing to the NCUA. The notice must:

(A) Disclose the NCUA-Licensed Permitted Payment Stablecoin Issuer's inability to timely file all, or specified portions, of its annual financial statement and the reasons therefore in reasonable detail;

(B) Include the date by which the financial statement will be filed; and

(C) Be filed on or before the deadline for filing the financial statement.

(m) *Changes in Control.* A Person seeking to acquire Control of an NCUA-Licensed Permitted Payment Stablecoin Issuer must follow the requirements of § 706.111 as though that Person were a Parent Company.

(n) *Use of existing reports.* In supervising and examining an NCUA-Licensed Permitted Payment Stablecoin Issuer, the NCUA will, to the fullest extent possible, use existing reports and other supervisory information.

(o) *Avoidance of duplication.* The NCUA will, to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.

## Subpart C—Custody

### § 706.301 Definitions.

For the purposes of this subpart, the following definitions apply:

*Applicable Law* means the law of a State or other jurisdiction governing a Covered Custodian's custody relationships, any applicable Federal law governing those relationships, the terms of the Custody Agreement, and any applicable court order.

*Covered Assets* means Payment Stablecoin reserves, Payment Stablecoins used as collateral, and Private Keys used to issue Payment Stablecoins, as well as cash and other property received in the course of the provision of custodial or safekeeping services for such assets.

*Covered Custodian* means an Insured Credit Union or NCUA-Licensed Permitted Payment Stablecoin Issuer to the extent of such Person's provision of custodial or safekeeping services for Covered Assets.

*Covered Customer* means a Person for or on whose behalf a Covered Custodian receives, acquires, or holds Covered Assets.

*Custody Agreement* means a legally binding contractual agreement between a Covered Customer, as the principal, and the Covered Custodian, as the agent, that establishes the Covered Custodian's duties and responsibilities in providing safekeeping and ancillary services to the Covered Customer.

*Digital Wallet* means a software program or hardware device that stores and manages the Private Keys associated with a particular unit of a Digital Asset.

*Sub-Custodian* means a Person that provides custody and safekeeping services to a Covered Custodian, including through a Digital Wallet for which such Person controls the associated Private Keys, with respect to Covered Assets of a Covered Customer, for which the Covered Custodian otherwise serves as a custodian under this subpart. A sub-custodian is subject to the requirements applicable to a custodian under the GENIUS Act, including the requirements of section 10 of the Act (12 U.S.C. 5909).

### § 706.302 Covered Asset custodial property requirements.

(a) *Separate accounting, treatment, and dealing.* A Covered Custodian must separately account for the Covered Assets of a Covered Customer and must treat and deal with those Covered Assets as belonging to such Covered Customer and not as the property of the Covered Custodian.

(b) *Protection, possession, and control.*

(1) A Covered Custodian must take appropriate steps to protect the Covered Assets of Covered Customers from the claims of creditors of the Covered Custodian and any Sub-Custodian, as applicable, including through adopting, implementing, and maintaining written policies, procedures, and internal controls that are adequate to comply with Applicable Law and that are commensurate with the Covered Custodian's size, complexity, and risk profile and with the nature of the applicable Covered Assets for which it provides custodial or safekeeping services.

(2)

(i) A Covered Custodian must maintain possession or control of the Covered Assets of a Covered Customer that are held directly, including in a Digital Wallet for which the Covered Custodian controls the associated Private Keys; however, a Covered Custodian may maintain the Covered Assets of a Covered Customer through the use of a Sub-Custodian if consistent with Applicable Law, provided the Covered Custodian maintains adequate safeguards and internal controls reasonably designed to provide the Covered Custodian with oversight of such Sub-Custodian's compliance with the requirements of this subpart.

(ii) With regards to any Payment Stablecoin or Payment Stablecoin reserve in the form of a tokenized asset held in safekeeping under this subpart, a Covered Custodian, or Sub-Custodian, as applicable, maintains control for purposes of paragraph (b)(2)(i) of this section if it can reasonably demonstrate, consistent with the standard of care established by applicable law, that no other party, including the Covered Customer, can transfer the Payment Stablecoin or tokenized asset using a Distributed Ledger without the consent of the Covered Custodian or Sub-Custodian, as applicable.

(c) *Withdrawals and application of Covered Assets.* Consistent with Applicable Law, a Covered Custodian may withdraw and apply such share of the Covered Assets of a Covered Customer necessary to transfer, adjust, or settle a transaction or transfer of assets applicable to that Covered Customer, including the payment of commissions, taxes, storage, and other charges lawfully accruing in connection with the provision of services to that Covered Customer by the Covered Custodian.

(d) *Holdings of cash.* Notwithstanding any other provision of this section, an Insured Credit Union that provides custodial or safekeeping services, including as a Sub-Custodian, for Covered Assets that are in the form of cash may hold such cash in the form of a deposit or Share Account liability, provided such treatment is consistent with Federal law.

### § 706.303 Use of omnibus accounts.

(a) *Segregation of Covered Assets.* A Covered Custodian must segregate all Covered Assets of Covered Customers from and not commingle them with the assets of the Covered Custodian, except as permitted under § 706.302(d).

(b) *Commingling covered assets.* A Covered Custodian may, for convenience, commingle the Covered Assets of multiple Covered Customers, in one or more omnibus accounts to the extent that the steps it has taken pursuant to § 706.302(b) are adequate to

maintain safe and sound practices for the use of omnibus accounts, and to the extent that the use of omnibus accounts is consistent with Applicable Law.

**§ 706.304 Self-custody hardware and software exclusion.**

The requirements of this subpart do not apply to any Insured Credit Union or NCUA-Licensed Permitted Payment Stablecoin Issuer solely on the basis that such entity engages in the business of providing hardware or software to facilitate a Person's self-custody of their Payment Stablecoins or Private Keys.

## Subpart D—Capital and Operational Backstop

**§ 706.400 Capital elements.**

(a) *Capital elements.* The minimum capital requirement must consist of common equity tier 1 capital and additional tier 1 capital.

(b) *Common equity tier 1 capital.* Common equity tier 1 capital is the sum of the common equity tier 1 capital elements in this paragraph (b). The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the NCUA-Licensed Permitted Payment Stablecoin Issuer, net of treasury stock, that meet all the following criteria:

(i) The instrument is paid-in, issued directly by the NCUA-Licensed Permitted Payment Stablecoin Issuer, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the NCUA-Licensed Permitted Payment Stablecoin Issuer;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the NCUA-Licensed Permitted Payment Stablecoin Issuer that is proportional with the holder's share of the NCUA-Licensed Permitted Payment Stablecoin Issuer's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of the NCUA, and does not contain any term or feature that creates an incentive to redeem;

(iv) The NCUA-Licensed Permitted Payment Stablecoin Issuer did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation;

(v) Any cash dividend payments on the instrument are paid out of the NCUA-Licensed Permitted Payment Stablecoin Issuer's net income or retained earnings and are not subject to a limit imposed by the contractual terms governing the instrument;

(vi) The NCUA-Licensed Permitted Payment Stablecoin Issuer has full discretion at all times to refrain from paying any dividends and making any other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the NCUA-Licensed Permitted Payment Stablecoin Issuer;

(vii) Dividend payments and any other distributions on the instrument may be paid only after all legal and contractual obligations of the NCUA-Licensed Permitted Payment Stablecoin Issuer have been satisfied, including payments due on more senior claims;

(viii) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the NCUA-Licensed Permitted Payment Stablecoin Issuer with greater priority in a receivership, insolvency, liquidation, or similar proceeding;

(ix) The paid-in amount is classified as equity under GAAP;

(x) The NCUA-Licensed Permitted Payment Stablecoin Issuer, or an entity that the NCUA-Licensed Permitted Payment Stablecoin Issuer controls, did not purchase or directly or indirectly fund the purchase of the instrument;

(xi) The instrument is not secured, not covered by a guarantee of the NCUA-Licensed Permitted Payment Stablecoin Issuer or of an Affiliate, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(xii) The instrument has been issued in accordance with applicable laws and regulations; and

(xiii) The instrument is reported on the NCUA-Licensed Permitted Payment Stablecoin Issuer's financial statements separately from other capital instruments.

(2) Retained earnings.

(3) Accumulated other comprehensive income (AOCI) as reported under GAAP.

(4) Notwithstanding the criteria for common stock instruments referenced in paragraph (b)(1) of this section, common stock issued by the NCUA-Licensed Permitted Payment Stablecoin Issuer and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (b)(1)(iii), (iv), or (xi) of this section, provided that any repurchase of the stock is required solely by virtue of the Employee Retirement Income Security Act of 1974 (ERISA) for an instrument of an NCUA-Licensed Permitted Payment Stablecoin Issuer that is not publicly-traded. In addition, an instrument issued by a NCUA-Licensed Permitted Payment Stablecoin Issuer to its employee stock ownership plan does not violate the criterion in paragraph (b)(1)(x) of this section.

(c) *Additional tier 1 capital.* Additional tier 1 capital is the sum of additional tier 1 capital elements and any related surplus. Additional tier 1 capital elements are:

(1) Instruments (plus any related surplus) that meet the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to payment stablecoin holders, general creditors, and subordinated debt holders of the NCUA-Licensed Permitted Payment Stablecoin Issuer in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument is not secured, not covered by a guarantee of the NCUA-Licensed Permitted Payment Stablecoin Issuer or of an Affiliate, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iv) The instrument has no maturity date and does not contain a dividend step-up or any other term or feature that creates an incentive to redeem;

(v) If callable by its terms, the instrument may be called by the NCUA-Licensed Permitted Payment Stablecoin Issuer only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in additional tier 1 capital or a tax event that impacts the taxation of the instrument. In addition:

(A) The NCUA-Licensed Permitted Payment Stablecoin Issuer must receive prior approval from the NCUA to exercise a call option on the instrument;

(B) The NCUA-Licensed Permitted Payment Stablecoin Issuer does not create at issuance of the instrument, through any action or communication, an expectation that the call option will be exercised; and

(C) Prior to or simultaneously with exercising the call option, the NCUA-Licensed Permitted Payment Stablecoin Issuer must either replace the instrument to be called with an equal amount of common equity tier 1 or additional tier 1 instruments or demonstrate to the satisfaction of the

NCUA that following redemption, the NCUA-Licensed Permitted Payment Stablecoin Issuer will continue to hold capital commensurate with its risk;

(vi) Redemption or repurchase of the instrument requires prior approval from the NCUA;

(vii) The NCUA-Licensed Permitted Payment Stablecoin Issuer has full discretion at all times to cancel dividends or other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions on the NCUA-Licensed Permitted Payment Stablecoin Issuer except in relation to any distributions to holders of common stock or instruments that are pari passu with the instrument;

(viii) Any cash dividend payments on the instrument are paid out of the NCUA-Licensed Permitted Payment Stablecoin Issuer's net income or retained earnings;

(ix) The instrument does not have a credit-sensitive feature, such as a dividend rate that is reset periodically based in whole or in part on the NCUA-Licensed Permitted Payment Stablecoin Issuer's credit quality, but may have a dividend rate that is adjusted periodically independent of the NCUA-Licensed Permitted Payment Stablecoin Issuer's credit quality, in relation to general market interest rates or similar adjustments;

(x) The paid-in amount is classified as equity under GAAP;

(xi) The NCUA-Licensed Permitted Payment Stablecoin Issuer, or an entity that the NCUA-Licensed Permitted Payment Stablecoin Issuer controls, did not purchase or directly or indirectly fund the purchase of the instrument; and

(xii) The instrument does not have any features that would limit or discourage additional issuance of capital by the NCUA-Licensed Permitted Payment Stablecoin Issuer, such as provisions that require the NCUA-Licensed Permitted Payment Stablecoin Issuer to compensate holders of the instrument if a new instrument is issued at a lower price during a specified time frame.

(2) [Reserved]

**§ 706.401 Minimum capital and backstop.**

(a) *Minimum capital requirement.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must hold minimum capital as follows:

(1) *De novo capital requirement.*

(i) A de novo NCUA-Licensed Permitted Payment Stablecoin Issuer must hold minimum capital equal to the greater of:

(A) The amount specified as part of its licensing conditions; or

(B) $5 million.

(ii) A de novo NCUA-Licensed Permitted Payment Stablecoin Issuer means a permitted payment stablecoin issuer that has received NCUA approval to issue a Payment Stablecoin under this part within the prior 3 years.

(iii) A de novo NCUA-Licensed Permitted Payment Stablecoin Issuer must hold this minimum amount for 36 months, or for a shorter or longer period as specified as part of its licensing conditions or as subsequently determined by the NCUA based on the experience of the NCUA-Licensed Permitted Payment Stablecoin Issuer.

(2) *Ongoing capital requirement.*

(i) An NCUA-Licensed Permitted Payment Stablecoin Issuer must maintain capital commensurate with the level and nature of all risks to which the NCUA-Licensed Permitted Payment Stablecoin Issuer is exposed, including risks for off-balance sheet activities.

(ii) An NCUA-Licensed Permitted Payment Stablecoin Issuer must have a process for assessing its overall capital adequacy in relation to its business model and risk profile and a comprehensive strategy for sustaining an appropriate level of capital to maintain ongoing operations.

(b) *Operational backstop.* An NCUA-Licensed Permitted Payment Stablecoin Issuer must maintain assets:

(1) Equal to 12 months of total expenses.

(i) In the case of an NCUA-Licensed Permitted Payment Stablecoin Issuer that has provided quarterly reports under § 706.205 for one year or more, the NCUA-Licensed Permitted Payment Stablecoin Issuer must calculate the amount required under this paragraph (b)(1) using the quarterly expenses reported in the current quarterly report and the three immediately preceding reports.

(ii) For each calendar quarter in the preceding 12 months for which the NCUA-Licensed Permitted Payment Stablecoin Issuer has not filed a quarterly report required under § 706.205 the NCUA-Licensed Permitted Payment Stablecoin Issuer must calculate its expenses using:

(A) Actual expenses, in the case of an NCUA-Licensed Permitted Payment Stablecoin Issuer that was in operation during a calendar quarter in which it did not file a quarterly report under § 706.205; or

(B) Reasonably determined expenses, which may include annualizing expenses from other quarters, in the case of any other NCUA-Licensed Permitted Payment Stablecoin Issuer.

(2) Consisting of:

(i) United States coins and currency (including Federal Reserve notes) or Money standing to the credit of an account with a Federal Reserve Bank;

(ii) Funds held as deposits or in Share Accounts that are payable upon demand at a U.S. Insured Depository Institution, the balances of which are fully insured by the FDIC or the NCUA; and

(iii) U.S. Treasury bills, notes, or bonds with a remaining maturity of 93 days or less, or issued with a maturity of 93 days or less; and

(3) Separately identified from any reserve assets required under § 706.202 or other assets of the NCUA-Licensed Permitted Payment Stablecoin Issuer on the reports filed under § 706.205.

(c) *Failure to meet minimum capital or backstop requirements.*

(1) An NCUA-Licensed Permitted Payment Stablecoin Issuer must comply with its minimum capital and backstop requirements at the end of each quarter based on the amounts reported in the most recent report required under § 706.205.

(2) An NCUA-Licensed Permitted Payment Stablecoin Issuer that fails to satisfy its minimum capital or backstop requirement at the end of a quarter is prohibited from issuing any new Payment Stablecoins, except as necessary to facilitate a transfer of Payment Stablecoins from one Distributed Ledger to another and provided that the net Outstanding Issuance Value does not increase starting on the first day of the following month and until such time as it satisfies its minimum capital and backstop requirements.

(3) If an NCUA-Licensed Permitted Payment Stablecoin Issuer fails to meet its minimum capital or backstop requirements at the end of two consecutive quarters, it must:

(i) Begin liquidation of Reserve Assets and redemption of outstanding Payment Stablecoins, consistent with § 706.203;

(ii) Not charge Customers a fee to redeem their Payment Stablecoins; and

(iii) Not issue any new Payment Stablecoins going forward.

**§ 706.402 Individual additional capital or backstop requirement.**

(a) *Applicability.* The NCUA may require an additional capital or backstop requirement for an individual NCUA-Licensed Permitted Payment Stablecoin Issuer in view of its circumstances. For example, an additional capital or backstop requirement may be appropriate for:

(1) Failure of management to assess an appropriate capital requirement to support ongoing operations consistent

with the NCUA-Licensed Permitted Payment Stablecoin Issuer's business model and risk profile;

(2) An NCUA-Licensed Permitted Payment Stablecoin Issuer that has, or is expected to have, losses resulting in capital inadequacy;

(3) An NCUA-Licensed Permitted Payment Stablecoin Issuer with significant exposure due to management's overall inability to monitor and control financial and operating risks;

(4) An NCUA-Licensed Permitted Payment Stablecoin Issuer that is experiencing significant volatility in Payment Stablecoin issuance or redemption;

(5) An NCUA-Licensed Permitted Payment Stablecoin Issuer with significant exposure due to fiduciary or operational risk;

(6) An NCUA-Licensed Permitted Payment Stablecoin Issuer's significant off-balance sheet activities; or

(7) An NCUA-Licensed Permitted Payment Stablecoin Issuer that may be adversely affected by the activities or condition of its Affiliate(s), or other Persons or institutions, with which it has significant business relationships.

(b) *Standards for determination.* The factors to be considered in the determination will vary in each case and may include, for example:

(1) The conditions or circumstances leading to the NCUA's determination that an additional capital or backstop requirement is appropriate or necessary for the NCUA-Licensed Permitted Payment Stablecoin Issuer;

(2) The exigency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the NCUA-Licensed Permitted Payment Stablecoin Issuer and, if applicable, its Affiliate(s);

(4) The NCUA-Licensed Permitted Payment Stablecoin Issuer's liquidity, capital, and Payment Stablecoin Reserve Assets compared to its peer group; and

(5) The views of the NCUA-Licensed Permitted Payment Stablecoin Issuer's owners and senior management in any response provided under paragraph (c)(2) of this section.

(c) *Procedures—*

(1) *Notice.* When the NCUA determines that an additional capital or backstop requirement above that set forth in § 706.401 are necessary or appropriate for a particular NCUA-Licensed Permitted Payment Stablecoin Issuer, the NCUA will notify the NCUA-Licensed Permitted Payment Stablecoin Issuer in writing of the proposed additional capital or backstop requirement and the date by which the requirement should be reached (if applicable) and will provide an explanation of why the requirement proposed is considered necessary or appropriate for the NCUA-Licensed Permitted Payment Stablecoin Issuer.

(2) *Response.*

(i)

(A) The NCUA-Licensed Permitted Payment Stablecoin Issuer may respond to the NCUA in writing to the notice.

(B) The response should include any matters which the NCUA-Licensed Permitted Payment Stablecoin Issuer would have the NCUA consider in deciding whether an individual additional capital or backstop requirement should be established for the NCUA-Licensed Permitted Payment Stablecoin Issuer, what the capital or backstop requirement should be, and, if applicable, when it should be achieved.

(C) Any response must be delivered to the designated NCUA official within 30 days after the date on which the NCUA-Licensed Permitted Payment Stablecoin Issuer received the notice or such other time period as the NCUA determines appropriate based on the condition of the NCUA-Licensed Permitted Payment Stablecoin Issuer.

(ii) Failure to respond within the time period specified by the NCUA constitutes a waiver of any objections to the proposed individual additional capital or backstop requirement or the deadline for its achievement.

(3) *Decision.* After the close of the NCUA-Licensed Permitted Payment Stablecoin Issuer's response period, the NCUA will decide, based on a review of the NCUA-Licensed Permitted Payment Stablecoin Issuer's response and other information concerning the NCUA-Licensed Permitted Payment Stablecoin Issuer, whether the individual additional capital or backstop requirement should be established for the NCUA-Licensed Permitted Payment Stablecoin Issuer and, if so, the requirement and the date the requirement will become effective. The NCUA-Licensed Permitted Payment Stablecoin Issuer will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish an individual additional capital or backstop requirement for the NCUA-Licensed Permitted Payment Stablecoin Issuer.

(4) *Submission of plan.* The decision may require the NCUA-Licensed Permitted Payment Stablecoin Issuer to develop and submit to the NCUA, within a time period specified, an acceptable plan to reach the additional capital or backstop requirement established for the NCUA-Licensed Permitted Payment Stablecoin Issuer by the date required.

(5) *Change in circumstances.* If, after the NCUA's decision in paragraph (c)(3) of this section, there is a significant change in the circumstances that materially affects the NCUA-Licensed Permitted Payment Stablecoin Issuer's capital adequacy or its ability to reach the required additional capital or backstop requirement by the specified date, the NCUA-Licensed Permitted Payment Stablecoin Issuer may request, or the NCUA may propose to the NCUA-Licensed Permitted Payment Stablecoin Issuer, a change in the additional capital or backstop requirement for the NCUA-Licensed Permitted Payment Stablecoin Issuer, the date when the minimum must be achieved, or the NCUA-Licensed Permitted Payment Stablecoin Issuer's plan (if applicable). Pending a decision on reconsideration, the NCUA's original decision and any plan required under that decision continues in full force and effect.

## Subpart E—Supervision and Enforcement Policy for Anti-Money Laundering/Countering the Financing of Terrorism Program Requirements for NCUA-Licensed Permitted Payment Stablecoin Issuers

### § 706.501 Definitions.

For purposes of this section:

*AML/CFT enforcement action* means any formal or informal action taken under authority of 12 U.S.C. 5905, 12 U.S.C. 1786, or other applicable law, that seeks to penalize, remedy, prevent, or respond to noncompliance with past or ongoing violations of, or past or ongoing deficiencies relating to, an AML/CFT requirement. The term includes—

(1) A cease-and-desist order, written agreement, consent order, or memorandum of understanding; or

(2) The assessment of a civil money penalty.

*AML/CFT requirement* means:

(1) A requirement of the Bank Secrecy Act or applicable regulations at 31 CFR chapter X;

(2) A requirement of 12 U.S.C. 5903(a)(5)(A)(i)–(v), 12 U.S.C. 5903(a)(6)(B), or 12 U.S.C. 5903(f)(1)(A); or

(3) A requirement prescribed under 12 U.S.C. 1786(q) or this section.

*Significant AML/CFT supervisory action* means any written communication or other formal supervisory determination that—

(1) Identifies one or more alleged deficiencies, weaknesses, violations of law, or unsafe or unsound practices or conditions relating to an AML/CFT requirement;

(2) Communicates supervisory expectations to an NCUA-Licensed Permitted Payment Stablecoin Issuer regarding actions or remedial measures required to correct the deficiency, weakness, violation, or practice or condition; and

(3) contemplates significant or programmatic actions or remedial measures to be taken by the NCUA-Licensed Permitted Payment Stablecoin Issuer.

The term does not include examiner observations, suggestions, or other informal comments.

**§ 706.502 NCUA Supervision and Enforcement Policy**

*(a) In general.* Except with respect to a significant or systemic failure to implement an effective AML/CFT program in accordance with applicable regulations at 31 CFR Chapter X, an NCUA-Licensed Permitted Payment Stablecoin Issuer that has established an effective AML/CFT program in accordance with applicable regulations at 31 CFR Chapter X will not be subject to an AML/CFT enforcement action or to a significant AML/CFT supervisory action related to the requirements of 31 U.S.C. 5318(h)(1), this section, or applicable regulations at 31 CFR Chapter X.

(b) *Program establishment violations.* Nothing in this subpart E may be construed to restrict an AML/CFT enforcement action or a significant AML/CFT supervisory action with respect to any failure to establish an effective AML/CFT program in accordance with applicable regulations at 31 Chapter X.

(c) *Criminal enforcement unaffected.* Nothing in this subpart may be construed to affect criminal enforcement liability under the Bank Secrecy Act.

**§ 706.503 FinCEN consultation.**

(a) *Consultation and consideration requirement.* Before initiating an AML/CFT enforcement action or a significant AML/CFT supervisory action, the NCUA will provide the FinCEN Director an opportunity to review the action and will consider any input offered by the FinCEN Director on the action, which may include any view as to the effectiveness of the NCUA-Licensed Permitted Payment Stablecoin Issuer's AML/CFT program.

(b) *Notice requirement.* To provide the FinCEN Director an opportunity to provide a view under paragraph (a) of this section, the NCUA will:

(1) Send written notice to the FinCEN Director of its intent to take that action at least 30 days before taking the action (unless a shorter period of time is necessary, in the sole discretion of the NCUA, to remedy, prevent, or respond to an unsafe or unsound practice or condition), accompanied by the relevant AML/CFT information underlying the proposed action, including the relevant portions of the draft report or enforcement action, the relevant examination workpapers supporting the proposed action, and the relevant AML/CFT information submitted by the NCUA-Licensed Permitted Payment Stablecoin Issuer to the NCUA, other than information over which the NCUA-Licensed Permitted Payment Stablecoin Issuer may claim privilege under Federal or State law; and

(2) Respond to the extent reasonably practicable to requests for additional information from the FinCEN Director regarding the proposed action.

**§ 706.504 . Disclosure of supervisory information to FinCEN.**

[OPTION A]

The NCUA permits a permitted payment stablecoin issuer subject to the NCUA's jurisdiction, on behalf of the NCUA, to disclose to the FinCEN Director, and permits the FinCEN Director to use, any information relating to an existing or potential AML/CFT enforcement action or significant AML/CFT supervisory action to which the permitted payment stablecoin issuer has access.

[OPTION B]

(a) The NCUA permits a permitted payment stablecoin issuer subject to the NCUA's jurisdiction, on behalf of the NCUA, to disclose to the FinCEN Director, and permits the FinCEN Director to use, any information relating to an existing or potential AML/CFT enforcement action or significant AML/CFT supervisory action to which the permitted payment stablecoin issuer has access upon the contemporaneous disclosure of such information to the NCUA

(b) A permitted payment stablecoin issuer's disclosure of information to the FinCEN Director under paragraph (a) of this section does not waive, invalidate, destroy, or otherwise affect any privilege or protection available under Federal or State law, including the attorney-client privilege, the work-product doctrine, the bank-examination privilege, or any other confidentiality or evidentiary privilege.

(c) Any disclosure made by a permitted payment stablecoin issuer under paragraph (a) of this section is made on behalf of the NCUA pursuant to the NCUA's authorization under 12 U.S.C. 1821(t).

## PART 745—SHARE INSURANCE COVERAGE

■ 7. Authority for part 745 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; title V, Pub. L. 109–351;120 Stat. 1966.

■ 8. Amend § 745.2 by adding a new paragraph (f) to read as follows:

* * * * *

(f) *Technology used to record accounts.* The technology or type of recordkeeping utilized by an Insured Credit Union to record account liabilities does not affect whether those liabilities constitute ''accounts.''

* * * * *

■ 9. Revise § 745.6 to read as follows:

**§ 745.6 Accounts held by a corporation, partnership or unincorporated association.**

(a) Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to the SMSIA in the aggregate. The account of a corporation, partnership, or unincorporated association not engaged in an independent activity shall be deemed to be owned by the Person or persons owning such corporation or comprising such partnership or unincorporated association and, for account insurance purposes, the interest of each Person in such an account shall be added to any other account individually owned by such Person and insured up to the SMSIA in the aggregate. For purposes of this section, ''independent activity'' means an activity other than one directed solely at increasing insurance coverage.

(b) Notwithstanding any other provision of this part, accounts at an Insured Credit Union held as reserves for a Payment Stablecoin, as defined in the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS) (12 U.S.C. 5901), are accounts of the permitted payment stablecoin issuer's and insured as corporate accounts for purposes of this part.

## PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 10. The authority citation for part 747 is revised to read as follows:

**Authority:** 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d, 5905, and 5913; 15 U.S.C. 1639e; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; Pub. L. 114–74.

■ 11. Amend § 747.1 by revising paragraph (e) and adding paragraph (f) to read as follows:

**§ 747.1 Scope.**

* * * * *

(e) Suspension or revocation of registration, cease-and-desist, temporary cease-and-desist, removal and prohibition proceedings, or civil money penalties under section 6 of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (''GENIUS Act'') (12 U.S.C. 5905); and

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in subparts B through J of this part.

■ 14. Amend § 747.3 by revising paragraphs (g) and (h) to read as follows:

**§ 747.3 Definitions.**

* * * * *

(g) Institution includes:

(1) Any Federal credit union as that term is defined in section 101(1) of the Act (12 U.S.C. 1752(1));

(2) Any insured State-chartered credit union as that term is defined in section 101(7) of the FCUA (12 U.S.C. 1752(7)); and

(3) Any NCUA-Licensed Permitted Payment Stablecoin Issuer as that term is defined in 12 CFR 706.2.

(h) Institution-affiliated party means any institution-affiliated party as that term is defined in section 206(r) of the Act (12 U.S.C. 1786(r)). For actions pursuant to the GENIUS Act, institution-affiliated party means any institution-affiliated party as that term is defined in section 2(13) of the GENIUS Act (12 U.S.C. 5901(13)).

* * * * *

■ 12. Amend § 747.3 by revising paragraph (a) to read as follows:

**§ 747.703 Authority to conduct investigations.**

(a) The General Counsel and persons acting on his or her behalf and at his or her direction may conduct such investigations into the affairs of any insured credit union, NCUA-Licensed Permitted Payment Stablecoin Issuer, or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the Act, the GENIUS Act, the NCUA Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union or an NCUA-Licensed Permitted Payment Stablecoin Issuer. The General Counsel and persons acting on his or her behalf may investigate whether any party is unfit to participate in the affairs of a credit union or an NCUA-Licensed Permitted Payment Stablecoin Issuer, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his or her designee, in his or her discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

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